

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re: PATROCINIO DOMINGUEZ and
TERESA R. DOMINGUEZ,

No. 24-10064-j7

Debtor.

**MEMORANDUM OPINION AND ORDER GRANTING DEBTOR'S SECOND MOTION
FOR SUMMARY JUDGMENT ON THE ISSUE OF AVOIDING A JUDICIAL LIEN**

THIS MATTER is before the Court on the Debtor's Second Motion for Summary Judgment on the Issue of Avoiding a Judicial Lien ("Second Motion for Summary Judgment" – Doc. 61). Debtor Teresa R. Dominguez requests the Court to grant summary judgment determining that a judicial lien held by Creditor Corrie A. Bramley can be avoided in its entirety pursuant to 11 U.S.C. § 522(f) as impairing Debtor's allowed homestead exemption in property located at 3825 Porto Fino Ct. SW, Albuquerque, New Mexico (the "Property"). Ms. Bramley did not file a response to the Second Motion for Summary Judgment and the deadline to file a response has passed. *See* NM LBR 7056-1(c). The facts not subject to genuine dispute identified and properly supported in the Second Motion for Summary Judgment are sufficient to establish the value of the Property. Based on that value, application of the formula in 11 U.S.C. § 522(f) entitles the Debtor to avoid Ms. Bramley's judicial lien. The Court will, therefore, grant the Second Motion for Summary Judgment.

BACKGROUND AND PROCEDURAL HISTORY

Debtors filed a voluntary petition under chapter 7 of the Bankruptcy Code on January 20, 2024 (the "Petition Date"). *See* Doc. 1. Two contested matters pending in this bankruptcy case arise from (1) Debtors' claim of a homestead exemption set forth in their bankruptcy schedules (Doc. 1) and Corrie A. Bramley's objection thereto (Doc. 24); and 2) Debtors' Motion to Avoid

Judicial Lien held by Corrie A. Bramley (“Motion to Avoid Lien” – Doc. 16) and Ms. Bramley’s objection thereto (Doc. 24). A third contested matter arising from Ms. Bramley’s Motion for Relief from Stay (Doc. 10) remains pending. All three contested matters are set for a final, evidentiary hearing on January 30, 2025. *See* Doc. 49.

The Court previously granted summary judgment in favor of Debtors establishing that Debtor Teresa Dominguez has an allowed homestead exemption in the Property in the amount of \$150,000. *See* Doc. 55. Debtor Teresa Dominguez then filed a motion for summary judgment seeking to avoid Ms. Bramley’s judicial lien based on an appraised value of \$238,000 for the Property as of May 22, 2024. *See* Debtor’s Motion for Summary Judgment on the Issue of Avoiding a Judicial Lien (“First Motion for Summary Judgment” – Doc. 57). The Court denied the First Motion for Summary Judgment because the Petition Date is the operative date for determining lien avoidance under 11 U.S.C. § 522(f),¹ and the appraisal Debtor offered in support of the First Motion for Summary Judgment provided a value of the Property as of May 22, 2024, approximately five months after the Petition Date. *See* Doc. 58. The Second Motion for Summary Judgment asserts that the value of the Property on the Petition Date is \$235,000, based on Teresa Dominguez’s opinion of value. Corrie Bramley has not filed a response to the Second Motion for Summary Judgment.

DISCUSSION

A. *Summary Judgment Standards*

Summary judgment will be granted when the movant demonstrates that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of

¹ *See In re Sawyers*, 2 F.4th 1133, 1138 (8th Cir. 2021) (“It is well settled that the value of a debtor’s homestead is determined based on the property’s fair market value as of the petition date.”); *In re Pacheco*, 342 B.R. 352, 357 (Bankr. D.N.M. 2006) (“[T]he value of the liens, the value of the property, and the amount of the exemption are all measured as of the date of the filing of the petition.”).

law.² The moving party must demonstrate the absence of a genuine dispute as to any material fact even if the nonmoving party fails to respond to the motion for summary judgment. *See Reed v. Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002) (“[A] party’s failure to file a response to a motion for summary judgment is not, by itself, a sufficient basis on which to enter judgment against the party.”).

To meet this initial burden, the moving party must identify the material facts with respect to which the party asserts no genuine dispute exists, properly supported by evidence, admissions, and other materials in the record.³ If a nonmoving party fails to address the movant’s assertion of a fact as required by Rule 56(c), the Court may:

- (1) Give the nonmoving party an opportunity to address the fact;
- (2) Consider the fact that the nonmoving party fails to address undisputed for purposes of the motion;
- (3) Grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to summary judgment; or
- (4) Issue any other appropriate order.⁴

When determining whether to grant summary judgment, the Court must “examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.” *Wolf v. Prudential Ins. Co. of Am.*, 50 F.3d 793, 796 (10th Cir. 1995) (quoting *Applied Genetics Int’l, Inc. v. First Affiliated Sec., Inc.*, 912 F.2d 1238, 1241 (10th Cir. 1990)). Summary judgment is appropriate when “the evidence points only one way and no reasonable inferences could support the non-moving party’s position.” *Genberg v. Porter*, 882 F.3d 1249, 1253 (10th Cir. 2018).

