

# In the United States Bankruptcy Court

## for the Northern District of Iowa

CHARLES WILLIAM NANDELL  
Debtor.

Bankruptcy No. 96-12411KC  
Chapter 7

### ORDER RE MOTION TO AVOID LIEN

On November 21, 1996, the above-captioned matter came on for hearing pursuant to assignment. Debtor appeared in person with Attorney Douglas Herman. Objector Ann Helen Zateslo appeared by Attorney David Pulliam. Evidence was presented after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. 157(b)(2)(K).

### FINDINGS OF FACT

Debtor and Objector Ann Helen Zateslo were husband and wife. During their marriage, they acquired the parties' marital residence located at 302 Cherokee Trail, Iowa City, Johnson County, Iowa. This home is described as a mobile home and is licensed as such. It is, however, more in the nature of a modular home which can be divided into two sections, loaded on a semi-trailer and moved. It does not have wheels and is not easily portable though it does rest on a rented lot. This home was purchased in October or November of 1990 for \$12,000. The home was held in joint tenancy by the parties.

Objector Ann Helen Nandell, n/k/a Ann Helen Zateslo, petitioned for a dissolution of marriage in Johnson County, Iowa in October, 1993. The parties reached a joint stipulation of settlement which was filed with the Court on March 1, 1993. On the same date, the parties appeared before Judge Kristin L. Hibbs and a Decree of Dissolution was entered incorporating the terms of the Stipulation into the Dissolution Decree.

The Stipulation and Decree award the marital home to Debtor. Debtor has continuously resided on the property to the present time. Paragraph 15 of the Stipulation provides that the home would be awarded to Debtor free and clear of all right, title and interest of Ann Helen Zateslo. The Stipulation and Decree additionally provide, in paragraph 15 that "In exchange for clear title to the mobile home, Respondent (Debtor) shall pay Petitioner (Zateslo) \$6,000.00 which shall be a lien on the property until paid."

Debtor filed his Chapter 7 Petition on September 23, 1996. The Bankruptcy Schedules establish that Debtor claims this modular or mobile home exempt. Mrs. Zateslo has not objected to Debtor claiming the property exempt. She does object, however, to avoidance of the lien. She claims that the lien created in her favor by the Dissolution Decree cannot be avoided. Mrs. Zateslo asserts that the lien created by the Stipulation is a consensual lien and not an avoidable judgment lien.

### CONCLUSIONS OF LAW

Debtor bears the burden of proof on all lien avoidance issues while the burden is on the objecting party to prove that a claimed exemption is not properly claimed. In re Streeper, 158 B.R. 783, 785 (Bankr. N.D. Iowa 1993); Fed.R.Bankr.P. 4003(3). No objection is raised to Debtor's assertion that this modular home is exempt property under Iowa Code sec. 561.16. Therefore, the issues for resolution all involve lien avoidance and the burden of proof is upon Debtor on all these issues.

The applicable avoidance language of 522(f) states that:

(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is -

(1) a judicial lien;

Four elements must be addressed to determine whether lien avoidance shall occur: a) whether a lien exists; b) whether it constitutes a judicial lien; c) whether the lien impairs an exemption to which the debtor would otherwise be entitled; and d) whether the lien fixes on an interest of debtor.

The first element requires Debtor to establish that a lien has been created. A lien is defined under the Bankruptcy Code as follows: "lien means charge against or interest in property to secure payment of a debt or performance of an obligation." 11 U.S.C. 101(37).

The definition of a lien under the Bankruptcy Code is extremely broad. Under Iowa law, the State trial court has broad power to affect the parties' property interest in a dissolution decree. This power includes invasion of the homestead rights of the parties. It has long been held in Iowa that the dissolution statute is a "special declaration of statute" under section 561.16 which authorizes substantial adjustment of the property rights of the dissolution parties including, without limitation, the homestead rights of the parties. See In re Marriage of Tierney, 263 N.W.2d 533 (Iowa 1978); Brown v. Vonnahme, 343 N.W.2d 445 (Iowa 1984); In re Reinders, 138 B.R. 937 (Bankr. N.D. Iowa 1992).

