

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

In re:

Case No. 8:05-bk-27165-CPM  
Chapter 7

Mary K. Levi,

Debtor.

**ORDER (1) DENYING DEBTOR'S, MARY K. LEVI, MOTION FOR SUMMARY JUDGMENT IN SUPPORT OF DEBTOR'S MOTION TO AVOID JUDGMENT LIEN OF NEVIN A. WEINER PURSUANT TO 11 U.S.C. 522(f) (sic), (2) GRANTING CREDITOR, NEVIN A. WEINER, P.A.'S MOTION FOR SUMMARY JUDGEMENT (sic) IN OPPOSITION TO DEBTOR'S MOTION TO AVOID JUDGEMENT (sic) LIEN OF NEVIN A. WIENER PURSUANT TO 11 U.S.C. §522(f), AND (3) DENYING DEBTOR'S MOTION TO AVOID JUDGMENT LIEN OF NEVIN A. WEINER, ESQUIRE, PURSUANT TO 11 U.S.C. § 522(f)**

THIS CASE came on for hearing upon cross motions for summary judgment in a contested matter arising from a motion to avoid a judgment lien of Nevin A. Weiner, Esquire (Doc. No. 30) ("Lien Motion") filed by Mary K. Levi ("Debtor"). Mr. Weiner filed a response to the Debtor's Lien Motion (Doc. No. 31). His professional association ("Creditor"), as assignee of the judgment at issue, filed a motion for summary judgment in its favor (Doc. No. 34). In response, the Debtor filed her own motion for summary judgment (Doc. No. 36), and the Creditor filed a Response to that motion (Doc. No. 42).

The crux of the dispute between the parties is whether a charging lien in favor of the Creditor

constitutes an avoidable judicial lien under 11 U.S.C. section 522(f)(1)(A). As an alternative argument, the Debtor's motion for summary judgment attacks the efficacy of her waiver of her homestead exemption as to the Creditor, arguing that the charging lien is unenforceable even if it is not a judicial lien capable of avoidance under section 522(f).<sup>\*</sup> Another issue, raised at the hearing by the Debtor for the first time, is that this Court should determine the validity of the underlying charging lien.

After reviewing the record and pertinent case law the Court is satisfied that, as a matter of law, a charging lien does not fall within the scope of the definition of a "judicial lien" as defined by 11 U.S.C. section 101(36). Section 101(36) defines a "judicial lien" as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. §101(36).

The Court considers the Eleventh Circuit case of *Weed v. Washington (In re Washington)*, 242 F.3d 1320 (11th Cir. 2001) and District Court Judge Susan C. Bucklew's decision on remand in that case convincing on all three issues identified above. In *Washington*, the Eleventh Circuit affirmed Judge Bucklew's decision that charging liens arise by operation of law and not by judicial action and, thus, are not judicial liens within the meaning section 522(f).

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<sup>\*</sup> The proper way to raise this issue is through an adversary proceeding brought pursuant to Rule 7001(2), Federal Rules of Bankruptcy Procedure.

*Washington*, 242 F.2d at 1324-25. It follows, therefore, that a charging lien cannot be avoided by virtue of 11 U.S.C. section 522(f)(1). *See also, In re Zoernack*, 289 B.R. 220, 225 (Bankr. M.D. Fla. 2003). Consequently, the Debtor in the instant case cannot avoid the Creditor's charging lien by use of section 522(f)(1).

In addition to affirming Judge Bucklew's decision on the judicial lien issue, the Eleventh Circuit in *Washington* remanded the case back to her for a determination of whether the debtor could effectively grant a lien on her homestead property and whether the charging lien was valid. Looking to principles of collateral estoppel and citing *Community Bank of Homestead v. Torcise*, 162 F.3d 1084, 1086 (11th Cir. 1998), Judge Bucklew determined that all of the issues on remand had already been decided by a state court of competent jurisdiction and thus the parties were precluded from "rearguing the issue of the validity and/or enforceability of the charging lien...." *Weed vs. Washington*, Case. No. 8:98-CIV-2142-T-42EAJ, at \*6 (M.D. Fla. June 28, 2001) (order on remand).

In this case, issues identical to those raised by the Debtor in this Court were litigated in a court of competent jurisdiction and a final judgment was entered against the Debtor before she filed her petition in bankruptcy. Accordingly, as in the *Washington* case on remand, the necessary elements of collateral estoppel are present and similarly preclude the Debtor

from rearguing the validity and enforceability of the charging lien at issue in this case.

Accordingly, it is

ORDERED that

- (1) Debtor's, Mary K. Levi, Motion for Summary Judgment in Support of Debtor's Motion to Avoid Judgment Lien of Nevin A. Weiner Pursuant to 11 U.S.C. 522(f) (sic) is DENIED;
- (2) Creditor, Nevin A. Weiner, P.A.'s Motion for Summary Judgment in Opposition to Debtor's Motion to Avoid Judgment Lien of Nevin A. Weiner Pursuant to 11 U.S.C. §522(f) is GRANTED; and
- (3) Debtor's Motion to Avoid Judgment Lien of Nevin A. Weiner, Esquire, Pursuant to 11 U.S.C. § 522(f) is DENIED.

DONE AND ORDERED on October 16, 2007.

BY THE COURT

/s/ Catherine Peek McEwen  
Catherine Peek McEwen  
United States Bankruptcy Judge

cc: Debtor  
Debtor's counsel  
Creditor's counsel