

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re

DENA RELYEA,

Case No. 01-11549

Debtor.

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APPEARANCES:

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Attorneys for the Debtor  
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Albany, New York 12204

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ANDREA E. CELLI, ESQ.  
Chapter 13 Trustee  
350 Northern Boulevard  
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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

**MEMORANDUM-DECISION AND ORDER**

This matter came before the court on the motion of Dena Relyea (the “Debtor”) for an order avoiding judicial liens pursuant to 11 U.S.C. § 522(f). The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and § 157. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B).

**FACTS**

The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on March 19, 2001. The Debtor’s confirmed plan provides for monthly plan payments of \$100.00 for a term of 60 months. In addition, unsecured creditors are to receive a dividend of not less than 10%.

The Debtor listed her Schoharie County residence as having a value of \$133,200.00<sup>1</sup> with a mortgage lien against the same held by Traveler's Bank & Trust in the amount of \$101,000.00. The Debtor's residence is jointly owned with her nondebtor spouse. On schedule C, the Debtor claimed a \$10,000.00 homestead exemption.

In her motion, the Debtor asserts there are three judgment liens against her home junior to Traveler's mortgage lien (collectively the "Judgments"). According to the Debtor, Citibank obtained a money judgment against her in the amount of \$4,892.09 which was recorded in the Schoharie County Clerk's office on September 13, 2000. Chase Manhattan holds a \$9,066.24 money judgment against the Debtor which was recorded in the Schoharie County Clerk's office on November 14, 2000. In addition, Universal Bank obtained a money judgment against her in the amount of \$5,450.52 which was recorded in the Schoharie County Clerk's office on March 12, 2001.

The Debtor seeks to invoke § 522(f) to partially avoid the judgment lien of Chase Manhattan and to avoid the judgment lien of Universal Bank in its entirety. Specifically, it is the Debtor's intention to pay Citibank's judgment lien of \$4,892.09 in full. The Debtor proposes to treat the judgment lien of Chase Manhattan as partially secured to the extent of \$1,156.91 and the balance, \$7,909.33, as unsecured, and the \$5,450.52 judgment lien of Universal Bank as totally unsecured. The Chapter 13 trustee filed opposition to the Debtor's motion.

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<sup>1</sup>Debtor's schedule A reflects a fair market value of \$148,000.00 reduced by 10% for "closing costs" with a resulting value of \$133,200.00.

## ARGUMENTS

In calculating the equity in her property for purposes of § 522(f), the Debtor starts with the fair market value of \$148,000.00 and subtracts 10% for “closing costs” (\$14,800.00) and the balance owed on her mortgage held by Travelers (\$101,000.00) resulting in equity of \$32,200.00. The Debtor then subtracts her claimed homestead exemption of \$10,00.00 from her one-half of the equity yielding \$6,049.00<sup>2</sup> available for judgment liens to attach.

The Debtor takes the position that for purposes of determining if a judicial lien impairs a debtor’s homestead exemption closing costs should be deducted from the fair market value of the homestead property. The Debtor supports her position with the argument that in order for a judgment creditor to realize anything from its lien there must be a sale of property. The Debtor asserts that it follows that the value realized by the creditor would be reduced by the costs of the sale.

The Debtor argues further that the determination of value must be examined in the bankruptcy context, namely, a debtor’s fresh start. The Debtor asserts that if closing costs are not taken into account, debtors will not receive the full amount of the value to which they are entitled under the Bankruptcy Code. The Debtor provides no case law in support of her arguments.

The Trustee does not dispute the fair market value of the Debtor’s homestead<sup>3</sup>, but argues that closing costs should not be deducted from the fair market value in order to determine the

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<sup>2</sup>Using the Debtor’s formula, the court believes the equity available for judgment liens to attach is \$6,100.00 calculated as follows:  $\$148,000 - 10\% = \$133,200 - \$101,000 = \$32,200/2 = \$16,100 - \$10,000 = \$6,100$

<sup>3</sup>The Debtor attaches as an exhibit to her motion an appraisal dated January 9, 2001 to substantiate a fair market value of \$148,000.00.

Debtor's equity for the purposes of lien avoidance under 11 U.S.C. § 522(f). The Trustee believes there is sufficient equity above the Debtor's exemption for all three judgment liens to attach, if the court values the Debtor's interest in the property at its full market value.<sup>4</sup>

## **DISCUSSION**

The first issue before the court is whether hypothetical closing costs should be considered in computing the amount of equity in the Debtor's homestead property for purposes of lien avoidance under § 522. Section 522(f)(1) provides, in part:

...the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is

(A) a judicial lien...

A lien is considered to impair an exemption to the extent that the sum of -

- (i) the lien;
  - (ii) all other liens on the property; and
  - (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;
- exceeds the value that the debtor's interest in the property would have in the absence of any liens. (11 U.S.C. § 522(f)(2)(A)).

For purposes of § 522, "value" is defined as "...fair market value as of the date of the filing of the petition..." 11 U.S.C. § 522(a)(2). There is no reference in the definition of "value" to a deduction for liquidation costs. Nor is there any such reference in the mathematical formula contained in § 522(f)(2)(A). The calculation appears to be a simple one of value minus the sum of the judicial lien to be avoided, all other liens, and the exemption. The plain language of the statute indicates that no deduction for liquidation costs should be taken when determining equity

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<sup>4</sup>The Trustee asserts it would not be unreasonable to value the Debtor's interest in the property at its full market value (\$148,000.00) because the property is held by tenancy by the entirety with her nondebtor spouse. The Trustee cites no authority for this position.

for purposes of § 522(f).

As stated above, the Debtor cites no case law in support of her position. The only cases the court found in support of the Debtor's position are *In re Walsh*, 5 B.R. 239 (Bankr. D.C. 1980), and *In re Smith*, 117 B.R. 326 (Bankr. S.D. Ohio 1990), and the court declines to follow their holdings.

The majority of courts have held that the liquidation costs of a hypothetical sale should not be deducted from the fair market value of a debtor's residence when determining the value of a creditor's interest in that property when the debtor intends to retain possession of the property. *In re Coker*, 973 F.2d 258 (4<sup>th</sup> Cir. 1992); *In re Richardson*, 280 B.R. 717 (Bankr. S.D. Ala. 2001); *In re Sheth*, 225 B.R. 913 (Bankr. N.D. Ill. 1998); *In re Raines*, 1998 WL 1986961 (Bankr. D.S.C. 1998); *In re Coates*, 180 B.R. 110 (Bankr. D.S.C. 1995); *In re Abrahamzadeh*, 162 B.R. 676 (Bankr. D.N.J. 1994); *Household Finance Corp. III v. Wilk*, 1992 WL 165770 (W.D.N.Y. 1992); *In re Yackel*, 114 B.R. 349 (Bankr. N.D.N.Y. 1990). The court agrees with the reasoning of these cases. These courts have focused on the plain language of § 522 and the fact that the debtors were retaining their homesteads; thus, the liquidation costs were truly hypothetical costs.

A debtor's exemption is recognized to allow a debtor to retain property. *In re Mangold*, 244 B.R. 901, 905 (Bankr. S.D. Ohio 2000). This right is satisfied by permitting debtors to avoid judicial liens to the extent they impair their exemptions. *See Nelson v. Scala*, 192 F.3d 32, 34-35 (1<sup>st</sup> Cir. 1999).

Turning to the issue of whether any or all of the Judgments impair the Debtor's homestead exemption, a literal application of the mathematical formula contained in § 522 (f)(2)(A) would produce the following result:

Debtor's 1/2 interest in property	\$ 74,000.00
Judgment liens <sup>5</sup>	- \$ 19,408.85
Mortgage lien	- \$101,000.00
Debtor's claimed exemption	- <u>\$ 10,000.00</u>
	- \$ 56,408.85

Under this scenario, all three judgments may be avoided in their entirety. The courts that have applied this approach refer to the plain language of the statute, maximizing the debtor's "fresh start," and liberal interpretation of the exemption statute. See *In re Cozad*, 208 B.R. 495 (10<sup>th</sup> Cir. B.A.P. 1997); *In re Piersol*, 244 B.R. 309 (Bankr. E.D. Pa. 2000).

This calculation, however, does not take into account that the Debtor's residence is jointly owned with her nondebtor spouse as tenants by the entirety. Thus, the mortgage covers the interests of both the Debtor and her nondebtor spouse.

"The plain meaning of legislation should be conclusive, except in the rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242 (1989)(quotation omitted). A court may look beyond the plain language of a statute if applying the plain language would produce an absurd result. *In re Lehman*, 205 F.3d 1255, 1256 (11<sup>th</sup> Cir. 2000)(citation omitted); See *In re Miller*, 299 F.3d 183 (3<sup>d</sup> Cir. 2002); *In re Snyder*, 49 B.R. 40 (1<sup>st</sup> Cir. B.A.P. 2000); *Nelson v. Scala, supra*.

Here, the strict interpretation approach would result in the Debtor retaining equity of \$23,500.00,<sup>6</sup> \$13,500.00 in excess of her homestead exemption. This windfall would be at the

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<sup>5</sup>Citibank (\$4,892.09) + Chase Manhattan (\$9,066.24) + Universal Bank (\$5,450.52) = \$19,408.85

<sup>6</sup>\$148,000.00 (the value of the property) - \$101,000.00 (mortgage balance) = \$47,000.00 (equity) /2 = \$23,500.00

expense of the lienholders whose liens are avoided, an outcome which the court believes goes beyond the protection Congress sought to provide debtors.

When a homestead is held in joint tenancy, tenancy in common, or tenancy by the entirety, the court believes the proper result under § 522(f)(2)(A) is obtained by applying the common sense approach employed by the First, Third and Eleventh Circuits. *See In re Miller, supra; In re Lehman, Inc., supra; Nelson v. Scala, supra.* Basically, liens against both parties' interests should be deducted from the total value of the property before determining the Debtor's interest in the same.

Under this analysis and applying the facts of this case, the court calculates the extent to which the Universal Bank's judgment impairs the Debtor's homestead exemption as follows:

Value of property	\$148,000.00
Mortgage lien	- <u>\$101,000.00</u>
Total equity in property	\$ 47,000.00
Universal Bank's judgment	\$ 5,450.52
Citibank's and Chase Manhattan's judgments	\$ 13,958.33
Debtor's claimed exemption	- <u>\$ 10,000.00</u>
	\$ 29,408.85
1/2 of Equity	\$ 23,500.00
Judgment lien + all other liens + exemption	- <u>\$ 29,408.85</u>
	- \$ 5,908.85

As the sum of Universal Bank's lien, all other liens on the property, and the Debtor's exemption exceeds the value of the Debtor's interest in the property by \$5,908.85, Universal Bank's lien of \$5,450.52 fully impairs the Debtor's exemption. Pursuant to § 522(f)(2)(B),<sup>7</sup>

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<sup>7</sup>11 U.S.C. § 522(f)(2)(B) provides "...a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens."

because Universal Bank's lien may be avoided in full, this lien should not be used in calculating whether Chase Manhattan's lien impairs the Debtor's homestead exemption.

The court calculates the extent to which Chase Manhattan's judgment lien impairs the Debtor's homestead exemption as follows:

Chase Manhattan's judgment	\$ 9,066.24
Citibank's judgment	\$ 4,892.09
Debtor's claimed exemption	<u>\$ 10,000.00</u>
	\$ 23,958.33
½ of Equity	\$23,500.00
Judgment lien + all other liens	
+ exemption	- <u>\$23,958.33</u>
	- \$ 458.33

As the sum of the Chase Manhattan's lien, all other remaining liens on the property, and the Debtor's exemption, exceeds the value of the Debtor's interest in the property by \$458.33, Chase Manhattan's judgment impairs the exemption in part. *See Hazen v. Hazen*, Case No. 99-17110 (Bankr. N.D.N.Y. June 4, 2001). As a result, Chase Manhattan's judgment shall be avoided to the extent of \$458.33, and \$8,607.91 of the judgment is unavoidable.

Based upon the foregoing, it is hereby

ORDERED, that the judicial lien of Universal Bank in the amount of \$5,450.52 shall be avoided in its entirety with respect to the Debtor's homestead located at RD #3, Box 353A, Stonybrook Road, Schoharie, Schoharie County, New York and treated as an unsecured claim in the bankruptcy; and it is further

ORDERED, that the judicial lien of Chase Manhattan in the amount of \$9,066.24 shall be partially avoided with respect to the Debtor's homestead located at RD #3, Box 353A, Stonybrook Road, Schoharie, Schoharie County, New York, such that \$458.33 of the lien shall be avoided and treated as an unsecured claim in the bankruptcy, and \$8,607.91 of the lien is

unavoidable; and it is further

ORDERED, that the judicial lien of Citibank remains effective and is not avoided; and it is further

ORDERED, that the Schoharie County Clerk may mark its records in conformance with this Memorandum-Decision and Order.

Dated:

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Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Judge