

FILED
U.S. BANKRUPTCY COURT
EST & WST DIST. OF ARK.

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

SEP 06 2002

JEAN ELIZABETH ROLFS, CLERK
By: _____
DEP. CLERK

IN RE: TRECEE LEE ANDERSON,

Debtor.

CASE NO. 1:02-BK-72101M
CHAPTER 7

ORDER

On April 1, 2002, Trecee Lee Anderson ("Debtor") filed a voluntary petition for relief under the provisions of chapter 7. The docket reflects that the case was administered as a no-asset case, and on July 2, 2002, the Debtor was granted a discharge of her debts pursuant to 11 U.S.C. § 727(b).

On May 3, 2002, the Debtor filed a motion, pursuant to Section 522(f) of the United States Bankruptcy Code to avoid a non-purchase money judgment lien in favor of Farmers Bank & Trust Company ("Farmers Bank") in the sum of \$63,467.28 and interest on the Debtor's exempt property. Farmers Bank filed a response to the motion to avoid lien, objecting on the grounds that as of the date of the petition the Debtor owned no property to which the judgment lien had attached under state law.

A hearing was held in El Dorado, Arkansas, on June 17, 2002, and the matter was submitted to the Court upon stipulated facts and briefs.

9/6/02 *ERB*
Entered on docket on _____ by _____ in
compliance with FRBP 5003(e) and/or FRCP 58, 79(a)

The proceeding before the Court is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K), and the Court has jurisdiction to enter a final judgment in the case.

DISCUSSION

A debtor may avoid the fixing of a judicial lien on the debtor's property to the extent it impairs an exemption to which the debtor is entitled. 11 U.S.C. § 522(f)(1)(A) (2000). To avoid such a lien the debtor must meet three conditions: (1) the lien must be a judicial lien; (2) the lien must impair an exemption of the debtor; and (3) the lien must fix on an interest of the Debtor in property. Taylor v. Taylor (In re Taylor), 271 B.R. 157, 160 (Bankr. W.D. Ark. 2001); Cloud v. Cloud (In re Cloud), 215 B.R. 870, 872 (Bankr. E.D. Ark. 1997); In re Stone, 119 B.R. 222, 226 (Bankr. E.D. Wash. 1990); 4 Collier on Bankruptcy ¶ 522.11[1] (Alan N. Resnick & Henry J. Sommer et al. eds., 15th ed. rev. 2002).

In this case, the parties agree that on the date the petition was filed, the Debtor owned no real property upon which the judgment lien could attach under state law. The parties failed to stipulate whether an execution had been issued so as to create a lien on personal property, but the Court infers from the failure to so stipulate that no such execution was issued. Farmers Bank is, therefore, correct that the motion should be denied because there is no exempt property impaired by its judgment lien.

The Debtor concedes that the judgment lien did not attach, but expresses the fear that “in the event Debtor, in the future, attempts to acquire real estate or apply for financing, the existence of the Judicial Lien will impair the Debtor's ability to purchase items or obtain financing for years in the future. . . .” (Debtor’s Brief in Support of Motion to Invalidate

Lien on Exempt Property at 2.) However, this argument misinterprets the effect of a discharge provided by section 727 of the Bankruptcy Code.

The Bankruptcy Code states that a discharge "voids any judgment at any time obtained to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727." 11 U.S.C. § 524(a)(1)(2000).

A leading treatise on bankruptcy explains the effect of section 524(a) as follows:

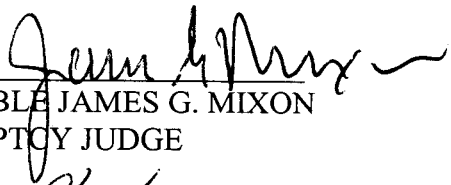
Section 524(a) is meant to operate automatically, with no need for the debtor to assert the discharge to render the judgment void. . . . A bankruptcy court can find that a postpetition state court judgment is void despite the full faith and credit normally given to state court judgments. . . . A prepetition judgment that has been made void by this section cannot be the basis for a creditor obtaining a lien on property that was not subject to a lien before bankruptcy. . . . Nor may a creditor proceed in rem against a property interest of the debtor if the creditor had no lien before the bankruptcy case and the debtor's personal liability has been discharged.

4 Collier on Bankruptcy ¶ 524.029[1] (Alan N. Resnick & Henry J. Sommer et al. eds., 15th ed. rev. 2002).

See also In re Paeplow, 972 F.2d 730, 735 (7th Cir. 1992)(creditors with prepetition claims not reduced to judgment with a lien attached to property of the debtor may not reduce that claim to a judgment and lien attaching against the debtor or the debtor's property post-discharge); In re Thomas, 102 B.R. 199, 201 (Bankr. E.D. Cal. 1989) (abstract of judgment filed by creditor prepetition did not give rise to lien on property acquired by debtor post-discharge).

Therefore, for the reasons stated herein, the motion to avoid lien is denied.

IT IS SO ORDERED.



THE HONORABLE JAMES G. MIXON
U. S. BANKRUPTCY JUDGE

DATED: 9/05/02

cc: Renee S. Williams, Trustee
Jack W. Gooding, Esq.
Henry Kinslow, Esq.
Debtor