² See Fed. R. Civ. P. 56(a), made applicable to contested matters in bankruptcy cases by Fed. R. Bankr. P. 7056 and Fed. R. Bankr. P. 9014.

³ See Fed. R. Civ. P. 56(c)(1), made applicable to contested matters in bankruptcy cases by Fed. R. Bankr. P. 7056 and Fed. R. Bankr. P. 9014.

⁴ See Fed. R. Civ. P. 56(e), made applicable to contested matters in bankruptcy cases by Fed. R. Bankr. P. 7056 and Fed. R. Bankr. P. 9014.

B. *Facts Not Subject to Genuine Dispute*

The Second Motion for Summary Judgment identifies the following numbered facts that Debtors assert are not subject to genuine dispute:

1. The Property had a value of \$238,000 on the Petition Date.⁵
2. The total amount of the underlying mortgage debt against the Property as of the Petition Date was \$121,570.00.
3. Corrie Bramley has a judicial judgment recorded with the Bernalillo County Clerk's Office on December 13, 2023, page 1 of 5, # Doc. 2023078942.
4. Debtor Teresa Dominguez is entitled to a \$150,000 homestead exemption.

Curiously, Debtor also included the following fact: Corrie Bramley argues that the Property is worth \$278,500, but provides the Court with no evidence of value. *See* Second Motion for Summary Judgment, Material Undisputed Facts, ¶ 2. This fact merely establishes that this is what Ms. Bramley contends is the value of the Property.

C. *Application of the Lien Avoidance Formula*

Pursuant to 11 U.S.C. § 522(f),

the debtor may 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 under subsection (b) of this section, if such lien is—

(A) A judicial lien

11 U.S.C. § 522(f)(1).

⁵ In support of this fact, Debtors rely on the Petition, Official Form 106 Summary (1), Schedule A, Section 1, 1.1, and 2, and the Affidavit of Teresa R. Dominguez (“Dominguez Affidavit”), p. 2, ¶ 7, attached in support of the Second Motion for Summary Judgment. The Dominguez Affidavit states that the estimated reasonable value of the Property on the Petition Date was \$235,000. That is also the stated value of the Property in Debtors’ Schedules. The appraisal of the Property as of May 22, 2024, offered in support of the First Motion for Summary Judgment, valued the Property at \$238,000 as of that date. *See* Doc. 57-3.

Impairment is determined based on the following statutory formula:

For the purposes of this subsection, 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.

11 U.S.C. § 522(f)(2)(A).

The facts not subject to genuine dispute establish that Debtor Teresa Dominguez has an allowed homestead exemption in the Property in the amount of \$150,000; that Corrie A. Bramley holds a recorded judgment against the Property; and that the total amount of all other liens against the Property is \$121,500. A judgment recorded against real property, such as a transcript of judgment, is a form of judicial lien subject to avoidance under 11 U.S.C. § 522(f). *See* § 101(36) (“The term ‘judicial lien’ means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.”); *In re Gregory Rockhouse Ranch*, 380 B.R. 258, 262 (Bankr. D.N.M. 2007) (“Transcripts of judgment are the type of judicial lien that is avoidable under 11 U.S.C. § 522(f).”); *In re Morgan*, No. 7-09-11942 JA, 2009 WL 3617613, at *2 (Bankr. D.N.M. Oct. 28, 2009) (same). Thus, Ms. Bramley’s recorded judgment constitutes a judicial lien subject to avoidance to the extent it impairs Ms. Dominguez’s allowed \$150,000 homestead exemption in the Property.

Debtors rely on Ms. Dominguez’s opinion of value to establish the value of the Property on the Petition Date as a fact not subject to genuine dispute. “An owner of property may be qualified to give lay testimony as to the property’s value. The basis of the opinion may affect its weight, not its admissibility.” *In re Liss*, 641 B.R. 384, 386 (Bankr. N.D. Ill. 2022) (citing Fed. R.

Evid. 701, 702); *see also* *Cunningham v. Masterwear Corp.*, 569 F.3d 673, 676 (7th Cir. 2009) (“[T]he federal rules . . . have been interpreted to permit a property owner to testify about the value of his property.”). In fact, “under the Federal Rules of Evidence, when a purported owner of property is testifying as to the value of the property, his testimony [may] qualif[y] as expert witness testimony under Fed. R. Evid. 702.” *Hornick v. Boyce*, 280 Fed. App’x 770, 774 (10th Cir. 2008). *See also* *Cunningham*, 569 F.3d at 676 (“He can testify about [the value of his own property] either as a matter within his personal knowledge, or if he is an expert on property values, as an expert witness”) (citations omitted).

