

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**
Bankruptcy Judge Joseph G. Rosania, Jr.

In re:

LEO GUZMAN
SSN/ITIN: xxx-xx-2278

and

ALICIA VANESSA FLORES
SSN/ITIN: xxx-xx-9771

Debtors.

Case No. 23-13222-JGR

Chapter 13

ORDER GRANTING MOTION TO AVOID LIEN WITH IMMEDIATE EFFECT

THIS MATTER is before the Court regarding the Motion to Avoid Lien with Creditor Wakefield and Associates Inc. (Doc. 13) filed on July 28, 2023, by Leo Guzman and Alicia Vanessa Flores (collectively “the Debtors”), and the objection thereto (Doc. 32) filed on September 18, 2023, by creditor Alt Assets, LLC (“Alt Assets”).

This Court has subject matter jurisdiction over this core matter pursuant to 28 U.S.C. §§ 1334, 157(a), and 157(b)(2)(A) and (O).

BACKGROUND

I. The Bankruptcy Case

The Debtors operate a food truck. They fell behind on their mortgage payments, failed to pay federal and state income taxes, and had three judgments entered against them in state court. Thus, they filed a voluntary chapter 13 petition (Doc. 1) on July 21, 2023. Their residence, located at 18149 E. Hinsdale Ave, Foxfield, Arapahoe County, CO (the “Residence”) was valued at \$952,000 in their Schedule A. The Residence was subject to one consensual and four nonconsensual liens when the petition was filed: a consensual mortgage lien in favor of Wilmington Savings Fund with an approximate balance of \$700,000, a nonconsensual statutory tax lien in favor of the Colorado Department of Revenue in the amount of \$14,018 for income taxes, and three nonconsensual judgment liens. The Debtors claimed a Homestead Exemption in the Residence in the amount of \$250,000 pursuant to Colo.Rev.Stat. § 38-41-201.

The Debtors’ sixty-month amended plan (Doc. 33) cures a substantial pre-petition arrearage on their Residence in the approximate amount of \$103,664 and pays the Colorado Department of Revenue tax lien in the amount of \$14,018 over time. Their plan

also proposes to pay the sum of \$33,936 to unsecured creditors. Finally, their plan calls for them to make post-petition monthly mortgage payments directly to Wilmington Savings Fund outside the plan.

On July 28, 2023, the Debtors filed a Corrected Motion to Avoid Lien with Creditor Wakefield and Associates, Inc. (“Wakefield”), one of three judicial liens on the Residence, under 11 U.S.C. § 522(f)(Doc. 13). Wakefield held a judicial lien on the Residence stemming from a judgment against Leo Guzman in the amount of \$1,490.30. The judicial lien was created when Wakefield recorded a transcript of judgment with the clerk and recorder of the County of Arapahoe, Colorado, at reception number E2041984 on April 13, 2022. A copy of the transcript of judgment was attached to the Motion to Avoid Lien pursuant to L.B.R. 4003-2(a)(3).

The Debtors filed two other motions to avoid judgment liens on the Residence (Docs. 15, 17), both in favor of creditor Dreamspring. Dreamspring did not file objections, and the Court granted both motions on October 26, 2023, with immediate effect (Docs. 39, 40).

On September 18, 2023, Alt Assets, an assignee of Wakefield’s judgment, filed a response objecting to the motion to avoid lien on the Residence (Doc. 32).

On November 9, 2023, the Court held a hearing on Plan Confirmation and a hearing on the contested motion to avoid Alt Asset’s lien. Since there were no objections to confirmation, the Court confirmed the Debtors’ Amended Chapter 13 Plan (Doc. 48). The Court also heard offers of proof regarding the Debtors’ Motion to Avoid Lien and Alt Assets’ objection thereto. Determining there were no facts in dispute and the resolution of the contested matter involved a question of law, the Court ordered the parties to submit simultaneous briefs (Doc. 49).

On December 8, 2023, Alt Assets submitted its Opposition Brief (Doc. 53), the Debtors filed their Support Brief (Doc. 54), and the Court took the matter under advisement.

