

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
at Greenbelt**

In Re:	*		
ELIZABETH B. HEBERT,	*	Case No.	00-21170-DK
	*	Chapter	7
	*		
Debtor.	*		
*****	*		
ELIZABETH B. HEBERT,	*		
	*		
	*		
Movant,	*		
vs.	*		
	*		
COLONIAL PACIFIC LEASING CORP.,	*		
	*		
	*		
Respondent.	*		
*****	*		

**THIS MEMORANDUM OF DECISION IS NOT FOR PUBLICATION**

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*****	*		

**MEMORANDUM OF DECISION**

This matter came before the court upon a Motion to Avoid Judicial Lien. The court has considered the motion and the case file and has decided, for the reasons stated below, to deny the motion.

**Background**

Elizabeth B. Hebert (“Debtor”) filed a voluntary petition in bankruptcy under Chapter 7 on October 19, 2000. Appended to the petition were Schedules, a Statement of Financial Affairs and a Chapter 7 Individual Debtor’s Statement of Intention.

Schedule A reflected that Debtor owns real property located at 4207 Skyline Drive in Suitland, Maryland (the “Property”), valued at \$141,750.00 and encumbered by secured claims totaling \$178,416.74. Schedule D reflected that there exists two secured claimants – Colonial Pacific Leasing Corp. as the holder of a judgment lien totaling \$45,139.78 and Countrywide Home Loans Corp. as the holder of a Deed of Trust with a balance of \$133,276.96.

Schedule C, setting forth the property claimed by Debtor to be exempt, reflected exemptions totaling \$8,007.00. The Property was listed, but assigned an exempt value of \$0.00. Other items listed and valued as exempt were \$3,000.00 for wearing apparel, \$2,000.00 for furs and jewelry, \$500.00 for firearms and sports and photographic equipment, \$1,000.00 for an automobile, \$1,000.00 for computers, \$500.00 for household goods and furnishings and \$7.00 for framed prints. Schedule B described Debtor’s personal property and assigned a total value of \$17,400.00. In her Chapter 7 Individual Debtor’s Statement of Intention, Debtor asserted that she intended to retain the Property as exempt and to redeem the Property pursuant to 11 U.S.C. § 722.<sup>1</sup>

On January 11, 2001, Debtor filed a Motion to Avoid Judicial Lien requesting that the judgment lien held by Colonial Pacific Leasing Corp. (“Colonial”) be avoided pursuant to 11 U.S.C. § 522(f)(2). Debtor alleged that the judgment lien impaired the use of an exemption. In particular, Debtor claimed that she was “unable to exempt any equity in her residence because of the existence of the aforesaid judgment lien which impairs her ability to avail herself to the use of an exemption to which she is entitled pursuant to Annotated Code of Maryland, Courts and

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<sup>1</sup> Section 722 of Title 11 appears to be inapplicable to the factual situation before this court as the section addresses redeeming tangible personal property intended primarily for personal, family or household use.

Judicial Proceedings Article 11-504(f).”<sup>2</sup> A hearing was held on the motion on March 2, 2001. Colonial failed to respond or otherwise oppose the relief.<sup>3</sup>

### Discussion

Debtor’s contention that Colonial’s judgment impairs her exemption in her residence is without merit. Debtor assigned an exempt value of zero to the Property; therefore, there exists no exemption to impair as required by 11 U.S.C. § 522(f).

Section § 522(f) of Title 11 addresses the avoidance of certain liens and 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, other than a judicial lien that secures a debt –

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; (citation to § 522(f)(1)(A)(ii) and (B) omitted).

(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

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<sup>2</sup> The motion to avoid Colonial’s lien was first filed in November, 2000 but was stricken by the court because Debtor had failed to cure a deficiency within the time prescribed by the court.

<sup>3</sup> The court notes that the motion was not directed to the attention of an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process. FED. R. BANKR. P. 7004(h). The motion was mailed to an attorney and to an office in Oregon. The court notes that the records of the Maryland State Department of Assessments and Taxation reflect that The Corporation Trust is the resident agent in Maryland for “Colonial Pacific Leasing Corporation.” The court’s denial of Debtor’s motion is not on the basis of the deficient service but for the reasons set forth in this opinion.

(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. (citation to § 522(f)(2)(B)-(C) omitted).

Subsection (b) of 11 U.S.C. § 522 provides, in part, that a debtor may exempt from the bankruptcy estate property listed in 11 U.S.C. § 522(d), unless state law does not so authorize.<sup>4</sup> Maryland law provides that a debtor in bankruptcy is not entitled to the federal exemptions. MD. CODE ANN., CTS. & JUD. PROC. § 11-504(g) (2000). Section 11-504 of the Courts and Judicial Proceedings portion of the Code of Maryland sets forth the various exemptions available to Marylanders.<sup>5</sup>

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<sup>4</sup> Section 522(b)(2)(A) of Title 11 provides that exempt property includes property exempt under federal law or, as is applicable in the subject case, under state or local law in effect on the date the bankruptcy petition is filed.

<sup>5</sup> Section 11-504 of the Courts and Judicial Proceedings portion of the Code of Maryland provides:

(b) In general. – The following items are exempt from execution on a judgment:

(1) Wearing apparel, books, tools, instruments, or appliances, in an amount not to exceed \$2,500 in value necessary for the practice of any trade or profession except those kept for sale, lease, or barter.

