

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - -

No. 1257 August Term, 1996  
(Argued: March 31, 1997 Decided: )  
Docket No. 96-5115 MAY 13 1997

IN RE: MARK SCARPINO,  
Debtor.

- - - - -

MARINE MIDLAND BANK,  
Appellant,

- v. -

MARK SCARPINO,  
Debtor-Appellee.

Before: OAKES, KEARSE, and McLAUGHLIN, Circuit Judges.

Appeal from a judgment of the United States District Court  
~~for the Western District of New York, Michael A. Telesca, Judge,~~  
affirming an order of the bankruptcy court pursuant to 11 U.S.C.  
§ 522(f)(1) avoiding appellant's judgment lien on debtor's after-  
acquired property on the ground that the lien impaired debtor's  
homestead exemption.

Reversed.

A. PAUL BRITTON, Rochester, New York  
(Mary M. Connors, Harter, Secrest  
& Emery, Rochester, New York, on  
the brief), for Appellant.

RELIN, GOLDSTEIN & CRANE, Rochester,  
New York (Mark K. Broyles,  
Rochester, New York, of counsel),  
filed a brief for Debtor-  
Appellee.

1 KEARSE, Circuit Judge:

2 This appeal turns on whether New York law, under which an  
3 unsatisfied money judgment automatically becomes a lien on real  
4 property thereafter acquired by the judgment debtor in the county  
5 in which the judgment has been docketed, see, e.g., Hulbert v.  
6 Hulbert, 216 N.Y. 430 (1916) ("Hulbert"); N.Y. C.P.L.R. 5203  
7 Practice Commentaries, leaves a temporal interval between the  
8 acquisition of the property and the attachment of the lien.  
9 Marine Midland Bank ("Marine Midland" or the "Bank") appeals from  
10 a judgment of the United States District Court for the Western  
11 District of New York, Michael A. Telesca, Judge, affirming an  
12 order of the Bankruptcy Court for the Western District of New York  
13 that granted the motion of debtor Mark Scarpino pursuant to 11  
14 U.S.C. § 522(f) (1994) to avoid the Bank's judgment lien on  
15 certain real property he acquired after the Bank had docketed its  
16 judgment. Both courts ruled that, under New York law, after  
17 ~~Scarpino acquired the property there was an interval before the~~  
18 Bank's judgment lien attached, thereby permitting Scarpino to  
19 avoid attachment of the lien. On appeal, Marine Midland  
20 challenges that ruling, contending that, with respect to an  
21 interest in real property acquired by a judgment debtor after the  
22 judgment has been docketed, the judgment lien created by New York  
23 law attaches to that interest simultaneously with the debtor's  
24 acquisition of the interest. We agree, and we therefore reverse.

1

## I. BACKGROUND

2 In 1990, Marine Midland obtained a judgment against  
3 Scarpino in New York State Supreme Court in the amount of  
4 \$16,378.56. The judgment was docketed in the office of the Monroe  
5 County Clerk on December 11, 1990, and was never satisfied. In  
6 1994, after obtaining a mortgage in the amount of \$86,540,  
7 Scarpino purchased a parcel of real property in Monroe County. In  
8 October 1995, he petitioned for bankruptcy under Chapter 7, see  
9 11 U.S.C. §§ 701-766 (1994), of the Bankruptcy Code, 11 U.S.C.  
10 §§ 101-1330 (1994) (the "Code").

11 To the extent pertinent to this appeal, New York law  
12 provides a judgment debtor with a homestead exemption to the  
13 extent of \$10,000, see N.Y. C.P.L.R. 5206(a) (McKinney 1978), and  
14 the Code allows a debtor to "avoid the fixing of" a judgment lien  
15 to the extent that the lien would impair an exemption to which the  
16 ~~debtor would otherwise be entitled, 11 U.S.C. § 522(f).~~ In papers  
17 filed with his bankruptcy petition, Scarpino listed his Monroe  
18 County real property as an asset valued at \$86,500; pursuant to 11  
19 U.S.C. § 522(b)(2)(A), he claimed the \$10,000 homestead exemption.  
20 Shortly thereafter, he moved in the bankruptcy court pursuant to  
21 § 522(f) to avoid Marine Midland's judgment lien on the property.

22 Marine Midland opposed Scarpino's motion. Though it  
23 acknowledged that the sum of its lien (\$16,378.56), the mortgage  
24 balance (\$86,061.60), and the amount of the exemption (\$10,000)  
25 exceeded the value of the property (\$86,500), it argued that

1 § 522(f), as interpreted by the Supreme Court in Farrey v.  
2 Sanderfoot, 500 U.S. 291 (1991), does not allow a debtor to avoid  
3 a lien unless the lien attached sometime after the debtor  
4 acquired the property. Relying on the New York Court of Appeals  
5 decision in Hulbert, in which the court stated that a judgment  
6 lien attaches "to the interest of [the judgment debtor] upon his  
7 acquiring title to that interest," 216 N.Y. at 433, the Bank  
8 argued that its lien attached simultaneously with Scarpino's  
9 acquisition of the property, not afterwards, and hence could not  
10 be avoided pursuant to § 522(f).

11 The bankruptcy court, in a Decision and Order dated May  
12 23, 1996 ("Bankruptcy Court Opinion"), granted Scarpino's motion  
13 to avoid the Bank's lien. While accepting the Bank's premise that  
14 Farrey v. Sanderfoot means that a debtor cannot under § 522(f)  
15 avoid a judgment lien that attached to exempt property  
16 simultaneously with the property's acquisition, the court  
17 ~~rejected Marine Midland's interpretation of state law. It~~  
18 distinguished Hulbert on the ground that that case did not  
19 directly involve the question of the time at which a judgment  
20 lien attaches but only the question of which of several judgment  
21 creditors' liens had priority. See Bankruptcy Court Opinion at  
22 5-7. The bankruptcy court viewed the question of the time at  
23 which a judgment lien attaches to the debtor's later-acquired  
24 property as "a matter of first impression," id. at 4, and it  
25 resolved the question in favor of Scarpino, stating that "logic  
26 and common sense would dictate that an interest would first have

1 to be acquired before any other right, title or interest could be  
2 acquired in it or attach to it, including the attachment of a lien  
3 of a prior judgment." Id. at 7. The bankruptcy court inferred  
4 support for its conclusion from the language of another New York  
5 decision, In re Hazard's Estate, 25 N.Y.S. 928 (Sup. Ct. 1893),  
6 aff'd, 141 N.Y. 586 (1894), that "until title is acquired it  
7 seems to be clear that no lien can attach," id. at 931. See  
8 Bankruptcy Court Opinion at 6-7.

9 The district court affirmed, agreeing with the bankruptcy  
10 court that Hulbert was distinguishable on the ground that it  
11 "addressed the issue of lien priority, not the question of  
12 precisely when the liens attached to the after-acquired property  
13 interest," Decision and Order dated August 13, 1996, at 3.  
14 Stating that "[c]onceptually, there could be no attachment of the  
15 pre-existing lien until the property was first transferred to the  
16 debtor," id., the district court ruled that the Bank's lien did  
17 ~~not attach until sometime after Scarpino owned the property and~~  
18 that he was therefore entitled to avoid the lien pursuant to  
19 § 522(f).

20 This appeal followed.

21 II. DISCUSSION

22 A bankruptcy estate generally comprises all property in  
23 which a debtor has an interest at the time the petition is filed.  
24 See 11 U.S.C. § 541. Section 522(b) of the Code, however, allows

1 the debtor in a liquidation case to exempt from the estate certain  
2 property that would otherwise be liquidated and distributed to  
3 creditors. The effect of exemption is to immunize the exempt  
4 property from seizure or attachment for satisfaction of debts  
5 incurred prior to the bankruptcy proceeding. See id. § 522(c)  
6 (exempt property generally "is not liable during or after the case  
7 for any debt of the debtor that arose . . . before the  
8 commencement of the [bankruptcy] case"). The purpose of allowing  
9 such exemptions is to help ensure that "a debtor that [sic] goes  
10 through bankruptcy comes out with adequate possessions to begin  
11 his fresh start." H.R. Rep. No. 95-595, at 126 (1977), reprinted  
12 in, 1978 U.S.C.C.A.N. 5963, 6087.

13 Section 522(c), however, provides no such immunization  
14 with respect to any of the debtor's liabilities that were secured  
15 by liens on the exempt property, unless those liens are avoided  
16 during the bankruptcy case under certain sections of the Code,  
17 ~~including § 522(f). See 11 U.S.C. § 522(c)(2); Johnson v. Home~~  
18 State Bank, 501 U.S. 78, 82-84 (1991) (unavoided liens survive  
19 bankruptcy, and lienholders may, pursuant to applicable state-law  
20 procedure, enforce them against the debtor's property after the  
21 bankruptcy case is closed); Farrey v. Sanderfoot, 500 U.S. at 297;  
22 S. Rep. No. 95-989, at 76 (1978), reprinted in 1978 U.S.C.C.A.N.  
23 5787, 5862. Section 522(f) provides, to the extent pertinent  
24 here, that

25 the debtor may avoid the fixing of a lien on an  
26 interest of the debtor in property to the extent that  
27 such lien impairs an exemption to which the debtor

1 would have been entitled under subsection (b) of this  
2 section, if such lien is--

3 (A) a judicial lien . . .

4 11 U.S.C. § 522(f)(1)(A), and it defines "impair[ment]" as the  
5 amount by which the sum of (a) the lien whose avoidance is sought,  
6 (b) all other liens, and (c) the amount of the exemption "exceeds  
7 the value that the debtor's interest in the property would have in  
8 the absence of any liens," *id.* § (f)(2)(A). The purpose of  
9 allowing avoidance of such liens is to "protect[] the debtor's  
10 exemptions, his discharge, and thus his fresh start." S. Rep. No.  
11 95-989, at 76, reprinted in 1978 U.S.C.C.A.N. at 5862.

12 In Farrey v. Sanderfoot, the Supreme Court reasoned that,  
13 by referring to the "fixing" of the lien, § 522(f) contemplates a  
14 property interest that existed before the lien attached, and the  
15 Court concluded that if the creation of the interest and the  
16 creation of the lien are simultaneous, there can be no avoidance  
17 of the lien under that section:

18 The statute does not say that the debtor may undo a  
19 lien on an interest in property. Rather, the statute  
20 expressly states that the debtor may avoid "the  
21 fixing" of a lien on the debtor's interest in  
22 property. The gerund "fixing" refers to a temporal  
23 event. That event--the fastening of a liability--  
24 presupposes an object onto which the liability can  
25 fasten. The statute defines this pre-existing object  
26 as "an interest of the debtor in property."  
27 Therefore, unless the debtor had the property  
28 interest to which the lien attached at some point  
29 before the lien attached to that interest, he or she  
30 cannot avoid the fixing of the lien under the terms  
31 of § 522(f)(1).

32 500 U.S. at 296 (first emphasis added; second emphasis in  
33 original). The Court stated that "the critical inquiry remains

1 whether the debtor ever possessed the interest to which the lien  
2 fixed, before it fixed." Id. at 299 In the case before it, the  
3 Farrey Court held that the debtor was not entitled under § 522(f)  
4 to avoid a judicial lien on homestead property awarded to him  
5 under a divorce decree because that lien, which was created by the  
6 same decree, attached to the property simultaneously with the  
7 debtor's acquisition of the property. See id. at 299-300.

8 The question before this Court, therefore, is whether,  
9 under New York law, a judgment lien attaches at the moment of the  
10 debtor's postjudgment acquisition of real property or sometime  
11 thereafter. We conclude that the lien attaches at the moment of  
12 acquisition.

13 Since at least 1813, New York has provided by statute for  
14 a lien that automatically attaches to a judgment debtor's real  
15 property if the judgment is docketed in the county in which the  
16 property is located. See, e.g., Hulbert, 216 N.Y. at 440; N.Y.  
17 C.P.L.R. 5203 (McKinney 1978). ~~As to a properly docketed~~  
18 judgment, the present provision states that, for a 10-year period,  
19 "[n]o transfer of an interest of the judgment debtor in real  
20 property, against which property a money judgment may be enforced,  
21 is effective against the judgment creditor . . . ." N.Y. C.P.L.R.  
22 5203. As we read this provision, there cannot be an interval  
23 between the debtor's postjudgment acquisition of an interest and  
24 the fixing of the lien arising from a previously docketed  
25 judgment, for if there were, the debtor would logically be able to  
26 transfer his interest in that interval, defeating the lien of the

1 judgment creditor. Since, as § 5203 indicates, the debtor would  
2 not be allowed to thus defeat the judgment creditor's interest, we  
3 conclude that there is no interval in which the lien has not  
4 attached. We need not rely on our own interpretation of the  
5 statute to reach this conclusion, however, for unlike the  
6 bankruptcy court, we do not view this case as presenting a  
7 question of first impression.

