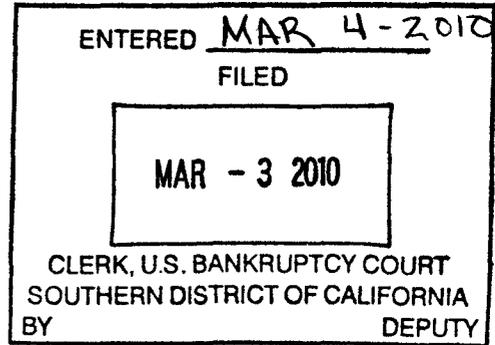


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



9 UNITED STATES BANKRUPTCY COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 09-04147-LT13

12 TAM TO NGUYEN,) ORDER ON MOTION TO AVOID

13 Debtor.) JUDICIAL LIEN

14 _____)

15 Debtor has moved to avoid the judgment lien of her former

16 family law attorney pursuant to 11 U.S.C. § 522(f), on the

17 ground that the lien impairs an exemption to which she is

18 otherwise entitled. In Debtor's reply to the Opposition, Debtor

19 acknowledges that the judgment lien is only partially avoidable.

20 The Court has subject matter jurisdiction over the

21 proceedings pursuant to 28 U.S.C. § 1334 and General Order

22 No. 312-D of the United States District Court for the Southern

23 District of California. This is a core proceeding under

24 28 U.S.C. § 157(b)(2)(A), (O).

25 The underlying facts are simple. A Judgment of Dissolution

26 was filed March 13, 2008, providing in relevant part that the

1 residence was to be sold and "[t]he net sale proceeds are to be
2 deposited into Petitioner's attorney's trust account and divided
3 equally between the parties after payment of community debts,
4 equalization, reimbursements and attorney fees." Debtor's former
5 attorney recorded his lien for attorney fees on or about June 25,
6 2008. Then, on or about March 31, 2009 Debtor filed this Chapter
7 7 proceeding. She listed the real property as an asset, with a
8 value of \$355,500, with consensual mortgage liens of \$244,955.84.

9 Debtor's former attorney, Mr. Love, contends that the
10 avoidability of his lien pursuant to the Bankruptcy Code has to
11 be determined as of the date of filing of the petition, and
12 utilizing the value of the property as of that date, which Debtor
13 said was \$355,500. Subtracting the outstanding mortgage liens of
14 \$244,955.84 (according to Schedule D) left equity of \$110,544.16,
15 one half of which would be hers. That amount would be
16 \$55,272.08. By Mr. Love's calculation, after subtracting
17 Debtor's claimed exemption of \$18,813.16, Debtor would still have
18 a non-exempt equity interest of \$36,458.92 from which to pay
19 Mr. Love's judgment lien. Mr. Love's lien was originally for
20 \$23,801.14, but he now asserts it should be \$26,801.14 as set by
21 the Family Court on or about December 16, 2009 -- post-discharge
22 -- because of accrued interest. Whatever the allowed amount of
23 Mr. Love's claim, it could be paid in full without impairing the
24 exemption amount to which Debtor is entitled. Accordingly, says
25 Mr. Love, the Debtor's motion should be denied.

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1 Complicating matters, at some point post-petition, the
2 property was sold. There were further hearings in the Family
3 Court which, for present purposes, resulted in two findings.
4 First, Mr. Love's lien amount had increased to \$26,801.14 because
5 of accrued interest; and, two, Debtor's actual net equity share
6 of the actual sale proceeds of the property is \$33,249. Both
7 sides acknowledge that if Debtor may use the actual share of the
8 net proceeds, \$33,249, then Mr. Love's lien does impair the
9 \$18,813.16 exemption to which Debtor is entitled. Only
10 \$14,435.84 would remain subject to Mr. Love's lien after allowing
11 Debtor's exemption in full.

12 The core problems with Debtor's motion is as the creditor
13 points out. The date of value of the property for purposes of a
14 motion to avoid under 11 U.S.C. § 522(f) is the date of filing of
15 the bankruptcy petition, not five months after the Debtor has
16 received her discharge. As Mr. Love has pointed out, if Debtor
17 had brought her motion while the case was originally pending, she
18 could not have prevailed because the only property value
19 available was the one Debtor scheduled, under penalty of perjury.
20 She did not bring a motion to avoid while the case was then
21 pending, and she received her discharge on July 7, 2009. At some
22 point the property sold, apparently for less than she had hoped.
23 So, in effect, she wants to go back in time, substitute a
24 different value for the property which now results in some
25 impairment of her exemption, and now assert the power to avoid
26 the portion of Mr. Love's lien that impairs her exemption.

1 However, Debtor has provided no authority to support her doing
2 so.

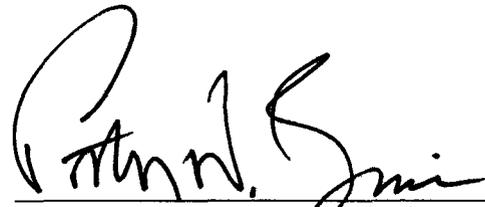
3 Debtor did not move to avoid Mr. Love's lien while the case
4 was originally pending, and his lien "rode through" her Chapter 7
5 bankruptcy following her discharge. It was still a valid lien
6 when the property was sold, and Debtor is precluded from, in
7 effect, having a second bankruptcy proceeding with a new date of
8 valuation against which to assess her claim of impairment of her
9 exemption. 11 U.S.C. § 727(a)(8).

10 Conclusion

11 For the foregoing reasons, Debtor's Motion to Avoid Lien
12 shall be, and hereby is denied.

13 IT IS SO ORDERED.

14 DATED: MAR - 3 2010

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17 PETER W. BOWIE, Chief Judge
18 United States Bankruptcy Court
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