

1 WRITTEN DECISION - FOR PUBLICATION

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CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re:) CASE NO. 05-04358-H7
DEMOSTHENIS KANAKARIS,) MEMORANDUM DECISION
Debtor.)

At issue is whether postpetition interest will continue to accrue on a judgment creditor's liens to the extent they are unavoidable under 11 U.S.C. § 522(f) (1) (A).

This Court has jurisdiction to determine this matter pursuant to 28 U.S.C. §§ 1334 and 157(b) (1) and General Order No. 312-D of the United States District Court for the Southern District of California. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A).

DISCUSSION

This Court found that judgment creditor's¹ first lien was unavoidable and judgment creditor's second lien was partially

¹ Peter Gilboy is the assignee of two judgment liens recorded against debtor's property. The first is a judgment lien originally in favor of First Commerce & Loan, Ltd. in the approximate amount of \$36,970.31 (the "First Commerce Lien"). The second is a judgment lien in favor of Glenn E. Martin, GEM International, and GEM International, Inc. in the approximate amount of \$846,972.86) (the "GEM International Lien").

1 avoidable under 11 U.S.C. § 522(f) (1) (A). Debtor argues that
2 judgment creditor is not entitled to postpetition interest on those
3 amounts that remain on his property and cites Bank of Am. Nat'l
4 Trust and Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592 (B.A.P.
5 9th Cir. 1997) in support. Debtor maintains that Hanger stands for
6 the proposition that § 522(f) is intended to allow debtors the full
7 benefit of their homestead exemption through any post-avoidance
8 appreciation in the value of their property. Debtor concludes that
9 "it only stands to reason that postpetition interest cannot accrue
10 on judicial liens where the aggregate amount of such liens impairs
11 the homestead." The Court finds debtor's argument unpersuasive.

12 A. Debtor's Homestead Exemption is Fully Protected

13 Section 522(f) (1) states that the "debtor may avoid the fixing
14 of a lien on an interest of the debtor in property to the extent
15 that such lien impairs an exemption to which the debtor would have
16 been entitled...." "The purpose of § 522(f) is to protect a
17 debtor's exemptions," Weeks v. Pederson (In re Pederson), 230 B.R.
18 158, 163 (B.A.P. 9th Cir. 1999), not to provide a windfall to the
19 debtor. See Hanger, 217 B.R. at 594 ("Section 522(f) (1) was not
20 intended to free the debtor's property of judicial liens
21 altogether; rather it was intended to preserve the debtor's
22 exemption."); See also In re Willets, 262 B.R. 552, 556 (Bankr.
23 N.D. Fla. 2001) ("Lien avoidance only extends to the removal of
24 impediments to exemptions to which the debtor would have been
25 entitled. There is no provision in the Code or the case law that
26 provides for the increase in a debtor's property rights through the
27 lien avoidance mechanism.").

28 Debtor does not dispute that the First Commerce Lien remains

1 on his property in total because it did not impair his homestead
2 exemption, nor does he dispute that a portion of the GEM
3 International Lien remains on his property because it did not
4 impair his homestead exemption. Debtor's exemption is therefore
5 fully protected in accordance with the intent of § 522(f).

6 B. The Value of a Lien is Measured as of the Petition Date

7 Debtor argues that the judgment liens were "fixed" in value as
8 of the petition date and, therefore, no postpetition interest is
9 authorized. The values of the judgment liens are "measured" as of
10 the petition date (not "fixed" as argued by the debtor) for
11 purposes of applying the formula in § 522(f)(2)(A). In re Salanoa,
12 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001) (finding that the
13 petition date is the operative date to make all § 522(f)
14 determinations for purposes of applying the formula, i.e., the fair
15 market value of the debtor's property, the amount of the debtor's
16 exemption, and the value of the liens are measured as of the date
17 of the filing of the petition). The Salanoa court noted that this
18 "approach is consistent with Dewsnup because it allows a lien
19 creditor to enjoy the increase in value if the lien is not avoided.
20 However, it also preserves the parties' rights as they existed on
21 the petition date to the extent the lien is avoidable under section
22 522(f)." Id.

23 C. An Unavoidable Lien "Rides Through" the Bankruptcy Unaffected

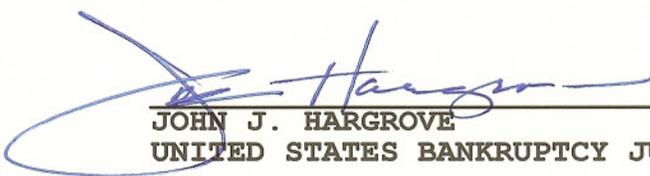
24 A secured creditor's lien rides through the bankruptcy
25 unaffected unless the Bankruptcy Code clearly permits its
26 modification, i.e. in reorganization cases. Dewsnup v. Timm, 502
27 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992); See also United
28 States v. Ron Pair Enters., Inc., 489 U.S. 235, 109 S.Ct. 1026, 103

1 L.Ed.2d 290 (1989) (involving the interpretation of § 506(b) in
2 context of Chapter 11 case and holding that post-petition interest
3 was available to oversecured creditors whose liens were
4 nonconsensual). Section 522(f)(1) does not say "that the debtor
5 may undo a lien on an interest in property," Pederson, 230 B.R. at
6 160, nor does it say that a judgment lien holder's rights are
7 somehow modified upon the filing of an avoidance action. The Court
8 finds therefore that a judgment creditor's lien, to the extent it
9 remains on debtor's property, rides through the debtor's bankruptcy
10 unaffected. This Court has no authority to stop the accruing of
11 postpetition interest or "modify" a judgment creditor's unaffected
12 judgment lien by virtue of debtor's avoidance action.

13 CONCLUSION

14 This Memorandum Decision constitutes findings of fact and
15 conclusions of law pursuant to Federal Rule of Bankruptcy Procedure
16 7052. For the reasons stated above, the Court has approved
17 judgment creditor's alternative order which authorizes the accrual
18 of interest on his judgment liens to the extent they remain on
19 debtor's property. No further order is requested.

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21 Dated: March 23, 2006.

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23 _____
24 JOHN J. HARGROVE
25 UNITED STATES BANKRUPTCY JUDGE
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