

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

Document Verification

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Chapter : 7
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
GINGER GRIFFITH,
Debtor.

No. 7-96-12874 RA

MEMORANDUM OPINION AND
ORDER GRANTING DEBTOR'S
MOTION TO AVOID LIEN OF
US NEW MEXICO FEDERAL CREDIT UNION

This matter came before the Court for hearing on the Debtor's Motion to Avoid Lien of US New Mexico Federal Credit Union "USNMFCU"), and the objection thereto by USNMFCU. Debtor appeared through her attorney Michael Daniels. USNMFCU appeared through its attorney James Artley. Having considered the testimony and the arguments of counsel, and being otherwise informed and advised, the Court finds that the debtor's motion is well taken and should be granted. This is a core proceeding under 28 U.S.C. §157(b)(2)(B). This memorandum opinion constitutes the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052.

The motion seeks to avoid the judicial lien of USNMFCU on the debtor's residence located at 1705 Virginia NE, Albuquerque, New Mexico, as impairing the debtor's state homestead exemption of \$30,000. The parties stipulated to all necessary facts, and the Court adopts those as its findings:

1. The debtor's case was commenced by the filing of a voluntary petition on July 3, 1996.

2. The residence at 1705 Virginia NE had a value of \$110,000 as of the date of the petition.
3. There was a first mortgage on the residence in the amount of \$69,000 on the date of the petition.
4. The debtor's homestead exemption is \$30,000.
5. USNMFCU's lien was \$5,896.96 on the date of the petition.
6. As of the date of the petition, there was another judgment lien, but that was avoided under 11 USC §522(f), and is not relevant to this motion.

The Court also finds:

7. The debtor was divorced in May, 1995, but the residence was on the date of the petition still titled in both her name and her ex-spouse's name as joint tenants.
8. In 1998 the ex-spouse deeded his one-half interest to the debtor for back child support.

Discussion

The bankruptcy code allows a debtor to 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 the lien is a judicial lien. 11 U.S.C. §522(f)(1)(A). The code also outlines the procedure to use to determine if a lien impairs an exemption:

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

The United States Bankruptcy Appellate Panel for the Tenth Circuit had the opportunity to apply this statute in a case of jointly owned property in the recent case of Zeigler Engineering Sales, Inc. v. Cozad, 208 B.R. 495 (10th Cir. B.A.P. 1997). In that case a debtor owned a one-half interest in a homestead with his non-filing spouse. Id. at 496. The issue was whether the debtor's interest was one-half of the full value of the property or whether it was one-half of the equity after subtracting other liens. Id. at 497. The Court affirmed the Bankruptcy Court's methodology, which was to subtract the full amount of all liens from the "debtor's interest" in the property, which was one-half of the full value. Id. at 498.

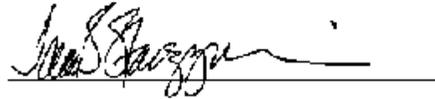
Using the Zeigler approach in this case results in the following:

Debtor's interest		\$ 55,000.00
Mortgage	\$ 69,000.00	
USNMFCU lien	5,896.96	
Exemption	<u>30,000.00</u>	
Subtotal	\$ 104,896.96	
Subtract Subtotal from Debtor's interest		<u>-104,896.96</u>
Amount that liens and exemption exceeds debtor's interest		\$ <u>-49,896.96</u>

Therefore, USNMFCU's entire lien impairs the debtor's homestead exemption and should be avoided.

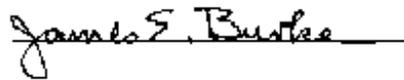
USNMFCU argued that the debtor's ex-spouse should not be allowed to claim an exemption in the property. Under the Zeigler approach, his entitlement to an exemption is irrelevant. The Court also finds that the subsequent deed to the debtor is not relevant, because the debtor's interest and entitlement to exemption is determined as of the date of the petition. In re Wells, 132 B.R. 966, 967 n.1 (Bankr. D. N.M. 1991).

IT IS THEREFORE ORDERED that the lien of US New Mexico Federal Credit Union is avoided pursuant to 11 U.S.C. §522(f).

A handwritten signature in black ink, appearing to read "James S. Starzynski", written over a horizontal line.

Hon. James S. Starzynski
United States Bankruptcy Judge

I hereby certify that, on the date file stamped above, a true and correct copy of the foregoing was either electronically transmitted, faxed, mailed, or delivered to Michael Daniels, James Artley, Michael Caplan, and the United States Trustee.

A handwritten signature in black ink, appearing to read "James S. Burke", written over a horizontal line.