

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

IN RE:	:	CASE NO. G09-23166-REB
	:	
TIMOTHY D. WILSON	:	
and PENNY D. WILSON,	:	
	:	
Debtors.	:	
<hr/>		
	:	CONTESTED MATTER
TIMOTHY D. WILSON	:	
and PENNY D. WILSON,	:	
	:	
Movants,	:	
	:	
v.	:	CHAPTER 7
	:	
BRIAN DURANT,	:	
	:	
Respondent.	:	JUDGE BRIZENDINE

ORDER GRANTING MOTION TO AVOID LIEN

Before the Court is the Motion of Debtor-Movants Timothy D. Wilson and Penny D. Wilson filed on August 25, 2009 to avoid the judicial lien held by Respondent Brian Durant. After protracted litigation over various issues as raised in this matter, a final hearing was held on July 21, 2011 to determine the value of the real property encumbered by this lien, which is used as a residence by Debtors, and is located at 8235 Mount Tabor Road, Cumming, Georgia. Based upon the pleadings of record and briefs as filed herein, the argument and evidence presented at the hearing, the appraisals offered by the parties, and applicable law, for the reasons stated on the record that are incorporated herein through Fed.R.Bankr.P. 7052, which adopts Fed.R.Civ.P. 52, and Fed.R.Bankr.P. 9014(c), it is

ORDERED that the value of the real property at issue is determined to be **\$135,000.00** and the

Court so finds.

Given this valuation, it appears that Respondent's judgment lien impairs Debtors' claimed exemption in this real property since the value of the mortgage interest asserted against the property (\$127,429.58) and Debtors' homestead exemption (\$20,000.00) together exceed the value of the underlying property as determined herein.¹ Even if Debtors could not claim their homestead exemption of \$20,000.00 in the property as argued by Respondent because it was not their residence at the time of the filing this case, they are each entitled to claim a "wildcard" exemption of up to \$5,600.00 or \$11,200.00 total. *See* O.C.G.A. § 44-13-100(a)(1) & (a)(6); *see also In re Lovvorn*, _ B.R. _, 2010 WL 1529377 (Bankr. M.D.Ga. April 13, 2010). On April 22, 2011, Debtors filed an amended Schedule C wherein they claimed an exemption in the subject property of \$9,000.00. Applying 11 U.S.C. § 522(f)(1) and using this figure, the Court finds and concludes that Respondent's lien impairs Debtors' exemption in the property and should be avoided.² Therefore, it is

FURTHER ORDERED that the motion of Debtor-Movants to avoid judicial lien of Respondent Brian Durant be, and hereby is, **granted** and the judgment lien of Respondent Brian Durant be, and is hereby, **avoided** in its entirety under 11 U.S.C. § 522(f) with respect to the aforesaid real property claimed as exempt by Debtors herein.

The Clerk is directed to serve a copy of this Order upon counsel for Debtor-Movants, counsel

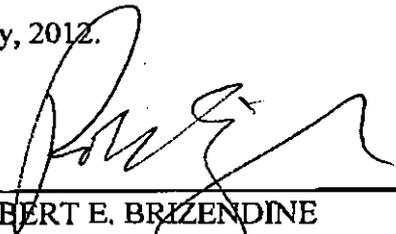
¹ This value was presented by Respondent in his pleading filed on August 10, 2011.

² Under Section 522(f)(1), the analysis is as follows. The mortgage amount (\$127,429.58) plus the \$9,000.00 exemption equals \$136,429.58. This amount exceeds the fair market value of the property. Similarly, adding the "wildcard" exemption plus the mortgage plus Respondent's judicial lien (\$37,326.50) equals \$173,756.08, and subtracting the fair market value of \$135,000.00 from same equals \$38,756.08 as the amount of the impairment. Because this amount exceeds the amount of the lien, the lien impairs the exemption.

for Respondent, the Chapter 7 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 2nd day of May, 2012.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE