

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

)	CASE NO. 04-62021
)	
IN RE:)	CHAPTER 7
)	
BARBARA A. AILING,)	JUDGE RUSS KENDIG
)	
Debtor.)	
)	ORDER DENYING IN PART
)	DEBTOR'S MOTION TO AVOID
)	JUDICIAL LIEN

This matter comes before the court upon a motion to Avoid Judicial Lien filed by debtor Barbara A. Ailing ("Debtor") on August 11, 2004. No responses to this motion were received.

Debtor seeks to avoid the judgment lien of First North American National Bank ("First North American") arising from a case brought in the Canton municipal court located in Stark County, Ohio. This judgment is in the amount of \$2,812.28 plus interest and costs. First North American caused a judicial lien to be recorded against Debtor's real estate which is located at 649 Bellflower Road SW, Canton, Ohio. Debtor claims that this judgment impairs her homestead exemption and pursuant to 11 U.S.C. § 522(f). Section 522(f) defines the term "impair" as follows:

(2)(A) 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 (emphasis added).

Debtor argues that First North American's lien should be avoided in its entirety. In making the impairment calculation, Debtor states that the value of her homestead is \$80,000, as listed in Schedule A, and is encumbered by a mortgage held by Washington Mutual with an outstanding balance of \$73,600. Further, Debtor is entitled to a homestead exemption of \$5,000 pursuant to O.R.C. § 2329.66(A)(1). Under the impairment calculation of section 522, the lien, all other liens, and Debtor's exemption add up to \$81,412.28. Therefore, only \$1,412.28 of the \$2,812.28 judicial lien impairs Debtor's exemption.

A statute's plain meaning should only be ignored in the rarest of circumstances. "[W]hen the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms." Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 6 (2000) (internal quotation marks omitted). The text of section 522 clearly states a lien impairs an exemption *to the extent that* the sum of the liens and any exemption exceed Debtor's interest in the property absent any liens. Since only \$1,412.28 of First North American's lien impairs Debtors exemption, Debtor can only partially avoid the First North American's judicial lien. Tedeschi v. Falvo (In re Falvo), 227 B.R. 662 (B.A.P. 6th Cir. 1998)(holding that a judicial lien which only partially impaired the homestead exemption was only partially avoidable.)

For the forgoing reasons, Debtor's Motion to Avoid Judicial Lien is **GRANTED** in part and **OVERRULED** in part. First North American's judicial lien is partially avoided in the amount of \$1,412.28, and the lien remains of record in the amount of \$1,400.00.

It is so Ordered.

/s/ Russ Kendig

RUSS KENDIG

U.S. BANKRUPTCY JUDGE

OCT 22 2004

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