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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re

John F. Puntoriero &
Maryann Puntoriero

Case No. 88-10634

Debtor

DECISION AND ORDER

The Court has grave doubts that a right to avoid liens under 11 U.S.C. § 522(f)(1) survives the passage of five years since the bankruptcy discharge, and the conveyance of the property by the Debtors. However, there are two unusual facts present here: (1) the Debtors did not "own" their homestead at the time of the bankruptcy, but were contract vendees under a land contract and did not acquire title until four years after bankruptcy; and (2) no judgment creditor has opposed the Debtor's motion.

It is not clear to the Court that the Debtors' interest as contract vendees of the land (which is well-recognized to be amenable to a claim of a homestead exemption), is lienable by the filing of a judgment.

Until that issue is resolved and in light of the lack of opposition to the motion, the Court cannot conclude that the failure to make the section 522(f)(1) motion was "unreasonable delay" as to which laches would apply. See *In re Schroff*, 94 B.R. 279 (Bankr. E.D.N.Y. 1988) (equitable considerations may be factored into decision on whether to reopen case for section 522(f)

motion).

The Court concludes that to the extent (if any) that the judgment creditors had any lien on the Debtors' homestead, said lien impaired their exemption and should be avoided under 11 U.S.C. § 522(f)(1).

The Debtors may submit an Order in suitable form declaring said liens to be void.

SO ORDERED.

Dated: Buffalo, New York
September 30 , 1993



U.S.B.J.