

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In Re:

KATHI I. HASSLER,

Debtor.

**Bankruptcy Case
No. 11-40196-JDP**

MEMORANDUM OF DECISION

Appearances:

Kenneth E. Lyon, Pocatello, Idaho, Attorney for Debtor Kathi I. Hassler.

David G. Ballard, CAPITOL LAW GROUP, PLLC, Boise, Idaho, Attorney for Creditor, Young Electric Sign Company.

Introduction

While Walter Evans (“Evans”) and Kathi Hassler (“Hassler”) were married, Young Electric Sign Company (“YESCO”) obtained a state court

judgment against Hassler,¹ and recorded that judgment in Bear Lake County, where the couple owned real property (“the Property”). After various pre- and post-divorce transfers of her interest in the Property, Hassler filed for chapter 7² bankruptcy protection, and claimed a \$100,000 homestead exemption in the Property pursuant to Idaho’s homestead exemption statutes. Shortly thereafter, Hassler, pursuant to § 522(f), moved to avoid a judgment lien claimed by YESCO against the Property. YESCO objected. The Court considered Hassler’s motion at a hearing on April 26, 2011. Having now reviewed the record, the parties’ submissions, and applicable law, this Memorandum disposes of Hassler’s motion. Rules 7052, 9014.

Facts

Evans and Hassler purchased the Property, located in Montpelier, as a married couple in November 2009. Dkt. No. 21-1, Ex. 3. YESCO

¹ At the time, Hassler was known as Kathi Evans.

² Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and all rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037.

recorded a certified copy of a January 2010, \$25,484.33 judgment against Hassler in Bear Lake County, on March 8, 2010. Dkt. No. 21-1, Ex. 1.

Changes in the couple's relationship regarding the Property soon followed. First, Hassler recorded a quitclaim deed conveying any interest she had in the Property to Evans on November 8, 2010. Dkt. No. 21-1, Ex. 4. As a result, when Hassler filed for divorce on December 10, 2010, and a divorce decree was entered on December 14, 2010, Evans and Hassler stipulated in state court that they had no community property and the Property was Evans' separate property.³ Dkt. No. 21-2, Ex. 6.

About a month and a half later, Evans and Hassler stipulated to amend their initial divorce decree. Dkt. No. 21-2, Ex. 9. In the January 28, 2011, stipulation, Evans and Hassler now "agreed" the Property was community property.⁴ *Id.* Evans then executed a quitclaim deed granting

³ The divorce decree identifies the Property with a description taken from tax records.

⁴ Prior to seeking a divorce, Hassler transferred any interest she may have had in the Property to Evans . Regardless of what the two agreed, Hassler did
(continued...)

“an undivided ½ interest in the Property” to Hassler on February 12, 2011. Dkt. No. 21-1, Ex. 2. Throughout this time, Hassler continued to live on the Property, while, at some point, Evans moved out.⁵

Hassler filed for chapter 7 bankruptcy protection on February 22, 2011. In her schedules she claimed a \$100,000 homestead exemption in the Property pursuant to Idaho’s homestead exemption statutes. Thereafter, Hassler filed a motion to avoid YESCO’s judgment lien on the Property pursuant to § 522(f). Dkt. Nos. 1, 15. YESCO objected. Dkt. No. 20.

Discussion

I. YESCO’s judgment lien.

Whether Hassler may avoid YESCO’s lien pursuant to § 522(f) first hinges on whether YESCO had a valid judgment lien. Recording a certified copy of a judgment creates a judgment lien against all property of

⁴(...continued)

not have any interest in the Property at the time of divorce that could have been community property.

⁵ It is unclear from the evidence exactly when Evans moved from the Property.

the judgment debtor within the county where recorded. Idaho Code § 10-1110. The judgment lien applies to all currently-owned property of the debtor, and all property thereafter acquired in the county during the lien's duration. *Id.* For later-acquired property, the judgment lien attaches when title passes. *See Nixon v. United States*, 289 F. 177, 179 (9th Cir. 1923) (examining a conveyance of Idaho land, and explaining that, for after-acquired property, a mortgage lien attaches when title passes); *Towle v. Great Shoshone & Twin Falls Water Power Co.*, 232 F. 733, 738 (D. Idaho 1916) (finding a lien could attach under a deed of trust's "after acquired property" clause, and such lien would attach when title passed).

A quitclaim deed passes whatever title and interest a grantor has in described property when that deed is executed. *See* Idaho Code § 55-606; *see also Bateman v. Donovan*, 131 F.2d 759, 763 (9th Cir. 1942), *Luce v. Marble*, 127 P.3d 167, 173 (Idaho 2005).

