

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In Re

ANTHONY DAVID MOORE

Case No. 97-14205-MAM-7

Debtor

**ORDER GRANTING DEBTOR'S MOTION TO
AVOID JUDGMENT LIEN OF VICTOR P. STANTON**

Barry A. Friedman, Attorney for the Debtor, Mobile, AL
Thomas R. Boller, Attorney for Victor Stanton, Mobile, AL

This case is before the court on the motion of the debtor, Anthony David Moore, to avoid the judgment lien of Victor Stanton pursuant to 11 U.S.C. § 522)(f)(1)(A) and Stanton's motion to alter, amend or set aside the order of April 18, 2005 granting lien avoidance. This court has jurisdiction to hear these matters pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. These matters are core proceedings pursuant to 28 U.S.C. § 157(b)(2) and the court has the authority to enter final orders. For the reasons indicated below, the court is granting Stanton's motion to set aside the order of April 18, 2005 granting lien avoidance to Moore and, then, upon consideration of Stanton's objections, is granting the debtor's motion to avoid Stanton's judgment lien.

FACTS

Anthony Moore filed a chapter 7 bankruptcy case on November 20, 1997. In his schedules, he asserted that he owned a homestead at 3525 Arrington Drive, Mobile, Alabama that was worth \$70,000. He listed the debt against the property as three mortgages totalling

\$154,000. He claimed the property as exempt to the extent of \$1 of value.

In his schedules, Moore listed a debt to Victor Stanton as an unsecured claim for \$10,095. He indicated that the basis for the debt was a “lawsuit for rent.” The first meeting of creditors was held on December 22, 1997. Stanton’s state court attorney was present.¹ The meeting was adjourned to January 26, 1998. Stanton’s attorney again was present. Moore was required to amend his schedules which he did on February 9, 1998. The amended Schedule A of the bankruptcy petition stated that the homestead property was valued at \$70,000 and had three mortgages totalling \$154,000 as liens against it. On February 9, 1998, a third continued creditors meeting was held to review Moore’s amendments to his schedules. Stanton’s attorney did not attend. Further continued meetings of creditors were held on March 2, March 30, April 13, May 11, June 1, and June 15, 1998 at the trustee’s request. Neither Stanton nor his counsel attended.

No objections to the general discharge of Moore’s debts nor objections to the dischargeability of any particular debts were filed by the deadline of February 20, 1998. Moore received his discharge on June 24, 1998.

After reopening his chapter 7 case, Moore moved on March 24, 2005 to avoid the judgment lien of Victor Stanton as it relates to his homestead property. The motion was granted on April 18, 2005. Stanton has moved to alter, amend or set aside that order on several grounds.

Stanton’s judgment lien was recorded in Mobile County property records on June 24, 1997. It is based on Stanton’s claim against Moore for unpaid rent and wanton destruction of the rental premises. The judgment was in the approximate amount of \$10,095. Stanton had an attorney representing him when he obtained the judgment in state court. That attorney,

¹ The state court attorney was not attorney Thomas Boller.

apparently somewhat unfamiliar with bankruptcy law, did not understand the need for a dischargeability judgment in bankruptcy court if Stanton believed the wanton destruction claim should not be discharged in Moore's bankruptcy case.

LAW

Stanton asserts that his motion to alter or amend the order granting the lien avoidance motion should be granted because the motion indicated a response could be filed "within 30 days from the date of service of this [motion to avoid lien]." Thirty days had not elapsed before entry of the court's order. Stanton is correct and Moore does not really contest this point. Therefore, the motion to alter or amend the order granting lien avoidance should be vacated to allow Stanton to offer a defense to the lien avoidance motion.

In his objection to the lien avoidance motion itself, Stanton asserts that on laches or estoppel grounds or other equitable grounds his judgment should not be avoided. Moore's discharge was granted more than 7 years ago. Since that time, Stanton states that he has "justifiably relied on . . . [his] judgment lien." Stanton also asserts that he relied on Moore's schedules. Moore should not be able to avoid the judgment lien for more than the \$1 claimed as exempt if he is allowed to avoid the lien at all.

Moore alleges that the laches argument must fail. The delay in making the motion did not prejudice Stanton. As to estoppel, Stanton's reliance on his judgment is without meaning legally. Stanton was represented and had ample opportunity to file a dischargeability complaint and was precluded from doing so in no way by this lien avoidance motion or its late filing. Moore had no equity in his homestead at the filing of this case and there was no value to which Stanton's lien could attach. Therefore, his claim was unsecured as scheduled.

The court will address the estoppel argument, the laches argument, and the value arguments in turn. The court concludes that none of the arguments are sustainable.

A.

Stanton asserts that estoppel precludes avoidance of the lien. As this court has stated:

Estoppel is an equitable remedy and requires proof of four elements: (1) knowledge of the facts by the party to be estopped; (2) the estopped party must have intended its actions to be acted upon or the . . . [creditor] must have a right to believe the . . . [debtor's] conduct was so intended; (3) the . . . [creditor] must have been ignorant of the facts; and (4) the . . . [creditor] must have relied upon the other party's conduct.

In re Boone, 281 B.R. 51 (Bankr. S.D. Ala. 2001); *see also Pinnacle Port Community Ass'n. v. Orenstein*, 872 F.2d 1536 (11th Cir. 1989) (listing the same factors); *Baldwin v. Citigroup, Inc. (In re Baldwin)*, 307 B.R. 251 (M.D. Ala. 2004) (same).

Stanton must prove, by a preponderance of the evidence, that these four elements are present. Stanton cannot prove all of the elements. The debtor listed Stanton as a creditor; indicated that Stanton was being treated as an unsecured creditor; and listed a property value and mortgage debt amounts that showed that there was no value to Stanton's lien claim. Moore did not mislead Stanton in any way. Stanton did not file a dischargeability action because of erroneous legal advice for which Moore is not responsible. Therefore, there was no reliance on Moore's actions that prejudiced Stanton. Improper legal advice prejudiced him.

B.

Stanton's second argument is that the doctrine of laches precludes Moore's requested lien avoidance. Stanton's assertion is not novel.

"[S]ection 522(f) . . . [does not] set[s] time limits on debtors' motions to avoid liens, and courts have dealt with such motions in different ways. . . The leading

approach is permissive but incorporates an equitable defense akin to laches, so that a debtor may reopen the bankruptcy case at any time to avoid a lien absent a finding of prejudice to the creditor.”

In re Bianucci, 4 F.3d 526, 528 (7th Cir. 1993).

As the *Bianucci* case states, “passage of time in itself does not constitute prejudice.” *Id.* at p. 528. Stanton’s argument is essentially that 7 years is too long a period to be defensible. Stanton testified to no other prejudice other than his inability to have his debt declared nondischargeable. That loss of right was not caused by anything Moore did. That right also expired February 20, 1998. The time period between February 20, 1998 and now added no new issues for Stanton.

The cases that have held that the passage of time prejudiced the creditor usually follow two fact patterns. The first scenario is one in which the creditor was not listed in the debtor’s bankruptcy schedules and had no knowledge of the bankruptcy. Prejudice to such a creditor is obvious. The creditor cannot attend the first meeting of creditors, take a Rule 2004 examination, object to exemptions, challenge the debtor’s discharge, and actively participate in the debtor’s bankruptcy case. *In re Hunter*, 283 B.R. 353 (Bankr. M.D. Fla. 2002). In such a case, avoidance of a judgment lien and/or reopening of the debtor’s case to bring such a motion is denied. The second scenario is one in which the creditor has expended money for attorneys fees and expenses to enforce its lien. In some cases, after fees and costs were incurred, courts denied debtors’ requested lien avoidance. *In re Bianucci, supra.*; *Hawkins v. Landmark Fin.Co.*, 727 F.2d 324 (4th Cir. 1984); *In re Serafini*, 30 B.R. 606, 608 (Bankr. W.D. Pa. 1983), *aff’d*, 41 B.R. 880 (W.D. Pa. 1984). In some cases, courts have required a debtor to reimburse the creditor for such costs as a precondition to the avoidance of a judicial lien to alleviate the prejudice. *In re Nash*,

2002 WL 862464 (Bankr. D.C. 2002); *In re Parker*, 64 B.R. 402 (Bankr. M.D. Fla. 1986); *Noble v. Yingling*, 37 B.R. 647 (D. Del. 1984).

In this case neither of the two scenarios described above were proven. Therefore, neither line of cases is applicable. Stanton must prove prejudice by a preponderance of the evidence. He has not done so.

C.

Stanton's final argument deals with the mechanics of section 522(f)(1)(A) and whether it is proper to avoid the entire lien of Stanton under the facts of this case. Section 522(f)(1)(A) states:

[A] 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 . . . if such lien is . . . a judicial lien.

Section 522(f)(2) further explains:

[A] lien shall be considered to impair an exemption to the extent that the sum of—

- (i) the lien;
- (ii) all other liens on the property; and
- (iii) the amount of the exemption that the debtor could claim if there were no other liens on the property

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

As the court understands Stanton's argument, since Moore only claimed a \$1 homestead exemption, Stanton argues that his judicial lien should attach to any value over the \$1 value. However, this argument ignores the language of the statute and the manner in which it is designed to work.

The value of the property to be considered is the value as of the date of the bankruptcy

case filing. *In re Hall*, 2005 WL 1593385, *3 (Bankr. W.D. Mo. 2005) (citing other relevant cases). The only evidence of the value of the property in evidence is that which was stated in the schedules—\$70,000. The evidence as to the amounts owed on the three mortgages is as stated in the schedules—\$154,000. Under Alabama law, Moore’s homestead exemption amount is \$5,000. However, he only claimed a \$1 exemption.

The *Hall* case states that pursuant to section 522(f)(2) a court must add the mortgages and the homestead exemption. Here those numbers total either \$159,000 or \$154,001. These numbers exceed the value of the homestead by \$89,000 or \$84,001. Since either of these numbers exceeds the value of Stanton’s lien of \$10,095, the lien is avoided in its entirety. *Id.* at p. *2. Since there was no value for Stanton’s lien at the time of the filing of the bankruptcy case, it cannot now reattach itself postbankruptcy to any new equity, if any, in the property. A debtor is entitled to avoid a judicial lien even if the debtor has no equity in the property at all at the time of valuation. *In re Taras*, 304 B.R. 912 (Bankr. N.D. Ga. 2004).

CONCLUSION

For all of the reasons stated above, Anthony Moore is entitled to avoid the judicial lien of Victor Stanton. Therefore, although the court is granting Stanton’s motion to reconsider its order of April 18, 2005, granting the lien avoidance, the court, upon consideration of the facts and law is again granting the motion to avoid the lien. Stanton’s claim is unsecured and the lien is avoided in its entirety.

IT IS ORDERED that

1. The motion of Victor Stanton to alter, amend or set aside the order of April 18, 2005 is GRANTED to allow consideration of objections to the motion; and

2. The motion of the debtor, Anthony Moore, is GRANTED avoiding the judgment lien of Victor Stanton against the real property located at 3525 Arrington Drive, Mobile, Alabama

Dated: July 14, 2005


MARGARET A. MAHONEY
U.S. BANKRUPTCY JUDGE