

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION**

IN RE:	:	CASE NO. G11-23362-REB
	:	
COREY BENJAMIN TALLANT	:	
a/k/a COREY TALLANT,	:	
	:	
Debtor.	:	
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FIRST FINANCIAL SERVICES, INC.,	:	CONTESTED MATTER
	:	
Movant,	:	
	:	
v.	:	
	:	CHAPTER 7
COREY BENJAMIN TALLANT, Debtor,	:	
and ALBERT F. NASUTI, Chapter 7 Trustee,	:	
	:	
Respondents.	:	JUDGE BRIZENDINE
	:	

ORDER

Before the Court is the motion of Movant First Financial Services, Inc., filed on December 9, 2011, to reconsider this Court's Order entered on December 6, 2011 in which the Court denied Movant's motion for relief from stay and granted Debtor's motion to avoid the judicial lien held by Movant in a certain 1988 Jeep Wrangler. Based upon a review of the motion and arguments of Movant, the Court will deny the motion.

Movant filed its motion for relief from stay on September 6, 2011 with respect to a claim in the amount of \$9,647.11 secured by an interest in Debtor's motor vehicle. In the motion, Movant asserted that the vehicle is not necessary for an effective reorganization, there is no equity in the vehicle, and its interest therein is not adequately protected. Debtor subsequently filed its motion to avoid Movant's lien

on October 4, 2011. Following a hearing on October 6, 2011 the parties filed letter briefs on the issue of whether this lien interest could be avoided.

The underlying debt originates in a judgment obtained by Movant in Habersham County Magistrate Court, upon which it obtained a writ of *fi.fa*. Thereafter, Movant followed the state law procedures set forth in O.C.G.A. § 40-3-53 to perfect its lien on Debtor's vehicle as noted on the certificate of title. There is no other security interest in said vehicle.

Previously, Movant contended that because it properly perfected its security interest, this interest could not be avoided under 11 U.S.C. § 522(f). Debtor countered, however, that this lien is subject to avoidance because the perfecting of a judicial lien on a vehicle does not change its legal character as a judicial lien into a consensual security interest or statutory lien. Consistent with the definition provided in Section 101(36), this lien came into existence through a process to enforce collection on a judgment. As stated above, the Court denied the motion of Movant, and granted relief to Debtor.

In its motion to reconsider, Movant advances the following arguments. First, Movant contends that it followed the procedure described by this Court to perfect its lien on Debtor's motor vehicle in accordance with O.C.G.A. § 40-3-53. *See Fox v. Lakeview Publishing.com, Inc. (In re Fox)*, Case No. G07-20069-REB (Bankr. N.D.Ga. Sept. 29, 2009); *see also Owens v. Calvary Portfolio Services, LLC*, Case No. A09-78584-JB (Bankr. N.D.Ga. Mar. 10, 2010). Movant asserts that the reasoning of this Court in *Fox* supports the principle that a judicial lien creditor who adheres to this procedure thereby receives the status and corresponding protections of a creditor holding a consensual security interest and, therefore, its lien cannot be avoided under 11 U.S.C. § 522(f).

Contrary to Movant's assertion, however, this Court's decision in *Fox* does not stand for the proposition that properly perfecting a lien against a motor vehicle in accordance with Georgia law

insulates such lien from avoidance analysis under Section 522(f). *Accord Owens*. Rather, the Court determined that when a creditor fails to follow O.C.G.A. § 40-5-53 in perfecting a lien on a motor vehicle, relying instead on the filing of a judgment on the general execution docket and resulting judgment lien, its judgment lien does not attach to the subject vehicle and the vehicle is not encumbered by the lien. The reasoning of this Court in *Fox* is not properly construed or extended as precedent for the implication that a judgment lien properly perfected under state law against a motor vehicle is thereby immune from avoidance under 11 U.S.C. § 522(f) if the conditions of that provision are shown to be satisfied. In fact, once the lien is shown to have attached and been perfected, the analysis under Section 522(f) concerns *precisely* the avoidance of such an otherwise valid and perfected lien to the extent it impairs an exemption to which a debtor is entitled.¹

As stated in its Order, this Court agrees with the reasoning and legal analysis set forth by Debtor in his briefs as filed in this case, and concludes that the lien of Movant may be and properly was avoided herein as otherwise provided in Section 522(f). As Debtor contends, compliance with the statutory procedures to make the enforcement of a judicial lien effective does not thereby convert the underlying character of the lien into a statutory lien or security interest, and the fact that this judicial lien may have been properly perfected against Debtor's vehicle does not except it from consideration under the lien avoidance provision implemented in this bankruptcy case.

Accordingly, based on the foregoing discussion, it is

ORDERED that the motion of Movant First Financial Services, Inc. to reconsider this Court's

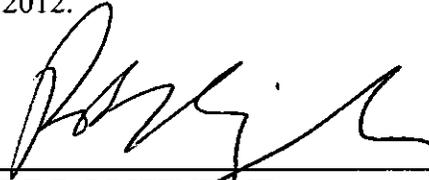
¹ In its motion to reconsider, Movant seemingly referred to a second vehicle of Debtor in connection with Movant's lien and in presenting an additional legal argument akin to a theory of subordination. Upon further review and based on the representation of counsel, it now appears that this allegation and argument is not being maintained herein, and the Court finds that no new facts are being asserted by Movant for consideration.

Order entered on December 6, 2011 be, and the same hereby is, **denied**.

The Clerk is directed to serve a copy of this Order upon counsel for Movant, counsel for Debtor-Respondent, the Chapter 7 Trustee, and the United States Trustee.

IT IS SO ORDERED.

At Atlanta, Georgia this 4th day of April, 2012.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE