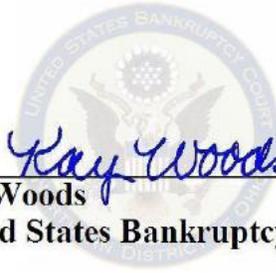


IT IS SO ORDERED.

Dated: August 23, 2016
03:49:40 PM



Kay Woods

 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

ANTOINETTE COLLEEN PACE,

Debtor.

*
*
* CASE NUMBER 15-42267
*
*
* CHAPTER 7
*
*
* HONORABLE KAY WOODS
*
*

ORDER GRANTING, IN PART, AND DENYING, IN PART,
MOTION TO AVOID LIENS

This cause is before the Court on Motion to Avoid Liens ("Motion") (Doc. 32) filed by Debtor Antoinette Colleen Pace on June 22, 2016. In the Motion, the Debtor relies on 11 U.S.C. § 522(f) and seeks "an order avoiding and cancelling" four judicial liens on the Debtor's residence located at 3481 Forty Second Street, Canfield, Ohio ("Residence") on the basis that the judicial liens impair the Debtor's homestead exemption. (Mot. at 1.) The Debtor also "moves this court for an order that title to said real

estate vest in the debtor free and clear of all security interests." (*Id.*) The Debtor identifies the four liens in question as (i) The Farmers National Bank of Canfield ("Farmers Bank") filed May 20, 2014 in the amount of \$141,013.65 with \$15.39 interest ("Farmers Bank Lien No. 1"); (ii) Farmers Bank filed May 20, 2014 in the amount of \$141,013.65 with \$15.39 interest (believed to be a duplicate lien) ("Farmers Bank Lien No. 2"); (iii) Midland Credit Management, Inc. filed October 21, 2011 in the amount of \$1,889.72 with 4% interest; and (iv) Matthew C. Giannini filed February 24, 2015 in the amount of \$2,975.00 with 3% interest (collectively, the "Judicial Liens").

In entering this order, the Court has considered the substance of the Motion, the Schedules and other documents filed by the Debtor, and the claims filed in this bankruptcy case.

I. BACKGROUND

By way of background, the Debtor filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code on December 21, 2015. The Debtor listed the Residence on Schedule A/B with a value of \$147,630.00 and claimed this same amount as the portion that she owned. (Doc. 12 at 3.) On Schedule C, the Debtor claimed the Ohio homestead exemption for the Residence in the amount of \$132,900.00 pursuant to Ohio Revised Code § 2329.66(A)(1). (*Id.* at 9.) On Schedule D, the Debtor listed Farmers Bank as having a secured claim against the Residence in the amount of

\$140,000.00 based on a judgment lien. (*Id.* at 11.) She also listed secured claims against the Residence in favor of Midland Funding LLC and the Mahoning County Auditor/Treasurer. (*Id.* at 12.) The Debtor did not list a mortgage against the Residence, although she listed a foreclosure action on the Statement of Financial Affairs for Individuals Filing for Bankruptcy ("SOFA"). (*Id.* at 29.) In answer to Part 4 of the SOFA regarding lawsuits, court actions, or administrative proceedings in which the Debtor was a party within one year prior to filing her bankruptcy petition, the Debtor listed a concluded foreclosure action styled "Farmers vs. Antoinette C. Pace, 2011 CV 00032" in the Mahoning County, Ohio, Court of Common Pleas. (*Id.*)

On February 2, 2016, Farmers Bank filed a proof of claim in the amount of \$151,869.39, which was denominated Claim No. 5-1. Attached to Claim No. 5-1 as Exhibit A is Certificate of Judgment Lien for Lien Upon Lands and Tenements filed July 3, 2014 in the amount of \$141,013.65 with interest at the rate of \$15.39 per diem and \$1,914.15 in costs entered in Journal Number 2939, Page 474. This Exhibit A appears to match the judicial lien identified by the Debtor as the Farmers Bank Lien No. 1.

Prior to confirmation of a chapter 13 plan, the Debtor filed Notice of Conversion (Doc. 21) on March 1, 2016, which converted her case from chapter 13 to chapter 7.