II. Alt Assets’ Position

Alt Assets does not question the Debtors’ right to avoid the lien and admits the requirements of 11 U.S.C. § 522(f), Fed.R.Bankr.P 4003(d), and L.B.R. 4003-2 have been met. The objection questions the timing of the lien avoidance. Alt Assets speculates the Debtors could obtain a windfall if the Residence is sold prior to the completion of the plan and the Debtors thereafter dismiss their bankruptcy case. The interplay of two bankruptcy code sections must be analyzed to resolve this dispute.

11 U.S.C. § 522(f)(1)(A) empowers debtors to avoid certain liens:

- (1) Notwithstanding any waiver of exemptions but subject to paragraph (3), 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, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5);

Upon dismissal of a bankruptcy case, 11 U.S.C. § 349(b)(1)(B) provides:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title;

Alt Assets relies on a series of bankruptcy decisions outside this District that express the view that the avoidance of the lien is delayed until the debtor receives a discharge. These cases offer three approaches. They reason that the protections afforded by 11 U.S.C. § 349(b)(1)(B) in reinstating the judicial lien after dismissal are ineffective in providing a creditor “absolute” protection if the property is sold during the chapter 13 case prior to dismissal. These cases delay the avoidance of the lien until the completion of the plan and entry of discharge. *In re Potter*, No. 00-10595, 2001 WL 36159722 (Bankr. D. Vt. 2001); *In re Harris*, 482 B.R. 899 (Bankr. N.D. Ill. 2012); *In re Stroud*, 219 B.R. 388 (Bankr. M.D. N.C. 1997); *In re Prince*, 236 B.R. 746 (Bankr. D. Okla. 1999); *In re Petersen*, 561 B.R. 788 (Bankr. D. Utah 2016).

This line of cases holds that because the lien cannot re-attach to a property after the property has been sold and the case dismissed, the reinstatement provisions of 11 U.S.C. § 349(b)(1)(B) become meaningless. See *In re Stroud*, 219 B.R. at 389; *In re Prince*, 236 B.R. at 748. The *Prince* court found that because the difficulty of re-attaching a lien in the event of dismissal and correcting real estate records is “akin to unringing a bell,” the order avoiding the lien would not be entered upon real estate records relating to the property until an order of discharge had entered in the case. *Id.* at 750-51. However, *Prince* offers a second approach whereby the lien avoidance is delayed only if there is a timely objection by the creditor. *Id.*

In re Petersen offers a third approach by employing a two-step process. That case involved the avoidance of a lien against a residence, impairing the applicable Utah homestead exemption. The *Petersen* court sought to balance 11 U.S.C. § 349(b)’s inability to provide “absolute protection” from a pre-discharge dismissal against the Supreme Court’s decision in *Law v. Siegel*, 571 U.S. 415, 424 (2014), which limited Bankruptcy Courts from reading exceptions into 11 U.S.C. § 522. *In re Petersen*, 561 B.R. at 792-93. The court held the avoidance of the lien was immediately effective for plan consummation purposes; but was not completely avoided until the plan was completed and the discharge entered, concluding this result harmonizes the purposes of both 11 U.S.C. § 522(f) and 11 U.S.C. § 349(b). *Id.* at 793.

In summary, the cases delaying the entry of the order avoiding the lien and reading a condition precedent into 11 U.S.C. § 522(f)(1) state that 11 U.S.C. § 349(b)(1) is rendered ineffectual unless the lien avoidance is delayed until after entry of the discharge, that there are burdens and problems associated with reinstatement of the lien after dismissal, and that the fresh start must be delayed until the debtor completes the chapter 13 plan payments and receives a discharge.

Therefore, based upon the above authorities, Alt Assets has requested the Court grant the Motion to Avoid Lien with three conditions:

- (1) that the Court order avoiding the judgment lien is effective for purposes of consummation of the Debtors' chapter 13 plan;
- (2) that the chapter 13 trustee hold the proceeds of any post-confirmation sale of the Residence in escrow until the Debtors complete their chapter 13 plan and receive a discharge; and
- (3) that the order avoiding the lien cannot be recorded in the Arapahoe County real property records until the Debtors complete their chapter 13 plan and receive a discharge.

