

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED

FEB 06 '02
U.S. Bankruptcy Court
Greensboro, NC
AHH

IN RE:)
)
Thomas Allen Jeffries,) Case No. 01-10721C-7G
)
Debtor.)

ORDER

The matter before the court is Debtor's motion to avoid a judicial lien pursuant to § 522(f)(1)(A) of the Bankruptcy Code which was heard on January 8, 2002.

The pertinent facts are not in dispute. When this case was filed the Debtor owned as a tenant in common an undivided one-half interest in rental property located in Greensboro, North Carolina. The value of the entire rental property on the petition date was \$42,000.00. The property as a whole is subject to a deed of trust that secures an indebtedness that had an unpaid balance of \$33,000.00 on the petition date. Debtor's interest in the rental property also is subject to a judgment lien in the amount of \$13,328.00 based upon a judgment that was obtained against the Debtor by Automotive Management Group, LTD.

In his claim to property exemptions the Debtor used the \$3,500.00 "wild card" exemption provided in N.C.G.S. § 1C-1601(a)(2)¹ to claim as exempt property \$50.00 in a checking account and his interest in the rental property.² The Debtor asserts in the motion that the judicial

¹The State of North Carolina, in N.C.G.S. § 1C-1601(f), has opted out of § 522(d) of the Bankruptcy Code.

²N.C.G.S. § 1C-1601(a)(2) permits a debtor to exempt "[t]he debtor's aggregate interest in any property," not to exceed \$3,500.00 in value less any amount of the exemption used under subdivision (1) of § 1C-1601(a).

lien held by Automotive Management impairs an exemption to which he is entitled and that the entire judicial lien may be avoided.

Debtor's motion was filed pursuant to § 522(f)(1)(A) of the Bankruptcy Code which permits a debtor to avoid the fixing of a judicial 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 § 522 provided that the judicial lien is not one that secures a debt for alimony or child support.

The methodology for determining the extent to which a judicial lien impairs an exemption is dealt with in § 522(f)(2)(A). Under this provision 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.

Application of the § 522(f)(2)(A) formula in the present case would involve the following computation:

\$13,328.00	- "the lien" (i.e., the judicial lien)
+33,000.00	- the deed of trust on the property
<u>+ 3,450.00</u>	- amount of exemption available
49,778.00	
<u>-21,000.00</u>	- value of Debtor's one-half interest
\$28,778.00	- extent of impairment

This literal application of the formula would enable the Debtor to avoid the entire judicial lien because the computation yields an extent

of impairment that exceeds the amount of the judicial lien. This would occur even though Debtor has equity of \$4,500.00 in the property and is entitled to an exemption of only \$3,450.00. The Debtor thus effectively would expand his exemption from \$3,450.00 to \$4,500.00 since he would stand to walk away with his equity in the rental property free of the judicial lien.³

The cases are split on whether the formula in § 522(f)(2)(A) should be applied literally in cases such as the present case in which the interest exempted by the debtor is an undivided, partial interest in property. The split derives from the formula utilizing the full amounts of liens that encumber the entire property, while utilizing only the value of the debtor's partial interest.

One line of cases has adopted a strict construction of the statutory language of § 522(f)(2)(A), concluding that the plain meaning of the statute requires that the lien to be avoided and all liens on the property be added to the exemption and deducted from the value of the debtor's interest in the property absent any liens. Under this construction, the calculation thus utilizes the full amount of the liens on the property as a whole, while subtracting from that figure only the value of the debtor's partial interest. Even though such application arguably may result in a windfall to the debtor, these courts adopt the approach that the plain language of a statute is

³No issue was raised in this case as to whether the trustee would have a claim to the \$1,050.00 of equity over and above the Debtor's \$3,450.00 exemption that would be freed up if the entire judicial lien were avoided. If so, priorities among creditors would be altered and the unsecured creditors would benefit at the expense of Automotive Management.

controlling and that courts are not free to rewrite plain, unambiguous statutory language. See e.g., In re Piersol, 244 B.R. 309 (Bankr. E.D. Pa. 2000); In re Cozad, 208 B.R. 495 (10th Cir. BAP 1997).

The other line of cases has disagreed with the strict interpretation of § 522(f)(2)(A) and has found that in some situations such an interpretation provides a windfall for the debtor that was not intended by Congress. In these cases, the courts conclude that § 522(f) is intended to protect in full, but not increase, a debtor's exemptions and that failing to calculate net equity before determining a debtor's interest confers more than the fresh start intended by Congress. Although these courts recognize that the interpretation of a statute begins with its language, they rely upon the principle of statutory construction that allows courts to look beyond the plain language of the statute if applying the plain language would produce an absurd result or a result obviously not intended by Congress. See e.g., In re Lehman, 205 F.3d 1255 (11th Cir. 2000); Nelson v. Scala, 192 F.3d 32 (1st Cir. 1999).

Having carefully considered both lines of authority, this court concludes that the sounder view is reflected in the cases which have rejected the literal application of the § 522(2)(A) formula in cases such as the present case involving co-owned property in which application of the formula involves utilizing the full amounts of liens that encumber the entire property, while utilizing only the value of the debtor's partial interest. Accordingly, in the present case, the Debtor's argument that he is entitled to avoid the entire judicial lien is not accepted. Instead, the Debtor will be permitted to avoid the

judicial lien to the extent of \$12,278.00, which means Automotive Management is left with a judicial lien of \$1,050.00 against Debtor's interest in the rental property. This is the result achieved by an application of the formula in which there is symmetry between the obligations and property interest utilized in the formula. Thus, the sum of the liens is arrived at by using \$13,328.00 (the judicial lien) plus \$16,500.00 (one-half of the indebtedness secured by the deed of trust) plus \$3,450.00 (the exemption amount) which totals \$33,278.00, and which exceeds the value of Debtor's \$21,000.00 interest in the property by \$12,278.00. Debtor thus is entitled to avoid the judicial lien to the extent of the \$12,278.00 impairment, leaving \$1,050.00 of the judicial lien not avoided and still in effect.

IT IS SO ORDERED.

This 31st day of January, 2002.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge