



**IT IS ORDERED as set forth below:**

**Date: March 13, 2007**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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IN RE:

CASE NO. 05-81736

Arthur Steven Brodsky, Sr. and Cathy Delores  
Brodsky,

CHAPTER 7

Debtors.

JUDGE MASSEY

\_\_\_\_\_  
Arthur Steven Brodsky Sr. and Cathy Delores  
Brodsky,

Movants,

v.

CONTESTED MATTER

Patricia Taylor and Central Pet, a Central  
Garden & Pet Company,

Respondents.

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ORDER GRANTING DEBTORS' MOTION TO AVOID LIENS

On November 9, 2006, the Court entered an order allowing Debtors to reopen this chapter 7 case in order to file a motion to avoid judicial liens allegedly held by Respondents pursuant to 11 U.S.C. § 522(f)(1)(A). On January 18, 2007, after the Court denied Debtor's first attempt at avoiding Respondent's liens, Debtors filed a renewed and restated motion to avoid lien against Respondents. On January 24, 2007, Central Pet filed a response to Debtors' motion, and the Court held a hearing on February 13, 2007. Although Central Pet contested service of process in its response to Debtors' motion, there is now no dispute that Central Pet was properly served. Patricia Taylor has not filed a response or otherwise indicated opposition to the motion.

The Brodskys filed their bankruptcy petition on October 13, 2005. Each of them owns a one-third interest in their residence located at 12995 Harrington Drive, Alpharetta, GA 30004 (the "Property"). Mr. Brodsky's mother, a non-debtor, owns the other one-third interest in the Property. Debtors valued the Property in their Schedules as of the petition date at \$500,000. Therefore, each Debtor's interest in the Property was \$166,666.67. Central Pet has not challenged this valuation.

As of the petition date, according to Debtors' Schedules, the Property was encumbered by three unavoidable liens - a first mortgage in the amount of \$276,571.37 in favor of Citimortgage, a junior lien in the amount of \$162,208.88 in favor of Wachovia, and an SBA loan in the amount of \$285,365.30 in favor of Temecula Valley Bank. Central Bank has not challenged the amounts of these liens. Each Debtor's share of the unavoidable liens is \$241,589.90. Because Debtors had no equity in their respective interests in the Property, they claimed no exemption amount on Schedule C by listing the value of the exemption at zero. The case was closed on April 21, 2006, without any motion to avoid these judicial liens having been filed.

In August 2006, Debtors negotiated a release of the third-priority lien held by Temecula Valley Bank. With this lien out of the equation, the amount of each Debtor's equity in the Property as of the petition date would total \$20,406.59. Subtracting the \$10,000 exemption provided by Georgia law would leave an equity of \$11,079.84 for each Debtor, which exceeds the amount of Central Pet's judgment lien of \$6,685.84.

On October 23, 2006, the Brodskys moved to reopen this case. The Court granted the motion in an order entered on November 7, 2006. Thereafter, they filed motions to avoid the judgment liens, which the Court denied for lack of jurisdiction as to Central Pet and failure to state a claim as to Patricia Taylor in orders entered on January 4, 2007. Thereafter, on January 18, 2007, Debtors filed a new motion to avoid the liens of Respondents. Central Pet filed a response, and the Court held a hearing on February 13, 2007.

At the hearing and in its response, Central Pet asserted that the lien held by Temecula Valley Bank should not be included in the lien avoidance calculation because it no longer encumbers the property. It does not dispute that Temecula's lien encumbered the Property prior to its release in August 2006, but it complains that Schedule D did not clearly show that Temecula's lien attached to the Property. Central Pet did not defend against the motion on the ground that no exemption amount was stated in Schedule C, which the Court noted at the hearing. On February 22, 2007, Debtors amended Schedule C to claim the full \$20,000 exemption permitted by Georgia law. *See* Bankruptcy Rule 1009(a). Debtors assert that the proper analysis looks at the value of Debtors' interest in the property as of the petition date, which would include this unavoidable lien.

This dispute presents three issues. First, may a debtor amend Schedule C after a closed case has been reopened? Second, is it a defense to the motion that Schedule D failed to show clearly that Temecula Valley Bank's lien attached to the Property? Third, where a case is closed and a consensual lien against real property is satisfied, thereby creating equity in the property as of that time, what is the relevant date for determining whether a judgment lien may be avoided when the case is later reopened for the purpose of hearing such a motion. These issues will be addressed in the order stated.

Courts routinely permit debtors to reopen cases where schedules are amended. "It is well settled that decisions as to whether to reopen bankruptcy cases and allow amendment of schedules are committed to the sound discretion of the bankruptcy judge and will not be set aside absent abuse of discretion. *In re Jones*, 490 F.2d 452, (5th Cir.1974)." *In re Rosinski*, 759 F.2d 539, 540-541 (6th Cir. 1985). Although "a court might deny leave to amend [pursuant to this rule] on a showing of a debtor's bad faith or of prejudice to creditors, " *In re Doan*, 672 F.2d 831, 833 (11th Cir. 1982), Central Pet does contend that Debtors are acting in bad faith or that an amendment would prejudice creditors. Indeed, had Debtors assigned a value of \$.01 to their exemption of the Property on their initial Schedule C and moved to avoid Respondents' liens prior to the closing of the case, there is no question that such a motion would have been granted. Here, the Court reopened the case to permit Debtors to file a motion to avoid lien and "to permit [subject to objection] the transaction of such other business as is permitted by Title 11 of the United States Code. Order Granting Debtors' Motion to Reopen Case entered on November 9, 2006." The Order was served on Respondents, who filed no objection. Hence, amendment of Schedule C was permissible.

Central Pet argues that the motion should be denied because Debtors failed to identify the Property as collateral for their debt to Temecula Valley Bank on Schedule D. This argument is without merit. An error of the nature described is not a defense to lien avoidance under section 522(f). Nor has Central Pet shown that it suffered any harm as a result of the omission. Debtors filed an affidavit of Mr. Brodsky in support of their motion showing the values of all of the liens, including that of Temecula Valley Bank, so that Central Pet has adequate notice of the lien for purposes of the motion.

“[T]he time of the filing of the bankruptcy petition is the proper time to decide a debtor's entitlement to an exemption for the purposes of § 522(f). *Owen v. Owen*, 500 U.S. 305, 314 n. 6, 111 S.Ct. 1833, 1838 n. 6, 114 L.Ed.2d 350, 360 n. 6 (1991) (citing 11 U.S.C. § 522(f), (b)(2)(A)).” *In re Clark*, 217 B.R. 943, 945 (Bankr. M.D.Fla. 1998). This is true even if the case has been closed and reopened. *In re Goswami*, 304 B.R. 386, 392 (9th Cir. BAP 2003). And it is true regardless of changes at a later date in the ownership of the property. *In re Wilding*, 475 F.3d 428, 2007 U.S. App. LEXIS 1970, \*10 (1st Cir. 2007) (“We think the petition date is the operative date for determining the various § 522(f) calculations.”); *In re Carroll*, 258 B.R. 316, 318 (Bankr. S.D. Ga. 2001). In *Wilding*, the First Circuit held that a debtor could avoid a lien against property that had been sold prior to the date on which Debtor filed his motion to avoid a lien against that property. The *Carroll* court also measured the value of the debtor’s interest in the property as of the filing date for purposes of a motion to avoid lien despite the fact that the debtor had transferred the property prior to the filing of the motion to avoid lien. *Carroll*, 258 B.R. at 317.

This Court agrees with the cases cited above and the many others that also hold that “[e]xemption rights are determined as of the date of the bankruptcy filing.” Bankruptcy Service L. Ed., Vol. 2E, §26.156 (collecting cases). Central Pet’s argument that Debtors would receive a windfall by being able to avoid its lien is based on an erroneous understanding of the operative time for evaluating whether a judicial lien impairs an exemption.

Respondents’ liens are thus avoidable in their entirety as to the Property because as of the petition date, the lien of each Respondent when added to all other liens and to the amount of each Debtor’s exemption, exceeded the value of each Debtor’s interest in the Property. 11 U.S.C. § 522(f)(2)(A). Hence, each Respondent’s lien impaired the exemption claimed by each Debtor. As to the personal property claimed as exempt and described in the motion, the value of that property is less than or equal to the value of the claimed exemptions, so that its lien impairs those exemptions as well.

For these reasons, it is

ORDERED that Debtors’ motion to avoid lien is GRANTED and the judicial lien of each Respondent is AVOIDED in its entirety.

\*\*\*END OF ORDER\*\*\*