III. The Debtors' Position

The Debtors request this Court follow the practice of the bankruptcy courts in this District and hold that an order avoiding a judgment lien take effect immediately upon entry. Debtors rely on a series of cases that state that the plain language of 11 U.S.C. § 522(f) when read in conjunction with 11 U.S.C. § 522(c), is clear and unambiguous on this point. 11 U.S.C. § 522(c) states in part, "[u]nless the case is dismissed, property exempted under this section is not liable during or after the case for any debt." Debtors assert that this Court should interpret these subsections to mean that any exempt property is not liable to judicial liens during the pendency of the bankruptcy case and the effect of the lien avoidance cannot be delayed. The Debtors urge this court to follow the holdings and reasoning of *In re Mulder*, No. 810-74217-reg., 2010 WL 4286174, at *3 (Bankr. E.D.N.Y. Oct. 26, 2010) and *In re Ferrante*, No. 09-13098, 2009 WL 2971306 (Bankr. D.N.J. Sept. 10, 2009).

In the case of *In re Mulder*, a debtor was entitled to relief under 11 U.S.C. § 522(f) but the pre-petition lien-holder sought to restrict the debtor from expunging the lien in the public records prior to discharge. *In re Mulder* at *1. That court found "no support in the Code to use [11 U.S.C. §] 349 as a basis on which to condition [11 U.S.C. §] 522(f) lien avoidance upon entry of a discharge" because 11 U.S.C. § 349 "only functions upon dismissal." *Id.* at *6-7. *Mulder* found support for its conclusion by employing the canon of statutory construction that when the words of a statute are clear, the analysis ends there.

In the case of *In re Ferrante*, a debtor was entitled to relief under 11 U.S.C. § 522(f) but the pre-petition lienholder objected to the immediate effect of 11 U.S.C. § 522(f). *In re Ferrante* at *7. That court found that while the underlying obligation owed to the creditors by the debtor is not discharged until the completion of the chapter 13 case, an order for 11 U.S.C. § 522(f) lien avoidance may be effected immediately *Id.* at 7, 10. The

court pointed out that 11 U.S.C. § 522(f) does not provide statutory protection to the creditor and that the statutory framework required immediate avoidance since the lien impaired the debtor's immediate use of the exempt asset. *Id.* at 12-13.

The Debtors also rely on *Law v. Siegel*, which strictly limits the interpretation of 11 U.S.C. § 522 to the words within the code, and does not allow statutory interpretation that contravenes an express provision of the Bankruptcy Code. *Law v. Siegel*, 571 U.S. at 424.

ANALYSIS

I. 11 U.S.C. § 522(f)

Historically, liens and security interests survived bankruptcy and were enforced on exempt property. However, Congress revised the bankruptcy law to permit debtors to avoid non-consensual judicial liens encumbering exempt property when it included 11 U.S.C. § 522(f) in the Bankruptcy Reform Act of 1978. This new law was intended to enhance and assist in the fresh start of consumer debtors by enabling them to avoid nonconsensual judicial liens impairing their exemptions. In essence, the nonconsensual judicial lien is stripped from the exempt property. The rationale was that a debtor should be able to avoid a judicial lien on exempt property even if the creditor beats the debtor to court in the pre-petition period. *U.S. v. Ron Pair Enterprises*, 489 U.S. 235 (1989); *Farrey v. Sanderfoot*, 500 U.S. 291 (1991). This Court notes that many of the judicial liens it has examined in bankruptcy cases arise from default judgments entered in state court collection cases against overburdened debtors.

The avoidance power under 11 U.S.C. § 522(f) constitutes a taking of property rights granted under state law and was a controversial provision. Hence, procedural due process must be afforded to the affected lien creditor including service of the Motion, notice of opportunity to object, and written evidence of the lien (specific recording information or a copy of the transcript of judgment) pursuant to Fed.R.Bankr.P. 4003(d) and L.B.R. 4003-2.

II. Judgment Liens in Chapter 13

Effective December 1, 2017, Fed.R.Bankr.P. 3015.1 requires the use of the official chapter 13 plan form, unless a local chapter 13 plan form was adopted in the district complying with the requirements of the rule. In response, Colorado adopted a local form. Colorado's local form requires the filing of separate motions to avoid liens under 11 U.S.C. § 522(f). Fed.R.Bankr.P. 4003(d) and L.B.R. 4003-2 both require service of the motion to comply with Fed.R.Bankr.P. 7004 and 9014. The filing of a separate motion with formal service ensures due process is provided to the creditor before property rights obtained through a judicial lien are avoided.