(2) Money payable in the event of sickness, accident, injury, or death of any person, including compensation for loss of future earnings. This exemption includes but is not limited to money payable on account of judgments, arbitrations, compromises, insurance, benefits, compensation, and relief. Disability income benefits are not exempt if the judgment is for necessities contracted for after the disability is incurred.

(3) Professionally prescribed health aids for the debtor or any dependent of the debtor.

(4) The debtor's interest, not to exceed \$500 in value, in household furnishings, household goods, wearing apparel, appliances, books, animals kept as pets, and other items that are held primarily for the personal, family, or household use of the debtor or any dependent of the debtor.

(5) Cash or property of any kind equivalent in value to \$3,000 is exempt, if within 30 days from the date of the attachment or the levy by the sheriff, the debtor elects to exempt cash or selected items of property in an amount not to exceed a cumulative value of \$3,000.

Citing to specific subsections of § 11-504, Debtor claimed and valued exemptions on certain personal property totaling \$8,007.00. Subsection (f) of 11-504 provides that a debtor may exempt the aggregate interest of real or personal property in values not to exceed \$2,500.00. Debtor claimed and valued exemptions under § 11-504(f) of \$0.00 for the Property, \$2,000.00 for furs and jewelry and \$500.00 for firearms and sports and photographic equipment. The three claimed exemptions totaled the maximum allowable exemption under § 11-504(f).<sup>6</sup>

This court (*Derby, J.*) addressed the issue of assigning a zero dollar value to an asset claimed as exempt and found that a debtor is limited to that claimed exempt value – *i.e.*, a debtor’s interest in the asset is exempt only to the extent of zero dollars.<sup>7</sup> *In re Forti*, 224 B.R. 323, 326-27 (Bankr. D. Md. 1998). Because Debtor valued her exemption on the Property as

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<sup>6</sup> The court notes that Debtor claimed exemptions totaling \$4,007.00 under § 11-504(b)(1), which exceeds the exemption amount provided by the statute. She exhausted the available exemptions in §§ 11-504(b)(4) and (f); however, she used only \$1,000.00 of the \$3,000.00 available to her under § 11-504(b)(5).

The United States Supreme Court, in *Taylor v. Freeland & Kronz, et al.*, 503 U.S. 638 (1992), held that a Chapter 7 Trustee may not dispute the validity of an exemption after the period set forth in Rule 4003 of the Federal Rules of Bankruptcy Procedure has expired, even though a debtor may have no basis for claiming such exemption. As no objection has been made in the subject case and the time period for objecting has expired, Debtor’s exemptions may not be disturbed.

This court (*Schneider, J.*) addressed the issue of disputing a claimed exemption in the context of a lien avoidance action. The court acknowledged the Supreme Court’s holding in *Taylor v. Freeland & Kronz, et al.* and supported it. However, the court found that a creditor may contest an exemption for the first time in defense to a motion to avoid a lien. The exemption itself may not be attacked, but the amount of the exemption may for the purpose of limiting the amount of the lien to be avoided even after the time period for raising an objection to a claimed exemption has expired. *Canelos v. Mignini t/a TAM-D Construction, et al. (In re Canelos)*, 216 B.R. 159, 163-64 (Bankr. D. Md. 1997). Therefore, objections to exemptions may be a defense to a lien avoidance action under 11 U.S.C. § 522(f). *Id.*

<sup>7</sup> In reaching its decision, the court analyzed the impact of a debtor assigning an “unknown” value to an exemption. The court considered the Supreme Court’s decision in *Taylor v. Freeland & Kronz, et al.*, as well as a decision by the Court of Appeals for the Fourth Circuit in the case of *Wissman v. Pittsburgh Nat’l Bank*, 942 F.2d 867 (4<sup>th</sup> Cir. 1991) (holding that a debtor who values an exemption as “unknown” is entitled to an exemption in the amount of the applicable statutory dollar limitation and that the trustee retains an interest in the recovery of assets in excess of the available exemption even though the trustee failed to make a timely objection). The Court reasoned that the Supreme Court “implicitly rejected” the Fourth Circuit’s reasoning. *In re Forti*, 224 B.R. 323, 326-27 (Bankr. D. Md. 1998).

\$0.00 on Schedule C, her request to avoid Colonial's judicial lien must be denied because there exists no exemption to impair as required by 11 U.S.C. § 522(f).

Based on the aforesaid, the Motion to Avoid Judicial Lien is denied. An appropriate order will be entered.

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Date

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DUNCAN W. KEIR, JUDGE  
UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND

cc: Debtor  
Debtor's counsel  
All parties-in-interest  
Chapter 7 Trustee

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**ORDER DENYING MOTION TO AVOID JUDICIAL LIEN**

For the reasons set forth in a separate Memorandum of Decision entered on even date herewith, it is by the United States Bankruptcy Court for the District of Maryland, ORDERED that the Motion to Avoid Judicial Lien is DENIED.

\_\_\_\_\_  
Date

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DUNCAN W. KEIR, JUDGE  
UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND

cc: Debtor  
Debtor's counsel  
All parties-in-interest  
Chapter 7 Trustee