

**United States Bankruptcy Court
District of New Mexico**

Document Verification

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Comments:	Findings of Fact and Conclusions of Law on Debtor's Motion to Avoid Judicial Lien and Order Avoiding Judicial Lien in Part		

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
Johnny Marcus Crisp,
Debtor.

No. 7 - 00-14612 - SR

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
ON DEBTOR'S MOTION TO AVOID JUDICIAL LIEN
and ORDER AVOIDING JUDICIAL LIEN IN PART**

This matter came before the Court for hearing on Debtor's Motion to Avoid Judicial Lien (doc. 15), and an objection thereto by Creditors Barbara and Rudy Restivo (doc. 17). Debtors appears through his attorney Trey Arvizu. Creditors appear through their attorney Clarke Coll. The Court requested briefs, and Creditors submitted their brief on November 29, 2005. This is a core proceeding. 28 U.S.C. § 157(b)(2)(K).

FACTS

1. Creditors obtained a judgment in state court against Debtor on or about August 14, 2000.
2. On or about August 18, 2000, Creditors recorded a Transcript of Judgment in the records of Chavez County, New Mexico, Book 395, Page 943.
3. On or about August 18, 2000, Creditors also filed a Notice of Lien in the Chavez County records against property being probated In the Matter of Evelyn Crisp (Debtor's mother.)

4. Debtor filed his Chapter 7 proceeding on August 30, 2000.
5. Debtor listed on Schedule B a "1/3 interest in Mother's estate", with a value of \$12,666. Debtor claimed \$3,915 of this asset exempt on Schedule C.
6. The "1/3 interest" consisted of real estate owned by Mother, apparently located in Chavez County.
7. Debtor received a discharge and his case was closed on December 19, 2000.
8. On July 19, 2005, Debtor filed a motion to reopen the case, to enable him to avoid the lien, to facilitate a sale of the property. The case was reopened on July 21, 2005.

CONCLUSIONS OF LAW

1. The "1/3 interest" was real estate that passed directly to Debtor upon his Mother's death. Conley v. Winkle, 66 N.M. 366, 368, 348 P.2d 485, 487 (1960); Powell v. Gilbert, 62 N.M. 411, 414, 311 P.2d 385, 387 (1957); Keirsev v. Hirsch, 58 N.M. 18, 27, 265 P.2d 346, 353 (1953).
2. Creditors' lien attached to the 1/3 interest when they filed the transcript of judgment. N.M.Stat. Ann. § 39-1-6 (1978).

3. Debtor claimed the 1/3 interest exempt in the amount of \$3,915 and no objections were filed. The 1/3 interest is exempt to the extent of \$3,915. See, e.g., Taylor v. Freeland & Kronz, 503 U.S. 638 (1992).
4. Creditors' lien impairs the exemption to which the Debtor would be entitled to the extent of \$3,915. See 11 U.S.C. § 522(f).
5. Creditors' lien should be avoided to the extent of \$3,915.

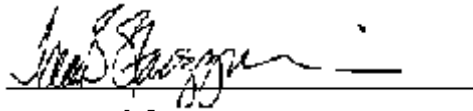
ORDER

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Debtor's Motion to Avoid Lien is granted in part.

IT IS FURTHER ORDERED that the lien of Barbara and Rudy Restivo represented by the transcript of judgment filed for record in Chavez County in Book 395, Page 943 is avoided to the extent of \$3,915.

IT IS FURTHER ORDERED that upon sale of any real estate affected by the transcript of judgment, that Johnny Marcus Crisp receive the amount of \$3,915 before any funds are paid to Barbara or Rudy Restivo.

IT IS FURTHER ORDERED that a copy of this Order may be filed in the records of Chavez County, New Mexico.



Honorable James S. Starzynski
United States Bankruptcy Judge

I hereby certify that on January 5, 2006, a true and correct copy of the foregoing was electronically transmitted, faxed, delivered, or mailed to the listed counsel and/or parties.

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