11 U.S.C. § 1325(a)(5) sets forth the requirements for the treatment of secured claims in a chapter 13 plan. Avoidance of a judicial lien allows for the claim to be treated as unsecured for plan purposes.

III. Judgment Liens in Colorado

In Colorado, a judgment lien may be obtained pursuant to C.R.S. § 13-52-102(1), which provides, in pertinent part:

“A transcript of the judgment record of such judgment, certified by the clerk of such court, may be recorded in any county; and from the time of recording such transcript, and not before, the judgment shall **become a lien upon all the real estate, not exempt from execution** in the county where such transcript of judgment is recorded, owned by such judgment debtor or which such judgment debtor may afterwards acquire in such county, until such lien expires.”

C.R.S. § 13-52-102(1) (emphasis added).

The homestead exemption statute provides as follows:

- (1) Every homestead in the state is **exempt from execution and attachment arising from any debt, contract, or civil obligation** not exceeding in actual cash value in excess of any liens or encumbrances on the homesteaded property in existence at the time of any levy of execution thereon:
 - (a) The sum of two hundred fifty thousand dollars if the homestead is occupied as a home by an owner or an owner’s family; or
 - (b) The sum of three hundred fifty thousand dollars if the homestead is occupied as a home by an owner who is elderly or disabled, an owner’s spouse who is elderly or disabled, or an owner’s dependent who is elderly or disabled.

C.R.S. § 38-41-201 (emphasis added).

C.R.S. § 38-41-201 was amended effective April 7, 2022, raising the prior homestead exemption of \$75,000 to \$250,000. The exemption for elderly or disabled persons increased from \$105,000 to \$350,000. In addition, C.R.S. § 38-41-201.7 was enacted to extend the definition of dwelling to cover personal property, including vehicles and trailers, vessels, camper coaches, mounted equipment, railway cars, shipping or cargo containers, sheds, yurts, and tiny homes. These amendments indicate the Colorado legislature intended to expand the protections of the homestead exemption to its residents.

In Colorado, a judgment lien never attaches to the homestead exemption. *In re Dickinson*, 185 B.R. 840, 841 (Bankr. D. Colo. 1995). A judgment lien “only attaches to the Debtor’s net equity after deduction of the homestead exemption amount.” *Id.*

11 U.S.C. § 522(f) provides a procedural mechanism to avoid the judicial lien under the Bankruptcy Code and 11 U.S.C. § 349(b)(1)(B) reinstates the judicial lien upon

dismissal of the bankruptcy case. However, under Colorado law, unless equity exists above the homestead exemption, the judicial lien does not attach in the first instance. In this case, Alt Assets does not argue there is equity above the Homestead Exemption on the dates of filing or confirmation but speculates there could be over the life of the five-year plan if the value of the Residence appreciates. The Court notes the opposite could occur if the value of the Residence depreciates.

IV. Estate Termination in the Tenth Circuit

The Tenth Circuit has adopted the estate termination theory in chapter 13 cases, which reverts pre-petition property in the debtor at the time of confirmation unless otherwise provided for in the plan. *In re Talbot*, 124 F.3d 1201, 1208 (10th Cir. 1997). This Circuit has repeatedly found that the automatic vesting provision of 11 U.S.C. § 1327(b)¹ terminates the estate's interest in the pre-petition property upon confirmation, and any proceeds resulting from a sale of property belong to the debtor, not the estate. See *Rodriguez v. Barrera (In re Barrera)*, 22 F.4d 1217 (10th Cir. 2022); *Sender v. Golden (In re Golden)*, 528 B.R. 803, 808 (Bankr. D. Colo. 2015); *In re Klein*, No. 17-19106-JGR, 2022 Bankr. LEXIS 2418, at *16 (Bankr. D. Colo. Aug. 23, 2022); *In re Froehlich*, No. 17-14231-JGR, 2018 Bankr. LEXIS 2984, at *13 (Bankr. D. Colo. Sep. 27, 2018).