8 For many decades, the New York Court of Appeals,  
9 interpreting predecessors of § 5203, has construed New York law to  
10 mean (a) that the lien attaches "from the moment a judgment is  
11 duly filed and docketed," Hulbert, 216 N.Y. at 440, and (b) that  
12 the lien extends not only to real property the debtor owned at the  
13 time the judgment was docketed, but also to any real property  
14 acquired by him thereafter, see, e.g., id at 433; In re Hazard's  
15 Estate, 25 N.Y.S. 928, 930 (Sup. Ct. 1893) ("Hazard's Estate")  
16 (citing N.Y. C.C.P. § 1251, which provided that a properly  
17 ~~docketed judgment, for a period of 10 years, "binds, and is a~~  
18 charge upon . . . the real property . . . in that county, which  
19 the judgment debtor has at the time of so docketing it, or which  
20 he acquires at any time afterwards" (emphasis added)), aff'd, 141  
21 N.Y. 586 (1894). As to such after-acquired property, the New York  
22 Court of Appeals in Hulbert stated that it was the "settled rule"  
23 that a judgment lien on the judgment debtor's property interest  
24 attaches "at the time of its acquisition by the debtor," i.e.,  
25 "upon [the debtor's] acquiring title to that interest." 216 N.Y.  
26 at 433 (emphases added). See also In re Luftman, 245 F. Supp.

1 723, 725 (S.D.N.Y. 1965) (Feinberg, J.) (judgment lien attaches to  
2 subsequently acquired property at "the moment the debtor obtains  
3 the realty"). Although the precise question before the Hulbert  
4 court was which of several judgment liens, if any, had priority  
5 with respect to property that the debtor inherited after the  
6 judgments were docketed, we see no basis for disregarding that  
7 court's clear and repeated view that the docketed judgments became  
8 liens on the after-acquired property of the judgment debtor: "at  
9 the time of its acquisition by the debtor," 216 N.Y. at 433; "when  
10 [the debtor] acquired the property," id. at 441; "upon his  
11 acquisition of the interest," id. at 440; "upon his acquiring  
12 title to that interest," id. at 433.

13 The district and bankruptcy courts in the present case  
14 relied on Hazard's Estate for the proposition that the lien arises  
15 not upon the judgment debtor's acquisition of the interest but  
16 sometime thereafter. That reading of the New York Supreme Court's  
17 ~~opinion in Hazard's Estate is not warranted, and indeed is~~  
18 contrary to the interpretation given Hazard's Estate by the New  
19 York Court of Appeals. The Hazard's Estate opinion merely  
20 emphasized the obvious: that a lien cannot attach to a person's  
21 interest in property before the interest is created. See 25  
22 N.Y.S. at 931 ("until title is acquired it seems to be clear that  
23 no lien can attach"). But the court did not indicate that it  
24 equated "not before," id., with after, for it stated that the lien  
25 arises "when the debtor acquires the property," id. at 930  
26 (emphasis added). Noting the statutory language that a judgment

1 lien "'shall bind the lands'" acquired by the judgment debtor "'at  
2 any time thereafter,'" the Hazard's Estate court asked "Bind when?  
3 Clearly when acquired, and not before." Id. at 930-31. Thus, the  
4 Hulbert court, which had affirmed in Hazard's Estate on the basis  
5 of the Supreme Court's opinion, cited Hazard's Estate for "the  
6 settled rule" that judgments become liens on an after-acquired  
7 property interest of the judgment debtor at the time the debtor  
8 acquires his interest. Hulbert, 216 N.Y. at 433.

9           Given New York's "settled rule," we conclude that Marine  
10 Midland's judgment lien attached to Scarpino's Monroe County  
11 property simultaneously with his acquisition of the property.  
12 Accordingly, the lien is not avoidable pursuant to § 522(f).

13

## CONCLUSION

14           We have considered all of Scarpino's arguments in favor of  
15 ~~affirmance and have found them to be without merit.~~ The judgment  
16 of the district court is reversed, and the order of the bankruptcy  
17 court avoiding the lien is vacated.