II. THE DEBTOR'S POSITION REGARDING AVOIDANCE OF THE LIENS

In the Motion, the Debtor alleges that the Residence has a value of \$147,630.00. She further alleges that delinquent real estate taxes owing to the Mahoning County Treasurer in the amount of \$15,435.78 are a lien against the Residence ("Real Estate Tax Lien"). As a consequence, the Debtor asserts that the Judicial Liens impair her Ohio homestead exemption in the amount of \$132,900.00.

Although no party filed an objection or otherwise responded to the Motion, the Court held a hearing on the Motion on August 4, 2016. T. Robert Bricker, Esq. appeared at the hearing on behalf of the Debtor. At that time, the Court informed Mr. Bricker on the record that his request for an order regarding the "vesting" of title free and clear of all security interests was beyond the scope of § 522(f) and that such relief could not and would not be granted. The Court also expressed concern that the Debtor had willfully allowed the real estate taxes on her Residence to remain unpaid in order to create an impairment to the homestead exemption. As a consequence, the Court requested further briefing and ordered the Debtor to file a supplement to the Motion. On August 18, 2016, the Debtor filed Support Brief (Doc. 47).

In the Support Brief, the Debtor now asserts that the amount of the Real Estate Tax Lien is \$22,612.98 (an increase from the \$15,435.78 asserted in the Motion). (Support Br. ¶ 8.) In the

Support Brief, the Debtor argues that (i) no party has objected to the relief requested; (ii) there is no evidence of fraud on the part of the Debtor in allowing the unpaid real estate taxes to accumulate to the extent that they impair her homestead exemption; and (iii) the homestead exemption should be liberally construed in favor of the Debtor.

III. ANALYSIS

Because the Motion is based on 11 U.S.C. § 522(f), that Code section is the start of the Court's analysis. Section 522(f) provides as follows:

(1) . . . [T]he 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 . . .

* * *

(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.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

11 U.S.C. § 522(f) (2016) (emphasis added).

Based on the Debtor's answer to Part 4 of the SOFA and Claim No. 5-1, it is clear that Farmers Bank Lien No. 1 is a "judgment arising out of a mortgage foreclosure." Thus, to the extent the Debtor is attempting to avoid Farmers Bank Lien No. 1, the Court finds that § 522(f)(2)(C) specifically prohibits the avoidance of this lien. Accordingly, the Court will deny the Motion to the extent the Debtor seeks to avoid Farmers Bank Lien No. 1. Based on the allegations in the Motion, Farmers Bank Lien No. 2 was filed on the same day and in the same amount as Farmers Bank Lien No. 1. However, the Motion states that Farmers Bank Lien No. 2 is based on a different court case than Farmers Bank Lien No. 1. Accordingly, based on the record before the Court, the Court cannot find that Farmers Bank Lien No. 2 is a duplicate of Farmers Bank Lien No. 1.

Turning to the other two judicial liens, the Court finds that the liens filed by Midland Credit Management, Inc. and Matthew C. Giannini, as set forth in the Motion, are avoidable because the total of the Real Estate Tax Lien (whether in the original amount

asserted or in the greater amount set forth in the Support Brief) plus Farmers Bank Lien No. 1 impairs each of these two liens. Indeed, based on the amount of the claim asserted in Claim No. 5-1, the amount of Farmers Bank Lien No. 1, alone, exceeds the value of the Residence.

Moreover, the Court finds that there is no basis to grant the Debtor's request for an order that title to the Residence vest in the Debtor free and clear of all security interests.

As a consequence, the Court hereby:

1. Denies the Motion to the extent it seeks to avoid the judicial lien asserted by Farmers Bank based on a judgment arising out of a mortgage foreclosure, *i.e.*, Farmers Bank Lien No. 1;
2. Denies, without prejudice, the Motion to the extent it seeks to avoid Farmers Bank Lien No. 2 on the basis it is a duplicate of Farmers Bank Lien No. 1;
3. Grants the Motion to the extent it seeks to avoid the judicial lien filed by Midland Credit Management, Inc. and hereby avoids such judicial lien;
4. Grants the Motion to the extent it seeks to avoid the judicial lien filed by Matthew C. Giannini and hereby avoids such judicial lien; and

5. Denies the relief requested to vest title to the Residence in the Debtor free and clear of all security interests.

#