

1 Civil Procedure § 703.140(b)(5) - and exhausted it in exempting
2 other assets.

3 Interestingly, on Schedule D, debtors listed obligations
4 for first and second position loan obligations on both real
5 properties. On Schedule E they listed a property tax claim for
6 property taxes on the Camino Portofino property.

7 In the Statement of Financial Affairs, debtors were asked
8 to list all property transferred in the preceding ten years
9 "to a self-settled trust or similar device of which the debtor
10 is a beneficiary." They indicated "none". In their Statement
11 of Intention they stated they wanted to reaffirm the debts on
12 the Camino Portofino property.

13 The Chapter 7 trustee proposed to abandon certain lawsuits
14 debtors had listed as assets of the estate. That brought
15 opposition from some of the parties to the litigation.
16 Meanwhile, Mr. Bakker had died and, on February 10, 2010 debtor
17 received her discharge.

18 Then, on May 6, 2010, debtor moved to avoid judgment liens
19 of the Muehls and the Hoffmans pursuant to 11 U.S.C. § 522(f),
20 on the theory that the liens impaired an exemption to which
21 debtor would otherwise have been entitled on the Camino Portofino
22 property. In addition, debtor asserted the lien was avoidable
23 because the underlying personal obligation had been discharged
24 by debtor's Chapter 7 discharge.

25 The last ground advanced by debtor can be addressed easily.
26 It is true that a Chapter 7 discharge can discharge a debtor's

1 personal liability on a secured obligation such as a judgment
2 lien or mortgage. As reiterated by the Supreme Court in Dewsnup
3 v. Timm, 502 U.S. 410, 418 (1992):

4 Under the Bankruptcy Act of 1898, a lien on
5 real property passed through bankruptcy
6 unaffected. This Court recently acknowledged
7 that this was so. See Farrey v. Sanderfoot,
8 500 U.S. 291, 297 . . . ("Ordinarily, liens
9 and other secured interests survive
10 bankruptcy"); [citations omitted] ("Rather, a
11 bankruptcy discharge extinguishes only one
12 mode of enforcing a claim - namely, an action
13 against the debtor in personam - while
14 leaving intact another - namely, an action
15 against the debtor in rem").

16 To the extent debtor asserts that the judgment liens are
17 avoidable because the underlying obligations were discharged
18 in this Chapter 7 proceeding, the argument fails and the
19 motions are denied on that ground.

20 More interesting is debtor's argument under § 522(f) for
21 avoidance of the judgment liens because they impair an exemption
22 to which she would otherwise be entitled. Among the multiple
23 issues raised in these proceedings is the issue of ownership
24 of the Camino Portofino property. In a declaration dated
25 June 1, 2010 debtor stated in relevant part:

26 3. At the time our bankruptcy case was
filed, both Debtor Theodorus Bakker and
myself, Simona Bakker, were settlors,
beneficiaries, and trustees of the Theodorus
Bakker and Simona R. Bakker Trust dated
July 15, 2005 ("Trust").

Debtor attached a copy of the Trust document which, on Exhibit A,
reflects that the Camino Portofino property was property of the

1 Trust. In fact, as creditor's Exhibit D reflects, the property
2 was transferred to "Simona R. Bakker, Trustee of the Bakker
3 Family Trust dated July 14, 2005", and recorded July 20, 2005.
4 Debtor promptly submitted a "Supplemental & Corrected"
5 declaration revising her earlier one to reflect that she was the
6 only trustee of the Trust at the time the bankruptcy was filed.

7 The Trust is not a debtor in bankruptcy, and even if it
8 were, it could not avail itself of the Bankruptcy Code's
9 exemption scheme because it is not an "individual" within the
10 meaning of the Code. The essence of the issue is found at
11 section 662 of the California Evidence Code. It states: "The
12 owner of the legal title to property is presumed to be the owner
13 of the full beneficial title. This presumption may be rebutted
14 only by clear and convincing proof." In the instant case, debtor
15 has asserted by declaration that Camino Portofino is the property
16 of the Trust. No legal authority, or evidence, has been
17 proffered to rebut the title of record as vested in the Trust.
18 Accordingly, based on the uncontroverted record before it, the
19 Court finds and concludes that the Camino Portofino property is
20 property of the Trust, not of the debtor as an individual.
21 Because debtor does not own the property, she may not avail
22 herself of 11 U.S.C. § 522(f) to attempt to avoid judgment liens
23 on property owned by the Trust.

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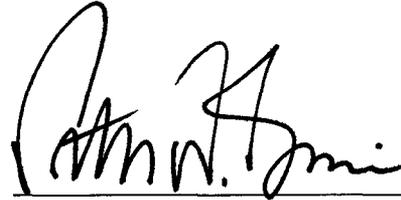
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1 As noted at the outset, there are multiple other issues
2 raised by the pleadings which, because of the foregoing, the
3 Court need not reach. Based on the above discussion, findings
4 and conclusions, debtor's motions to avoid the judgment liens are
5 denied.

6 IT IS SO ORDERED.

7 DATED: JUL - 1 2010

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10 PETER W. BOWIE, Chief Judge
11 United States Bankruptcy Court
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