A creditor retains the right to object to the automatic reversion of property pursuant to 11 U.S.C. § 1327(b). However, the creditor must object before confirmation, and the confirmation order must provide that the plan does not vest the property of the estate in the debtor.

If a plan provides for the reversion of property, “a debtor has no obligation to maintain possession of the property due to the effect of reversion upon confirmation” *Sender*, 528 B.R. at 809. “Thus, a debtor in this District in a Chapter 13 case can sell real and personal property after confirmation without either a court order or notice to the Chapter 13 trustee or creditors.” *In re Froehlich*, No. 17-14231-JGR, 2018 Bankr. LEXIS 2984, at *8. Without modification to the vesting provision of a chapter 13 plan, a court cannot place restrictions on the lawful use or sale of the property.

It is the practice of this Court, and other courts in this District to grant the avoidance of the lien without restriction, or delayed effectiveness. It is also the practice of this Court and other courts in this District to reinstate the lien upon dismissal of the chapter 13 case.

Alt Assets failed to object to the vesting provision contained in the Debtors' Amended Chapter 13 Plan (Doc. 13)². Alt Assets was aware of the Debtors' intent to avoid the lien because the Debtors filed their motion to avoid the lien on July 28, 2023, and Alt Assets filed a response objecting to the motion to avoid on September 18, 2023. The Amended Plan was filed on October 5, 2023, after the motion to avoid lien and responses were filed. Alt Assets appeared at the November 9, 2023 confirmation hearing but did not object to the plan.

¹ 11 USCS § 1327(b) - Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

² The Court is uncertain of the result if the affected lien creditor objects to the reversion in light of the Tenth Circuit authorities. This is a subject for a future controversy not now before this Court.

Section 10.7 of the confirmed plan states:

Reinvestment of Property in debtor: All property of the estate shall vest in the debtor at the time of confirmation of this Plan.

Once the plan was confirmed, the Residence reverted in the Debtors under the estate termination doctrine adopted by the Tenth Circuit. In keeping with *Siegel*, this Court agrees with the view that there can be no reading of 11 U.S.C. § 522(f) that allows a court to impose restrictions in contravention of and beyond the plain language of the statute conditioning how or when the judicial lien is avoided.

V. Conclusions of Law

The Court finds the elements of 11 U.S.C. § 522(f) have been met, the motion satisfies the procedural requirements Fed.R.Bankr.P. 4003(d) and L.B.R. 4003-2, and Alt Assets did not object to the avoidance of the lien. The Court declines to impose judicially crafted conditions to the avoidance of liens that are not contained in 11 U.S.C. § 522. The avoidance of the lien has an immediate effect and is not delayed until the completion of the chapter 13 plan and entry of discharge.

Once the chapter 13 plan is confirmed, pre-petition property reverts with debtors. Property may then be sold without obtaining court authorization. Proceeds are no longer property of the estate, and this Court cannot require those funds to be placed in escrow. The requested condition that the chapter 13 Trustee monitor post-confirmation sales of property and require that debtors escrow the non-exempt proceeds from the sale is found nowhere in the Bankruptcy Code and places an undue burden and potential liability on the chapter 13 Trustee.

Additionally, there is no authority and no basis to restrict the filing of the order avoiding the lien with the Arapahoe County clerk and recorder.

Should the Debtors sell the Residence and dismiss their case, Alt Assets will have access to all collection remedies provided under Colorado state law, including the attachment of the judicial lien against after-acquired real estate. Until such time, the property and proceeds from its sale belong to the Debtors. The Bankruptcy Code provides avenues to protect a judgment creditor against this theoretical situation through the plan confirmation process but does not grant authority under 11 U.S.C. § 522(f) to condition the avoidance of a lien. This conclusion is supported by the estate termination approach in this Circuit.

CONCLUSION

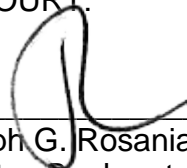
For the above reasons, the Court grants the Motion to Avoid Lien, with immediate effect.

Therefore, the Court hereby ORDERS:

The Debtors' Motion to Avoid Lien is GRANTED. The Objection filed by Alt Assets is OVERRULED.

Dated this 24th day of May, 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'J. Rosania, Jr.', written over a horizontal line.

Hon. Joseph G. Rosania, Jr.
United States Bankruptcy Judge