



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

**Date: January 17, 2014**

*Mary Grace Diehl*

**Mary Grace Diehl  
U.S. Bankruptcy Court Judge**

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

In re:	)	Case No. 10-60847-MGD
	)	
JEROME MILLER,	)	Chapter 7
	)	
Debtor.	)	Judge Diehl
	)	
JEROME MILLER,	)	
	)	
Movant,	)	
	)	
v.	)	CONTESTED MATTER
	)	
MARIETTA WINNELSON CO.,	)	
	)	
Respondent.	)	

**ORDER**

Before the Court is Debtor's Motion to Avoid Judicial Lien on Exempt Property ("Motion"), as provided by 11 U.S.C. Section 522(f) and Bankruptcy Rule 4003(d). (Docket No. 30). Respondent filed a Response asserting the defense of laches. (Docket No. 32). Debtor filed his Chapter 7 petition on January 11, 2010. The petition listed a judgment in favor of Respondent

on the statement of financial affairs, and Respondent was listed as a creditor on Schedule F. (Docket No. 1). Debtor's case was closed, and he received a discharge on April 21, 2010. (Docket No. 15). On September 16, 2013, Debtor filed a Motion to Reopen Chapter 7 case for the purpose of avoiding Respondent's judicial lien. Respondent did not respond to the Motion to Reopen, and that Motion was granted on November 1, 2013. (Docket Nos. 18, 22).

A hearing was held on the current Motion on January 16, 2014 in Atlanta, Georgia. At the hearing, Debtor's attorney stated that the reason for the delay in filing the Motion was attorney error. Laches applies where there was an unreasonable delay in seeking relief and where prejudice to the creditor results. *See In re Chandler*, 2008 WL 7842073, \*3 (Bankr. N.D. Ga. May 23, 2008); *In re Procaccianti*, 253 B.R. 2000 (Bankr. D.R.I. 2000). Debtor filed the Motion almost four years after filing his petition, and the Court determined at the hearing that attorney error did not prevent this from being an unreasonable delay. Further, the Court found that Respondent was prejudiced because it would have to procure a historical appraisal, conduct discovery regarding the value of the first and second liens on the property at the time of the petition, and incur attorney's fees as a result of this late-filed Motion. Thus, the Court found that there was unreasonable delay by Debtor and prejudice to Respondent.

However, because the prejudice is monetary and quantifiable, it is possible that it can be cured. *See In re Procaccianti* 253 B.R. at 592 (conditionally approving a motion to avoid lien upon the debtor paying the costs incurred by the creditor). Therefore, the Court will allow Debtor the opportunity to cure the prejudice by paying Respondent's costs of appraisal, attorney's fees, and costs of discovery related to the first and second liens, if any. If Debtor does not pay these amounts in the time provided by this Order, then the Motion will be denied.

Accordingly, it is hereby

**ORDERED** that counsel for Respondent file on the docket in this case a statement of attorney's fees and an estimate of costs for an appraisal and for discovery as to the value of the prior liens, if any, within **thirty days** of entry of this Order.

It is further **ORDERED** that within **thirty days** of the day in which Respondent files its statement of fees and costs, Debtor must deposit into an escrow account held by counsel for Respondent's law firm, an amount equal to the total fees and costs provided in the statement.

It is further **ORDERED** that if Debtor timely makes the payment, the Motion to Avoid Judicial Lien on Exempt Property will be set for hearing. Should Debtor fail to comply with this Order, the Motion to Avoid Judicial Lien on Exempt Property will be denied without further hearing.

The clerk is directed to serve a copy of this Order on Movant, counsel for Movant, Respondent, counsel for Respondent, and the Chapter 7 Trustee.

**END OF DOCUMENT**