A lien is created under Bankruptcy Code 101(37) when the dissolution court directs a charge against or an interest in the property to secure payment of a debt. The applicable language from the Stipulation which was incorporated into the Dissolution Decree is very specific. In summary, it states that the Respondent was awarded free and clear of all right, title and interest of the Respondent, the property in question. The language of the Stipulation also states that: "In exchange for clear title to the mobile home, Respondent shall pay Petitioner \$6,000.00 which shall be a lien on the property until paid." Nandell Stipulation at paragraph 15. As such, the language of the Stipulation incorporated into the Dissolution Decree creates a lien as defined in 11 U.S.C. 101(37).

Debtor argues that three different provisions of the Dissolution Decree make the amount of the lien unclear. He asserts that the lein may actually be less than \$6,000, depending on the possible sale of the mobile home. The Court concludes that the amount of the lien is essentially irrelevant in these proceedings, although the Court notes that there appears to be no ambiguity in the language quoted in the preceeding paragraph. The existence of the lien, not the amount, is the issue for determination. The Court has concluded that a lien exists in Ms. Zateslo's favor from the language of the Dissolution Decree.

The second issue for the Court's determination is whether the obligation and lien constitute a judicial lien. A judicial lien is defined under 101(36) to be a lien obtained by judgment, levy, sequestration or other legal or equitable process or proceeding. 11 U.S.C. 101(36); In re Applebaum, 162 B.R. 548, 550 (Bankr. E.D. Cal. 1993); In re Matrone, 183 B.R. 41, 42 (Bankr. N.D.N.Y. 1995). A judicial lien is distinguishable from other liens based upon the method by which the lien is created, not by how it is enforced. Nagvi v. Fisher, 192 B.R. 591, 595 (Bankr. D.N.H. 1995).

When a debtor is awarded sole title to the homestead in a divorce decree, and the former spouse is awarded a lien on that homestead in the same decree, the lien created is a judicial lien. In re Pedersen, 875 F.2d 781, 784 (9th Cir. 1989). A property settlement agreement entered into between the parties during a divorce proceeding can create a judicial lien because it arises in the context of judicial proceedings. In re Wells, 139 B.R. 255, 256 (Bankr. D.N.M. 1992). Regardless of whether the parties agreed to the terms or whether the court imposed the terms, a settlement agreement entered into during a pending divorce proceeding comes "into existence as a result of the commencement of a legal marital dissolution proceeding." Id.

The lien held by Mrs. Zateslo against Debtor's homestead is a judicial lien. It was created by the Dissolution Decree incorporating the Stipulation. The lien arose in the context of legal proceedings and came into existence as a result of the commencement of legal dissolution proceedings. The lien falls directly within the definition of a judicial lien under

101(36).

The third element which Debtor must establish is whether the lien impairs an exemption to which Debtor would otherwise be entitled. The Bankruptcy Code allows individual debtors to exempt from property of the bankruptcy estate, any property that is exempt under either 522(d) of the Bankruptcy Code, or in the alternative, state or local law applicable at the date of filing. State preference determines which exemption scheme is available to debtors. Section 522(b)(1) allows states to opt out of the Federal scheme embodied in 522(d) and thereby entitle debtors to state and local exemptions. Iowa has opted out of the Federal scheme by virtue of Iowa Code sec. 627.10. Therefore, the Court turns to Iowa law to determine whether Debtor is entitled to claimed exemptions.

The homestead rights of residents living in Iowa are controlled by Iowa Code sec. 561.16. This section provides:

The homestead of every family, whether owned by the husband or wife, is exempt from judicial sale, where there is no special declaration of statute to the contrary, and such rights shall continue in favor of the party to whom it is adjudged by divorce decree during continued personal occupancy by such party.

It is not disputed that the subject property constitutes Debtor's homestead. Based on the Dissolution Decree, Debtor has full ownership of the property. The question remains, however, whether Debtor may claim homestead rights as to the whole property against Ms. Zateslo's judicial lien. This is best resolved through consideration of the fourth element of 522(f).

The final issue for determination is whether the lien fixes on an interest of Debtor. On this element, the question that must be resolved is whether Debtor ever possessed an interest in the property to which the lien fixed, before it fixed. Farrey v. Sanderfoot, 111 S. Ct. 1825, 1830 (1991). The resolution of this question is accomplished through the application of state law. Farrey, 111 S. Ct. at 1830. The parties stipulate that prior to the Dissolution Decree, Debtor and his ex-wife held title to the modular home in joint tenancy.