The Dominguez Affidavit states that as of the Petition Date, Ms. Dominguez found several comparable properties near her home and within the same development that were valued between \$239,000 and \$255,000. *See* Dominguez Affidavit, ¶ 8. Ms. Dominguez states further that she searched online home listing websites such as Zillow.com and Realtor.com to search for a fair market value of homes comparable to the Property. *Id.* at ¶ 7. Finally, Ms. Dominguez states that a recent online search of Zillow.com showed that the property directly across the street from the Property sold for \$224,500 on April 2, 2024. *Id.* at ¶ 9. Based on her research, Ms. Dominguez concludes that the value of the Property on the Petition Date was \$235,000. *Id.* at ¶ 10.

Debtor’s statement of facts not subject to genuine dispute value the Property on the Petition Date at \$238,000, rather than the \$235,000, as stated in the Dominguez Affidavit. Based on the Dominguez Affidavit, the range of values reported in the Dominguez Affidavit for similar properties, and the fact that the nonmoving party has presented no other evidence of the Property’s value in response to the Second Motion for Summary Judgment, the Court concludes,

consistent with Fed. R. Civ. P. 56(c)(1) and Fed. R. Civ. P. 56(e),⁶ that Debtor had established as a fact not subject to genuine dispute that the value of the Property is \$238,000 as of the Petition Date. Ms. Dominguez is familiar with her own Property, conducted some research on online listing services, and found a recent sale of a property located across from the Property to arrive at her estimated value.

Section 522(f)'s formula directs the Court to add the creditor's lien amount, plus the amount of all the other liens against the Property, plus the amount of the Debtor's exemption in the absence of any liens to determine whether that sum exceeds the fair market value of the Property. Here, even though Debtor has not established in the Second Motion for Summary Judgment the amount of Ms. Bramley's judicial lien, the sum of the other liens against the Property (\$121,500) and Ms. Dominguez's allowed homestead exemption (\$150,000) is \$271,500, which exceeds the established value of the Property. *See Liss*, 641 B.R. at 391 (impairment for purposes of lien avoidance "requires the value of the Debtor's property interest to be worth less than the combined value of the subject lien, all other liens on the property, and the amount of the claimed exemption.").⁷ Thus, Ms. Bramley's judicial lien can be avoided in its entirety regardless of its amount because there is no equity in the Property in excess of the Debtor's allowed homestead exemption and the other liens against the Property to which Ms. Bramley's lien could attach.⁸

⁶ Fed. R. Civ. P. 56(c) and Fed. R. Civ. P. 56(e) are made applicable to contested matters in bankruptcy cases by Fed. R. Bankr. P. 7056.

⁷ A straightforward way to apply the statutory lien avoidance formula is to begin with the fair market value of the property and subtract from that figure the amount of any consensual liens and the amount of the applicable allowed exemption; if the result is zero or less, then the judicial lien can be avoided in its entirety. *See McWilliams v. Redstone Fed. Credit Union (In re McWilliams)*, No. 15-83117-CR- 7, 2016 WL 4991502, at *1 (Bankr. N.D. Ala. Sept. 16, 2016).

⁸ Debtor seems to argue that Ms. Bramley's lien is avoidable even if the Court were to accept Ms. Bramley's contention that the value of the Property is \$278,000. That is not correct. If the Property was worth \$278,000, Debtor would only be able to partially avoid Ms. Bramley's lien. Section 522(f) only

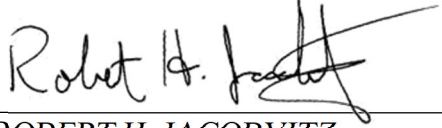
The Court's prior order fixing the amount of Ms. Dominguez's allowed homestead exemption and this order avoiding Ms. Bramley's judicial lien resolves the two pending contested matters. This order also renders moot Ms. Bramley's pending Motion for Relief from Stay (Doc. 10). The Motion for Relief from Stay requests the Court to lift the stay to allow Ms. Bramley to collect on her judgment secured by her judicial lien. That lien has now been avoided. The chapter 7 Trustee filed a report of no distribution; consequently there are no assets from which Ms. Bramley could receive a distribution on her now unsecured claim. *See* Doc. 15. Finally, although Ms. Bramley initiated an adversary proceeding objecting to the dischargeability of the debt represented by her judgment, that adversary proceeding was dismissed on May 22, 2024, and closed on June 18, 2024. *See* AP No. 24-1012-j. Thus, Ms. Bramley's unsecured claim will be discharged.

WHEREFORE, IT IS HEREBY ORDERED that the Second Motion for Summary Judgment is GRANTED.

ORDERED FURTHER, that Corrie A. Bramley's judgment, recorded in the records of Bernalillo County, New Mexico, on December 13, 2023, page 1 of 5, # Doc. 2023078942 is hereby avoided.

ORDERED FURTHER, that the Motion for Relief from Stay is DENIED, as moot.

ORDERED FINALLY, that the final hearing set for January 30, 2025, is VACATED.



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

provides for lien avoidance "to the extent" the lien impairs the debtor's homestead exemption. Using \$278,000 as the fair market value of the Property yields the following calculation: \$278,000 (Property value) - \$121,500 (consensual liens) - \$150,000 (allowed homestead exemption) = \$6,500 (equity to which Ms. Bramley's lien would attach).

Date entered on docket: December 6, 2024

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