One limitation on the attachment of judicial liens, however, is that judgments do not become liens upon property "exempt from execution."

Idaho Code § 10-1110. In Idaho, real property may be exempt from execution pursuant to the State's homestead statutes. *See* Idaho Code § 55-1003. Idaho's homestead statutes allow property owners to exempt up to \$100,000⁶ of value in their "homestead," which includes "the dwelling house . . . in which the owner resides or intends to reside" Idaho Code §§ 55-1001(2); 55-1003.

Property owners have two methods to invoke an Idaho homestead exemption. *See* Idaho Code § 55-1004(1). First, property is "automatically protected by the exemption" if it is (1) occupied as a principal residence (2) by the owner. *Id.* Second, where a homestead exemption does not automatically arise, a party may invoke a homestead exemption by recording a "declaration of homestead" in the county where the homestead is located. *Id.*

Even where properly established, however, Idaho's homestead exemption does not protect homesteads in all situations. *See* Idaho Code

⁶ If the total net value of a party's homestead is less than \$100,000, the homestead exemption is limited to that lesser amount. Idaho Code § 55-1003.

§ 55-1005. For instance, a homestead exemption does not protect a homestead from judgment liens arising prior to the homestead's establishment.⁷ Idaho Code § 55-1005(1).⁸

Where a homestead exemption arises "automatically," the point when the exemption is established, in relation to the time any judicial lien affixes to property, becomes important.⁹ If a party acquires property

⁷ A homestead is established at the same time, and by the same mechanisms, as a homestead exemption. *See* Idaho Code § 55-1004; *In re Bailey*, __ I.B.C.R. __, Bk. No. 10-02884-JDP (Bankr. D. Idaho 2011).

⁸ Idaho Code § 55-1005(1) provides:

The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

- (1) Before the homestead was in effect, and which constitute liens upon the premises;

⁹ Unfortunately, Idaho's homestead statutes are not helpful in determining when an automatic exemption is established in relation to judicial lien attachment. The homestead statutes provide "[a homestead is] automatically protected by the [homestead exemption] from and after the time the property is occupied as a principal residence by the owner" Idaho Code § 55-1004(1). Case law, however, indicates the "automatic" term refers to acts necessary to invoke an exemption, rather than the timing of an exemption's establishment. *See Hopkins v. Cerchione (In re Cerchione)*, 414 B.R. 540, 547 (9th Cir.

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simultaneously with the fixing of a judicial lien, the lien is considered to have attached before the ownership interest arose. *See In re Bailey*, __ I.B.C.R. __, Bk. No. 10-02884-JDP (Bankr. D. Idaho 2011) (citing *Farrey v. Sanderfoot*, 500 U.S. 291, 299–301 (1991)). It follows that, if a party does not have an ownership interest in property before a lien attaches, she would also not have a homestead exemption in that property before the lien attaches. *See* Idaho Code § 55-1004(1) (providing that an automatic homestead exemption arises from the time a property is occupied as a principal residence *by the owner*).

In this case, Hassler and Evans purchased the Property, as a married couple, in November 2009, and resided therein as their principal residence. At that point, the Property was automatically protected by a homestead

⁹(...continued)

BAP 2009) (quoting Idaho Code § 55-1004's legislative history in a footnote, and explaining that "automatic" simply means a debtor is not required to record a declaration to qualify for an exemption); *In re Koopal*, 226 B.R. 888, 890 (Bankr. D. Idaho 1998) ("The exemption is 'automatic' in that the debtor need not file of record a 'declaration' of homestead in order to gain the benefit of the statute.").

exemption. YESCO recorded its judgment against Hassler in Bear Lake County, on March 8, 2010. The judgment did not attach to the Property as a judgment lien, however, because the Property was “exempt from execution” due to Hassler and Evans’ homestead exemption.¹⁰ See Idaho Code § 10-1110.

In early November 2010, Hassler quit-claimed her interest in the Property to Evans. Even though she continued occupying the Property as her principal residence, Hassler no longer owned an interest in the Property, and, therefore, no longer had the benefit of a homestead exemption in the Property. No exemption was needed to protect the

¹⁰ When Hassler filed her petition, she estimated the Property’s value at an undisputed \$95,000, subject to a \$72,600 security interest. Dkt. No. 1. Idaho’s homestead statutes allow property owners to exempt up to \$100,000 in homestead equity. Idaho Code § 55-1003. See also *In re Johnson*, 262 B.R. 831, 844 (Bankr. D. Idaho 2001). After accounting for the security interest, there was roughly \$22,400 in Property equity when Hassler filed. Unless the Property’s value at some point between March 2010, and November 2010, when Hassler deeded her interest to Evans, was over \$75,000 above the value when Hassler filed, there was no equity in the Property and Hassler and Evans’ homestead exemption exempted it from execution. Per Idaho Code § 10-1110, YESCO’s judgment could not attach to the exempt-from-execution Property.