The U.S. Supreme Court, in Farrey assumed that a party's characterization of Wisconsin law, that the decree extinguished the previous property interests, was correct in determining when a lien attached for lien avoidance purposes. Id. at 1830. It concluded that the lien encumbers the debtor spouse's wholly new fee simple interest. Id. The Court proceeded to further analyze the issue finding the same result even if the decree did not extinguish the couple's pre-existing interests but instead merely reordered them. Id. at 1831. In a concurring opinion, Justice Kennedy discussed an interpretation of Wisconsin law contrary to that presented by the debtor spouse but in line with the majority's alternative analysis. Id. at 1832. He concluded that the debtor spouse obtained the creditor spouse's one-half interest in the decree while always retaining his one-half interest as well and thus was never divested of his own interest. Id. Both the majority opinion and the concurrence conclude that under this analysis, a debtor spouse could not use 522(f)(1) to undo an ex-spouse's encumbrance on the ex-spouse's pre-existing interest, reasoning that the debtor spouse had never possessed that interest without the lien already having fixed. Id. at 1831, 1832.

Iowa courts have not specifically addressed the issue of the effect a dissolution decree has on the parties' respective property rights. This Court, however, has determined that an Iowa dissolution decree does not totally extinguish the property rights of the parties. In re Booher, No. 94-10520KC, slip op. at 8 (Bankr. N.D. Iowa Nov. 15, 1994); see also In re Brockman, 143 B.R. 703, 707 (Bankr. S.D. Iowa 1992); In re Steffen (Steffen v. Steffen), No. L-91-02167D, Adv. No. L-92-0009D (Bankr. N.D. Iowa May 12, 1992). This is consistent with Boyd v. Robinson, 741 F.2d 1112, 1115 (8th Cir. 1984) (construing Minnesota law). There, the 8th Circuit reasoned that a lien in a dissolution decree recognizes and provides a remedy to enforce the lienholder's pre-existing property right in real estate. Id. at 1114.

A dissolution court, in awarding the homestead to one spouse, removes any interest the other spouse had in the homestead. Brown v. Vonnahme, 343 N.W.2d 445, 450 (Iowa 1984). If the dissolution court grants the other spouse a lien, it attaches to the interest in the property that spouse held pursuant to state law prior to the dissolution. Steffen, slip op. at 7. The spouse awarded the homestead then holds the original interest in the property plus the other spouse's interest subject to the lien.

In this case, the decree transferred Ms. Zateslo's one-half interest in the homestead as joint tenant to Debtor encumbered by her lien. Debtor then held the entire homestead. He retained his original one-half interest as joint tenant as it existed

prior to the dissolution. That interest is properly identified as Debtor's homestead to which liens, including Ms. Zateslo's lien from the Dissolution Decree, may not attach. Debtor also received Ms. Zateslo's one-half interest subject to her lien.

Debtor argues that the lien impairs his homestead interest in his pre-dissolution one-half interest as joint tenant because the total value of the property is less than the amount of the lien. He estimates the value of the modular home at \$4,000, as listed in his Schedule B. The record has no other evidence of value of the home. Regardless, under the foregoing, the lien only attaches to the one-half interest Debtor received in the dissolution decree. It may only be enforced against that one-half interest and therefore does not impair Debtor's homestead rights in his original, pre-dissolution one-half interest he held as joint tenant.

**WHEREFORE**, it is the conclusion of this Court that a lien was created on this property under the dissolution laws of the State of Iowa.

**FURTHER**, the lien created constitutes a judicial lien pursuant to 11 U.S.C. 101(36).

**FURTHER**, the lien does not impair an exemption to which Debtor would otherwise be entitled.

**FURTHER**, the lien does not fix on Debtor's pre-dissolution interest in the homestead property. The Dissolution Decree preserved that interest. The interest that the lien presently encumbers is Debtor's newly acquired one-half interest which the Dissolution Decree transferred to him subject to the lien.

**FURTHER**, for all the reasons set forth herein, Debtor's Motion to Avoid Lien pursuant to 11 U.S.C. 522(f) is **DENIED**.

**SO ORDERED** this 13th day of December, 1996.

Paul J. Kilburg  
U.S. Bankruptcy Judge