

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

RICHARD WURL

Case No. 94-13371 K

Debtor

MEMORANDUM AND ORDER

On March 22, 1995, this Court granted the Debtor's Motion under 11 U.S.C. § 522(f)(1) to avoid the judgment lien of Jeanne Schiffmacher. In timely fashion thereafter, Schiffmacher sought reconsideration, pro se. That request was placed on the calendar and heard, at which time legal counsel appeared for Schiffmacher, as well as for the Debtor. The Court ordered briefs and further argument. The arguments were heard on June 12, 1995. Although there are some factual disputes, a single issue of law is presented to the Court:

Does § 522(f)(1) permit a Debtor to avoid a judgment lien which impairs his homestead exemption, where the debt underlying the judgment lien was an unpaid portion of the purchase price of the homestead?

This Court rules that the statute contains no exception for that kind of judgment lien, and the lien may be avoided.

Whether this result is an appropriate one is a matter for Congress.

FACTS

The facts are simple. They harken to the days from which law school study cases are drawn. The Debtor and Schiffmacher were neighbors. The Debtor wanted to keep some horses but needed more acreage to do so. He negotiated with Schiffmacher (who describes herself as a "horse person") to buy a piece of her land. They agreed to terms reduced to a "Land Contract," under which the \$11,250 purchase price would be paid over three years with interest, and then title would be conveyed at a real estate closing, with the "closing costs" to be paid by the Debtor.

The purchase price was paid in installments with a balloon payment at the end. Although a dispute arose about the amount of the closing costs, Schiffmacher gave a fee simple deed. Some minutes before recording the deed, the Debtor recorded a mortgage that spread his existing residential mortgage over the newly-acquired land as well; that this occurred minutes before, rather than after recordation of the deed, appears to be of benign origin, the recordings having been left to a title company. It is not clear whether the Debtor so spread the

mortgage because he had borrowed the balloon payment, refinanced or some other reason.

Schiffmacher resorted to a suit on the contract to establish the Debtor's liability for closing costs, and obtained a judgment by default in the amount of \$1819.84, on August 30, 1994.

On November 21, 1994, the Debtor filed for relief under Chapter 7. The present motion to set aside Schiffmacher's judgment lien was filed on March 2, 1995. All economic or valuation factors supporting lien avoidance under the statute, as amended effective October 22, 1994, appear to be present.¹

DISCUSSION

May someone buy realty that will become exempt, default on a portion of the purchase price resulting in the fixing of a judgment lien upon all real estate owned by that person in the county, file bankruptcy, and then not only discharge the debt

¹Schiffmacher questions whether this parcel of after-acquired property can be said to have merged into his "homestead" under N. Y. Civ. Prac. L. & R. 5206. Under the facts of this case, the Court is satisfied that the parcel in question is part of the Debtor's "homestead." See generally *In re Flatt*, 160 B.R. 497 (Bankr. N.D.N.Y.) (finding a separately deeded non-contiguous parcel of property to be part of the debtors' exempt homestead, and providing a thorough discussion of the homestead exemption).

(assuming no fraud), but also set aside the judgment lien under § 522(f)(1) as part of his or her "fresh start?"

The answer is "yes," not because the statute so contemplates, but because it understandably fails to contemplate the unusual facts at bar.

First, § 522(f)(1) contains no exceptions; the nature of the underlying debt is irrelevant. Some courts, however, recognize an exception for debts that are non-dischargeable, since setting aside the judgment lien would simply result in a later judgment lien, and any lapse might create mischief as to intervening transfers or interests. (Although Schiffmacher suggests fraud here, she did not seek a determination of non-dischargeability when she was permitted to do so under Bankruptcy Rule 4007.)

Second, a seller has many ways to protect herself against a failure of the buyer to pay full consideration for the acquisition of property, whether the property is exempt or not. For example, Schiffmacher could have refused to give a deed until the full price was paid, taken back a mortgage, taken a security interest in some other property, or reserved some form of interest in the land. She did none of these. Rather, she conveyed fee title and relied on a subsequent suit on the contract and the resulting judgment lien.

Third, unless there has been a binding election of remedies before now, avoidance of the judgment lien has no effect

on any other lien that might be possessed by Schiffmacher. If she possesses a vendor's lien, equitable lien, constructive lien, or the like against the property in question, such lien is unaffected by the avoidance of the judgment lien and may now be enforced against that land without violation of the discharge, though not against the Debtor personally or against other assets of the Debtor.²

Schiffmacher's Motion to Reconsider the Court's Order of March 22, 1995, granting avoidance of her judgment lien is granted, but the result is not changed. She is hereby granted leave to pursue any other type of lien she might possess as against the parcel of land she sold to the Debtor, but only against such parcel and not against the Debtor personally or any other of his assets.³

Given the clear language of the statute and the panoply of protections of which Schiffmacher could have availed herself instead of giving an unconditional deed, any unfairness in this

²The property in question has not been sold nor is any sale pending. Consequently, there is no pressing need for this Court to answer the state law questions that remain. They may be addressed to a state court at a suitable time.

³It appears to the Court that Schiffmacher also has recourse against the Debtor's spouse, who did not file bankruptcy. If Schiffmacher has or may obtain a judgment against Mrs. Wurl (who also has title to the land in question), then Schiffmacher still has or may obtain a judgment lien on Mrs. Wurl's interest in the land.

result is not cognizable in this Court.

The Order of March 22 is hereby reaffirmed.

SO ORDERED.

Dated: Buffalo, New York
June 16, 1995

/s/Michael J. Kaplan

U.S.B.J.