

Code § 522(f)(1)(A)
Avoidance of judgment lien

Charles and Teri Caldwell, Case No. 601-65852-fra7

1/24/2006 FRA

Unpublished

Creditor obtained a money judgment against Debtors in the state of Washington and properly registered the judgment as a foreign judgment in Polk County, Oregon. In April 2001, Creditor recorded a lien record abstract in Lane County, Oregon. Debtors acquired their residence in Lane County in May 2001.

Debtors filed a motion to avoid the fixing of the judgment lien in their Lane County residence under Code § 522(f), which allows a debtor to avoid the fixing of a lien to the extent it impairs an exemption of the debtor (in this case, the homestead exemption). Creditor objected to the motion on the grounds that, under the holding of Farrey v. Sanderfoot, 500 U.S. 291 (1991), Debtors did not have an interest in their homestead prior to the affixing of the judgment lien and could thus not avoid the fixing of the lien.

The Ninth Circuit Bankruptcy Appellate Panel, in Weeks v. Pederson (In re Pederson), 230 B.R. 158 (9th Cir. BAP 1999), held that, under California law and in circumstances similar to those in the present case, the fixing of a judgment lien could not be avoided under the doctrine of Farrey v. Sanderfoot. There being no material difference between California and Oregon law with regard to the issues involved here, the Court ruled that Debtors could not avoid the fixing of Creditor's judicial lien.

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9 UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF OREGON

11 In Re:) Bankruptcy Case
12 CHARLES C. CALDWELL and) No. 01-65852-fra7
13 TERI L. CALDWELL,)
14 _____) MEMORANDUM OPINION
Debtors.)

15 The Debtors seek to avoid a judgment lien in favor of T & W
16 Funding Company XII, LLC (hereinafter "T & W"). 11 U.S.C.
17 § 522(f)(1)(A). Because the Court finds that the doctrine set out in
18 Farrey v. Sanderfoot, 500 U.S. 291 (1991) applies, the judgment lien may
19 not be avoided.

20 I. FACTS

21 The facts were stipulated to by the parties:

22 1. T & W obtained a money judgment against the Debtors in the
23 Superior Court for Pierce County, Washington, on March 22, 2001. The
24 following month the judgment was properly registered as a foreign
25 judgment pursuant to *former* ORS 24.105 in Polk County, Oregon.

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1 2. T & W recorded a lien record abstract in the matter
2 required by Oregon statutes in Lane County, Oregon, on April 26, 2001.

3 3. The Debtors acquired their residence in Lane County,
4 Oregon, by a statutory warranty deed recorded in Lane County, Oregon, on
5 May 22, 2001.

6 II. DISCUSSION

7 The Debtors move to avoid the fixing of T & W's lien pursuant
8 to Code § 522(f). This section allows a debtor to avoid the fixing of a
9 judgment lien to the extent the lien impairs the debtor's homestead
10 exemption. It is not disputed that the property in question is the
11 Debtors' homestead, and that their exemption is impaired by the presence
12 of the lien.

13 In Farrey v. Sanderfoot, supra, the Supreme Court construed the
14 text of § 522 as requiring that the debtor have some interest in the
15 subject property before the judgment lien is affixed to the subject
16 property. In that case, the debtors' acquisition of the property and the
17 attachment of a judgment lien in a domestic relations matter occurred
18 simultaneously by virtue of a domestic relations judgment. The Court
19 found that, since the judgment lien did not follow the acquisition, it
20 did not affix to the property for purposes of § 522, and therefore could
21 not be removed.

22 In Weeks v. Pederson (In re Pederson), 230 B.R. 158 (9th Cir.
23 BAP 1999), the Bankruptcy Appellate Panel for the Ninth Circuit held that
24 the same reasoning applied when debtors acquired real property in
25 California after a judgment against them had been properly recorded.
26 Where property of the debtor is acquired after entry of the judgment and

1 was therefore subject to the lien, the lien had not "fixed" on the
2 property, and therefore could not be avoided:

3 Unless the debtor had the property interest to which
4 the lien attached at some point *before* the lien
5 attached to that interest, he or she cannot avoid the
6 fixing of the lien under the terms of § 522(f)(1).
7 The critical inquiry is whether the debtor ever
8 possessed the interest to which the lien fixed, before
9 it fixed. If he or she did not, § 522(f)(1) does not
10 permit the debtor to avoid the fixing of the lien on
11 that interest. (*Italics in original.*)

8 Pederson, 123 B.R. at 160.

9 Since there is no practical distinction between Oregon's and
10 California's statutory schemes, Pederson controls. California Code of
11 Civil Procedure § 697.340 provides that:

12 A judgment lien on real property attaches to all
13 interests in real property in the county where the
14 lien is created (whether present or future, vested or
15 contingent, legal or equitable) that are subject to
16 enforcement of the money judgment against the judgment
17 debtor. . .at the time the lien was created.

16 Likewise, Oregon law in effect at the time in question, ORS
17 18.350, provided:

18 (1) Subject to the requirements of this section, from
19 the time of docketing an original or renewed Circuit
20 Court judgment as provided in ORS 18.320, such
21 judgment shall be a lien upon all the real property of
22 the judgment debtor within the county where the same
23 is docketed, or which the judgment debtor may
24 afterwards acquire therein. . .

22 For purposes of Bankruptcy Code § 522, the Debtors' acquired
23 their homestead property with T & W's judgment lien already in place.
24 Since the judgment lien was not affixed after the time the property was
25 acquired, it is not subject to avoidance under the doctrine of Farrey v.
26 Sanderfoot.

1 The foregoing constitutes the Court's findings of fact and
2 conclusions of law. An order denying the motion to avoid the judgment
3 will be entered contemporaneously with this memorandum opinion.
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7 FRANK R. ALLEY, III
8 Bankruptcy Judge
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