Property in Evans' hands, however, because YESCO's judgment was solely against Hassler.

Hassler and Evans divorced in December 2010, and, at some point, Evans moved from the Property. In February 2011, Evans recorded a quitclaim deed, transferring title to "an undivided ½ interest in" the Property to Hassler. As a result, YESCO's lien attached to Hassler's new interest. At the same time, Hassler again became the Property's owner-occupant, and she was thereafter automatically entitled to a homestead exemption as to her interest in the Property.

However, Hassler's re-acquisition of a Property interest occurred simultaneously with potential attachment of YESCO's lien. Because those acts occurred simultaneously, Hassler did not have an ownership interest or a homestead exemption in the Property prior to YESCO's lien affixing to the Property, and the Property is subject to that lien. Idaho Code § 55-1005(1).

II. § 522(f) Lien Avoidance.

Even a valid state judgment lien, however, may be avoided under the Bankruptcy Code pursuant to § 522(f)(1)(A).¹¹ *In re Field*, 05.1 I.B.C.R. 11, 13 (Bankr. D. Idaho 2005). Section 522(f)(1)(A) requires three conditions before a debtor may avoid a lien:

- (1) there was a fixing of a lien on an interest of the debtor in property;
- (2) such lien impairs an exemption to which the debtor would have been entitled; and
- (3) such lien is a judicial lien.

In re Ashcraft, 415 B.R. at 430 (quoting *Culver, LLC v. Chiu (In re Chiu)*, 304 F.3d 905, 908 (9th Cir. 2002)).

YESCO's lien, which it obtained through recording a judgment in Bear Lake County, is a judicial lien. Idaho Code § 10-1110 (requiring a

¹¹ Section 522(f) of the Code provides:

- (1) Notwithstanding any waiver of exemptions . . . 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

judgment to be recorded for it to “become” a lien upon a debtor’s real property); *see* 11 U.S.C. § 101(36) (defining “judicial lien” as a “lien obtained by judgment”); *In re Ashcraft*, 415 B.R. at 435–36 (explaining that a lien resulting from the recording of a judgment in county real property records is a judicial lien). In addition, YESCO’s lien impairs an exemption to which Hassler *would be* entitled, but for the existence of the lien. *See* § 522(f)(1)(A); *Owen v. Owen*, 500 U.S. 305, 309–14 (1991); Idaho Code § 55-1005(1).

YESCO’s lien, however, did not affix to an interest of Hassler in the Property. To avoid a lien pursuant to § 522(f)(1)(A), a debtor must have had an interest in property to which the lien affixed *prior to* the lien’s attachment. *Farrey*, 500 U.S. at 298. Where a judicial lien attaches simultaneously with the creation of the debtor’s interest in property, that property interest is not considered to have arisen prior to the lien attaching to the property. *See id.* at 299–301. *See also Weeks v. Pederson (In re*

Pederson), 230 B.R. 158, 160–64 (9th Cir. BAP 1999) (discussing both the *Farrey*-temporal approach to lien attachment and the opposing approach that views acquisition of property as independent from lien attachment, and following the temporal approach favored by the Supreme Court in *Farrey* and *Owen*). The timing of lien attachment is a state law matter. *Farrey*, 500 U.S. at 298. In Idaho, a lien attaches when title to property passes. See *Nixon*, 289 F. at 179; *Towle*, 232 F. at 738.

Because Hassler’s interest in the Property arose simultaneously with the fixing of YESCO’s lien, Hassler did not have an interest in the Property prior to the attachment of YESCO’s lien. Under the case law, YESCO’s judgment lien is not avoidable pursuant to § 522(f)(1)(A).

Conclusion

Hassler obtained an interest in the Property anew post-divorce. When she obtained that interest, YESCO’s judicial lien attached. Because those acts occurred simultaneously, YESCO’s lien is considered to have

affixed prior to Hassler's ownership interest or homestead exemption arising, and Hassler's motion to avoid YESCO's lien pursuant to § 522(f)(1)(A) must be denied. A separate order will be entered.

Dated: May 17, 2011



Honorable Jim D. Pappas
United States Bankruptcy Judge