

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

REMOVED ON DOCKET
5-16-05

IN RE: : CASE NO. G04-23195-REB
: :
THERESA MELINDA BARNES, :
: :
Debtor. :
_____: :
: :
THERESA MELINDA BARNES, : CONTESTED MATTER
: :
Movant, :
: :
v. : CHAPTER 7
: :
CAVALRY INVESTMENTS LLC : JUDGE BRIZENDINE
ASN FLEET ADVANTA VISA, :
: :
Respondent. :

ORDER GRANTING MOTION TO AVOID JUDICIAL LIEN

Before the Court is the motion filed by Debtor to avoid the judicial lien held by Respondent Calvary Investments LLC, ASN Fleet Advanta VISA. In the motion, Debtor claims that the subject lien, filed on the General Execution Docket in the State Court of Hall County, Georgia in favor of Respondent, impairs the exemptions of the Debtor in certain real and personal property, as well as an exemption in real property in the additional amount of \$10,000.00 to which Debtor is entitled under O.C.G.A. § 44-13-100(a)(1).¹ In response to the

¹ This statute provides as follows:

(a)(1) The debtor's aggregate interest, not to exceed \$10,000 in value, in real or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that own property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor. *In the event title to the property used for the exemption provided under this paragraph is in one of two spouses who is a debtor, the amount of the exemption hereunder shall be \$20,000 (emphasis added).*

motion, Respondent states that it holds a secured claim of \$6,669.29 based upon its judgment and asserts that Debtor cannot avoid its lien on Debtor's non-exempt equity in certain real property in the amount of \$4,000.00.²

In her brief, Debtor states that she holds sole title to the subject real property, which is her residence located at 3330 Jean Marie Lane, Gainesville, Georgia, and that Debtor's spouse is not a debtor in this case. Based upon state law, Debtor argues that eligibility has been satisfied for the \$20,000 homestead exemption, and hence, Respondent's lien must be avoided under 11 U.S.C. § 522(f) as it impairs the claimed exemption of the equity in her residence in the sum of \$14,000.00, given its current market value of \$92,000.00 and a mortgage in the amount of \$78,000.00.

Upon review of the motion and brief, and upon consideration of the cited case authority including *In re Burnett*, 303 B.R. 684 (Bankr. M.D.Ga. 2003) and *In re Taylor*, 320 B.R. 214 (Bankr. N.D.Ga. 2005), this Court finds and concludes that Debtor is entitled to the exemptions in personal and real property as claimed in her schedules, and with respect to the real property by virtue of her non-filing spouse, that Debtor is entitled to an exemption in the total amount of \$20,000.00 as provided by O.C.G.A. § 44-13-100(a)(1). By reason thereof, since Debtor's total equity of \$14,000.00 is less than the maximum allowed exemption in real property of \$20,000.00, Debtor is entitled to avoid in its entirety the judicial lien of Respondent with respect to the real property in question.

O.C.G.A. § 44-13-100(a)(1).

² Respondent calculates said amount by deducting Debtor's \$10,000.00 exemption in real property from her total equity of \$14,000.00.


Accordingly, it is

ORDERED that the motion filed by Debtor to avoid the judicial lien held by Respondent Calvary Investments LLC, ASN Fleet Advanta VISA be, and hereby is, **granted** and that the lien of Respondent be, and hereby is, **avoided** to the extent that same impairs the Debtor's claimed exemption in various personal property as set forth in her schedules and further, as reasoned above, that said judicial lien is **avoided** in the subject real property located at 3330 Jean Marie Lane, Gainesville, Georgia, and that Respondent shall have no further claim by reason of such lien in and to the subject real property.

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

IT IS SO ORDERED.

At Atlanta, Georgia, this 13th day of May, 2005



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE