


The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



  
John P. Gustafson  
United States Bankruptcy Judge

**Dated: June 17 2014**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**In Re:** ) **Case No. 13-33563**  
 )  
Ralph Mancini, ) **Chapter 7**  
 )  
 )  
**Debtor.** ) **JUDGE JOHN P. GUSTAFSON**

**MEMORANDUM OF DECISION AND ORDER**  
**REGARDING MOTION TO AVOID LIEN**

This case is before the court on the motion of Debtor Ralph Mancini to avoid and cancel the judgment lien of Albrechta & Coble, LTD. against Debtor’s interest in his residential real estate pursuant to 11 U.S.C. § 522(f) (“Motion”) [Doc. # 21], and the Objection filed by Albrechta & Coble, LTD. (“Creditor”) , [Doc. # 28]. The court held a hearing on the Motion on March 6, 2014. Upon completion of the hearing, the Motion was set for evidentiary hearing at which time Debtor was to appear. [Doc. # 31]. The evidentiary hearing was held on May 15, 2014. Debtor’s counsel and Creditor appeared in person at both hearings, and Debtor appeared in person at the evidentiary hearing. [Doc. # 37].

The district court has jurisdiction over this Chapter 7 case pursuant to 28 U.S.C. § 1334(a) as a case under Title 11. It has been referred to this court by the district court under its general order of reference. 28 U.S.C. §157(a); General Order 2012-7 of the United States District Court for the Northern District of

Ohio. The Motion is a core proceeding that this court may hear and determine. 28 U.S.C. §157(b)(1) and (b)(2)(K) and (O). For the reasons that follow, Debtor's Motion will be denied.

Debtor owns residential real estate located at 1826 Burgoon Street, Fremont, Ohio. He seeks to avoid a judgment lien obtained by Creditor against said property in the amount of \$5,576.35, plus interest at a rate of 3% per annum and court costs of \$89.00, that was filed in the Sandusky County, Ohio, Court of Common Pleas under Case No. CVF 1200439. At the evidentiary hearing, Debtor testified that he currently has a mortgage with Wells Fargo. His statement is verified by his petition, which shows that Wells Fargo has a mortgage on Debtor's property in the stated amount of \$93,000 [Doc. # 1], an amount which Debtor testified is now roughly \$88,700.00. Debtor also testified that he believes his real property is worth "\$69,000.00 or less." His belief is based upon the price that neighboring property has sold for and the sale price at which neighboring property is currently listed.

Exhibit 1, offered by Debtor at the evidentiary hearing, showed that the appraised total value of Debtor's real property as of May 8, 2012 was \$91,200.00. [Doc. # 36, Exhibit A]. Creditor offered into evidence Exhibits A and B. Exhibit A contained sales data for Debtor's real property, while Exhibit B contained evidence of Wells Fargo's statement of the appraised value of Debtor's real property. [*Id.* at Exhibits A, B]. Exhibit A showed that Debtor purchased the real property on January 29, 2008 for \$92,000.00, while Exhibit B showed that Wells Fargo, on November 13, 2009, appraised the value of Debtor's property to be worth \$103,000.00. [*Id.*] Although Debtor had his own opinions regarding the value of his real property, the evidence produced at the evidentiary hearing contained appraisals of the property ranging from the lowest appraised total value of \$67,800.00 on January 1, 2009 [Doc. # 36, Exhibit 1], to the highest appraised value of \$103,000.00 on November 13, 2009. [Doc. # 36, Exhibit B]. Debtor argues that because the sum of the liens and his exemption exceeds the value of the property by an amount greater than Creditor's lien, its lien is avoidable in its entirety.

### **LAW AND ANALYSIS**

In *Taylor v. Freeland & Kronz*, the United States Supreme Court provided the following regarding the procedure for claiming exemptions:

When a debtor files a bankruptcy petition, all of his property becomes property of a bankruptcy estate. See 11 U.S.C. §541. The Code, however, allows the debtor to prevent the distribution of certain property by claiming it as exempt. Section 522(b) allowed Davis to choose the exemptions afforded by state law or the federal exemptions listed in §522(d).

Section 522(1) states the procedure for claiming exemptions and objecting to claimed exemptions as follows:

“The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section.... Unless a party in interest objects, the property claimed as exempt on such list is exempt.”

Although §522(1) itself does not specify the time for objecting to a claimed exemption, Bankruptcy Rule 4003(b) provides in part:

“The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) ... unless, within such period, further time is granted by the court.”

*Taylor v. Freeland & Kronz*, 503 U.S. 638, 642, 112 S.Ct. 1644, 1647, 118 L. Ed. 2d 280 (1992); *see also*, 4 Collier On Bankruptcy ¶522.05[1], at 522-31 (16th ed. 2013).

Under 11 U.S.C. §522(b)(1), Ohio has opted out of the federal bankruptcy exemptions established under 11 U.S.C. §522(d). Ohio Rev. Code §2329.662. Bankruptcy debtors are, therefore, entitled to those exemptions allowed by Ohio law. On March 27, 2013, the Ohio Exemption Statute was amended by Ohio House Bill 470 to dramatically increase the Ohio homestead exemption. Now, under Ohio law, a debtor is entitled to a homestead exemption in the amount of \$132,900.00. Ohio Rev. Code §2329.66(A)(1)(b). Because the Debtor filed his petition on August 27, 2013, five months after the statute was amended, the majority view is that he is entitled to claim the amended homestead exemption amount. *In re Depascale*, 496 B.R. 860, 870 (Bankr. N.D. Ohio 2013)(“[T]he express language of O.R.C. §2329.66 makes clear that a debtor’s interest in the exempted property is determined as of the petition date...”); *See also*, *First Nat’l Bank of Pennsylvania v. Jones*, 6 N.E.3d 1231, 2014 WL 840256, at \*4-5 (Ohio Ct.App. March 3, 2014); *In re Kyle*, 2014 WL 1931608, 2014 Bankr. LEXIS 2159 (Bankr. S.D. Ohio May 14, 2014); *In re Mitchell*, 2014 WL 1725819, 2014 Bankr. LEXIS 1946 (Bankr. N.D. Ohio April 30, 2014); *In re Pursley*, 2014 WL 293557, 2014 Bankr. LEXIS 314 (Bankr. N.D. Ohio Jan. 23, 2014).

The Bankruptcy Code, in turn, establishes grounds for avoiding judicial liens that impair an exemption to which a debtor is entitled. Specifically, §522(f) provides as follows:

(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b)

of this section, if such lien is--

(A) a judicial lien . . .

A lien is considered to impair an exemption to the extent that the sum of the lien, all other liens on the property, and 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(f)(2).

In the instant case, the court cannot apply the formula set forth in Section 522(f)(2) to the facts in this matter, because Debtor did not claim a homestead exemption in his Schedules. [Doc. # 1]. Section 522(l) of the Bankruptcy Code requires a debtor to file with the court a list of property that he wishes to exempt from the bankruptcy estate. These proposed exemptions must be listed on the debtor's Schedule C and must include a description of the property the debtor seeks to exempt, the statute authorizing the exemption, the value of the exemption, and the market value less (minus applicable liens) of the exempted property. Fed. R. Bankr. P. 4003(a).

In deciding a bankruptcy exemption issue, the Supreme Court noted: "The starting point for our analysis is the proper interpretation of Reilly's Schedule C." *Schwab v. Reilly*, 560 U.S. 770, 779, 130 S.Ct. 2652, 2659, 177 L.Ed.2d 234 (2010). Here, the Debtor's Schedule C does not claim an exemption in the real estate in issue.

As Judge Whipple stated in *McGuire*:

Entitlement to an exemption is not automatic. A debtor is required to "file a list of property that the debtor claims as exempt under [§522(b)]. 11 U.S.C. §522(l). Then, "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. §522(l) (emphasis added). Rule 4003 of the Federal Rules of Bankruptcy Procedure direct the debtor to list exempt property on the schedule of assets required to be filed by Federal Rule of Bankruptcy Procedure 1007, which in turn requires the debtor to file a schedule of assets as prescribed by the appropriate Official Forms. See Fed. R. Bankr.P. 4003(a) and 1007(b)(1). Official Form 6 includes a Schedule C on which the debtor must claim property as exempt. See, *Schwab v. Reilly*, 130 S.Ct. 2652, 2660 (2010)(recognizing that "the list of property" to which §522(l) refers is "currently known as 'Schedule C'); *Auday v. Wet Seal Retail, Inc.*, 698 F.3d 902, 905 (6th Cir.2012)(finding the debtor's claim was not exempt property since "[s]he did not list the claim among the exemptions in her petition"); *Olson v. Anderson (In re Anderson)*, 377 B.R. 865, 874 (B.A.P. 6th Cir.2007)("proposed exemptions must be listed on the debtor's Schedule C"); *In re Zaidi*,

293 B.R. 861, 862–63 (Bankr.E.D.Va.2002) (“In order to claim an exemption in bankruptcy, the exemption must be scheduled on Schedule C of the debtor's schedules.”).

\* \* \* \* \*

. . . This requirement is more than a mere formality. It provides notice to all interested parties, including creditors, as to property interests in which the debtor is claiming an exemption. Rule 4003 specifies the time within which interested parties must object to the exemptions claimed on Schedule C. *Reilly*, 103 S.Ct. at 2661 n. 6. Relief under §522(f) is thus unavailable as Debtors have not shown that they are entitled to a homestead exemption in their residential real estate. . . .

*In re McGuire*, 2013 WL 4029297 at \*3, 2013 Bankr. LEXIS 3238 at \*8 - \*10 (Bankr. N.D. Ohio Aug. 6, 2013).

Thus, entitlement to an exemption in property cannot be presumed. It has to be properly claimed by the Debtor on the Schedule C.

Similarly, in *Laker*, the court examined an instance in which a Debtor included an asset (one life insurance policy with \$1,000.00 cash value) on Schedule B and claimed on Schedule C an exemption in those funds under Ohio Revised Code 2329.66(A)(10)(b). Regarding whether the Debtor owned additional unlisted policies or whether the cash value exceeded \$1,000.00, or even whether the Debtor was entitled to exempt the entire cash value of additional unlisted policies under Ohio Revised Code §3911.10, the court stated:

[U]ntil such exemption is properly claimed, Debtor has no basis for asserting a right to the additional funds. This requirement is more than a mere formality. It provides notice to all interested parties, including creditors, as to property interests in which the debtor is claiming an exemption. Rule 4003 specifies the time within which interested parties must object to the exemptions claimed on Schedule C. *Reilly*, 130 S. Ct. at 2661 n.6.

*In re Laker*, 2012 WL 260042 at \*3, 2012 Bankr. LEXIS 376 at \*9 (Bankr. N.D. Ohio Jan. 27, 2012).

In the present case, the Debtor’s argument is not well-taken. Because Debtor did not claim an exemption on Schedule C under the applicable Ohio homestead exemption statute, he cannot seek to avoid a judicial lien that impairs an unclaimed exemption.

**THEREFORE**, for the foregoing reasons, good cause appearing,  
**IT IS ORDERED** that Debtor’s Motion is hereby **DENIED** without prejudice.