

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

IN RE:)	CASE NO. 13-52624
)	
Katalin Zsuzsanna Dus,)	CHAPTER 7
DEBTOR(S))	
)	
)	JUDGE MARILYN SHEA-STONUM
)	
)	ORDER DENYING DEBTORS MOTION TO AVOID LIENS [Dkt. 12].
)	

Debtor, Katalin Zsuzsanna Dus (“Debtor”) filed a voluntary chapter 7 bankruptcy on September 6, 2013. [Dkt. 1]. Debtor then sought to avoid two liens held by Juniper Hills Condominium Unit Owner’s Association (“Juniper”) under § 522(f)(1)(A). [Dkt. 12].¹ Juniper

¹ Debtor also objected to the amount of the lien,[Dkt. 12 at p.3] this issue is not addressed in this Order. This Order deals solely with if Debtor may avoid the liens under 11 USC § 522(f)(1)(A).

filed an objection [Dkt. 19], and this matter was set for hearing on February 5, 2014, where it was taken under advisement.

At the hearing, Counsel for both parties agreed that there were no factual issues in dispute. Debtor was liable for repairs to her condominium under the Declaration of Condominium Ownership. After receiving a Judgment against Debtor, Juniper recorded a condominium lien against Debtor for the repair costs as well as the attorney fees. [*Summit County Records Instrument No. 55755048*, Dkt. 19, Ex. C]. In 2011, Juniper sought a foreclosure on Debtor's property in the Summit County Court of Common Pleas ("Summit County Court") for failure to pay the condominium lien. The Summit County Court granted Juniper's motion for summary judgment finding that Juniper had a valid condominium lien under Ohio R.C. §5311.18. [*Judgment Entry*, Dkt. 19, Ex. D ("Judgment Entry")]. The Debtor was then granted a decree of foreclosure along with costs and attorney fees of the action. [*Decree of Foreclosure*, Dkt. 19, Ex. E]. Debtor received a further lien for the cost and attorney fees of the foreclosure proceedings. [*Certificate of Judgment for Lien*, Dkt. 12 Ex. E].

Debtor argues that Juniper's liens are judicial liens which may be avoided under 11 U.S.C. § 522(f)(1)(A). Debtor claims that the initial lien in this case did not meet the statutory requirements of R.C. § 5311.18, arguing that the statute applies only to "common expenses." Debtor further contends that the second lien deals with costs and attorney fees which also do not meet the requirements of R.C. § 5311.18, as they are not "common expenses."

Both parties accept that a valid condominium lien under § 5311.18 is not subject to avoidance under § 522(f)(1)(A). *Cf. In re Barcelli*, 270 B.R. 837, 839 (Bankr. S.D. Ohio 2001) (holding that § 5311.18 creates a continuing lien). *See also In re Young*, 477 B.R. 594, (W.D. Pa.

2012) (interpreting Pennsylvania law); *In re Reece*, 274 B.R. 515 (Bkrtcy.D.Ariz 2001) (interpreting Arizona law).

Debtor argues that the initial lien in this case did not meet the statutory requirements of R.C. § 5311.18, this argument is barred under the doctrine of issue preclusion. 28 U.S.C. § 1738 requires a federal court to accord a state court judgment the same preclusive effect the judgment would have in state court. *Corzin v. Fordu (In re Fordu)*, 201 F.3d 693, 703 (6th Cir.1999). In determining whether the prior judgment should be given preclusive effect in a federal action, the federal court must apply the law of the state in which the prior judgment was rendered. *Id.*

Under Ohio law, the doctrine of issue preclusion, applies when a fact or issue “(1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom [issue preclusion] is asserted was a party in privity with a party to the prior action.” *Fordu*, 201 F.3d at 704 quoting *Thompson v. Wing*, 70 Ohio St.3d 176, 183, 637 N.E.2d 917, 923 (1994); see also *In re Sweeney*, 276 B.R. 186 (B.A.P. 6th Cir.2002); *In re Rebarchek*, 293 B.R. 400, 405 (Bankr.N.D.Ohio 2002).

In this case, the Summit County Court granted summary judgment against Debtor, directly addressing the validity of Juniper’s condominium lien under § 5311.18. The Summit County Court stated “it is undisputed that [Juniper] has a condominium lien on the real property at issue and [that said lien is recorded]. Pursuant to R.C. 5311.18(B) Plaintiff is entitled to foreclose on its lien for non-payment of maintenance fees and assessments.” [*Id.* at p.3].

As Debtor’s only argument is that the initial lien in this case does not meet the requirements of R.C. § 5311.18 because it flows from a “non-common expense.” The Summit County Court, a court of competent jurisdiction, determined that the original lien was a valid condominium lien under § 5311.18. Debtor is therefore collaterally estopped from “relitigating

facts and issues in a subsequent suit that were fully litigated in a prior suit.” *Thompson v. Wing*, 70 Ohio St.3d at 183. *See also In re Rebarcek*, 293 B.R. at 405.

As to the second lien, debtor argues that these litigation expenses cannot be collected unless they arise from “common expenses.” Debtor argues that the foreclosure costs and attorney fees in this case are not connected to a “common expense” and thus not subject to R.C. § 5311.18.

Ohio R.C. § 5311.18 provides:

(A)(1) Unless otherwise provided by the declaration or the bylaws, the unit owners association has a lien upon the estate or interest of the owner in any unit and the appurtenant undivided interest in the common elements for the payment of *any of the following expenses that are chargeable against the unit* and that remain unpaid for ten days after any portion has become due and payable:

- (a) The portion of the common expenses chargeable against the unit;
- (b) Interest, administrative late fees, *enforcement assessments*, and *collection costs*, *attorney's fees*, and paralegal fees the association incurs if authorized by the declaration, the bylaws, or the rules of the unit owners association and if chargeable against the unit.

Ohio Rev. Code Ann. § 5311.18 (emphasis added).

Debtor’s arguments ignore the plain language of the statute. The Section provides for the collection of “*any of the following expenses*” without limiting it to common expenses.

Subsection (a), provides for the collection of “common expenses” but places no limitation on subsection (b). Subsection (b) provides for the collection of “enforcement assessments, collection costs, and attorney fees” as authorized by the bylaws, without any limitation requiring such fees to be related to “common expenses.”

The Declaration of Condominium Ownership in this case provides for a lien under § 5311.18 “upon each Unit’s ownership interest for any unpaid interest...enforcement assessments, and collection costs, attorney fees, and paralegal fees.” [*Amendments* Dkt. 19, Ex. B at p.3].

Therefore, the statute and the Declaration of Condominium Ownership, provide a lien for attorney fees and collection costs under §5311.18, regardless of its connection to “common expenses.”

Debtor’s Counsel provided only one argument when confronted with the plain language of the statute at the hearing: that the Court should give weight to the title of the section. While, the title does state “lien for common expenses,” this argument has no legal support. Under Ohio law: “Title, Chapter, and section headings...do not constitute any part of the law as contained in the “Revised Code.” Ohio R.C. § 1.01. *See also Cosgrove v. Williamsburg of Cincinnati Mgt. Co., Inc.*, 1994-Ohio-295, 70 Ohio St. 3d 281, 284, 638 N.E.2d 991, 993.

Therefore, the words of R.C. § 5311.18 provide only one reasonable interpretation: they provide for a statutory lien on attorney fees and collection costs regardless of their connection to common expenses. Thus, Debtor’s argument is baseless.

Therefore, Debtor’s Motion to Avoid Liens is hereby denied.

IT IS SO ORDERED.

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cc:

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