

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:)	
)	JUDGE RICHARD L. SPEER
Linda Burnett)	
)	Case No. 03-36426
Debtor(s))	
)	

DECISION AND ORDER

This cause is before the Court upon the Debtor's Motion to Avoid Lien. The Debtor's motion is brought pursuant to 11 U.S.C. § 522(f)(1)(A) which allows a debtor to avoid a lien on his or her property to the extent that (1) it is a "judicial lien," and (2) then only to the extent that it impairs an exemption to which the debtor would have otherwise been entitled. The specific lien at issue in this matter is held by Fred Wheeler d.b.a. L & W Construction, a creditor, against the residence owned by the Debtor, Linda K. Burnett.

At a hearing held on December 16, 2003, it was determined that the sole issue in controversy was whether the Creditor's lien constituted a "judicial lien" within the meaning of U.S.C. § 522(f)(1)(A). As it concerns this issue, these two facts are relevant: (1) on November 7, 2000, the Creditor, pursuant to Ohio Revised Code §1311.01 et seq., ostensibly obtained a mechanics' lien against the Debtor's real estate; and (2) on August 14, 2003, the Debtor filed for relief under Chapter 7 of the Bankruptcy Code.

A "judicial lien" as used in § 522(f)(1), is defined under the Bankruptcy Code as a "lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. §101(36). This is opposed to a statutory lien which, under § 101(53), is defined as a lien "arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but

In re Linda Burnett
Case No. 03-36426

does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.”

On a prior occasion, this Court determined that a mechanics’ lien created under Ohio law was a “statutory lien” within the meaning of 11 U.S.C. § 541(c)(2). *Vaughan v. Fisher (In re B.J. Packing)*, 158 B.R. 988, 991 (Bankr. N.D. Ohio 1993). Other courts have consistently held the same and, as a consequence, have denied attempts to avoid the mechanics’ lien under § 541(c)(2). *See In re Ramsey*, 89 B.R. 680, 682 (Bankr. S.D. Ohio 1988) (mechanics’ lien is a statutory lien because no judicial action created it); *Souers v. Nevada Ready Mix (In re Souers)*, 163 B.R. 346, 349 (Bankr. S.D. Iowa 1994) (court finds that a mechanics’ lien is a statutory lien). *But See In re Chambers*, 264 B.R. 818, 821 (Bankr. N.D. W.V. 2001) (as a general rule, courts have defined mechanics’ liens as statutory liens, however, procedures under state law could require a contradictory result).

Pertaining to these past decisions, the Debtor has offered no reason as to why a different result is compelled. Therefore, given principles of *stare decisis* and judicial conformity, the Court is not disposed to find that a mechanics’ lien created under Ohio law is subject to avoidance as a “judicial lien” under § 541(c)(2)(A).

One final note, the Debtor also challenged the existence of the Creditor’s lien on the grounds that it was not properly created in accordance with Ohio law. In this case, however, a discharge has already been entered and there are no estate assets yet to be administered; as a consequence, the merits of the Debtor’s position are more appropriate for determination in state court.

In re Linda Burnett
Case No. 03-36426

In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

ORDERED that the Motion of the Debtor, Linda Burnett, to Avoid the Lien of Fred Wheeler, d.b.a. L&W Construction, be, and is hereby, DENIED.

Dated:

Richard L. Speer

In re Linda Burnett
Case No. 03-36426

United States
Bankruptcy Judge