

11 U.S.C. § 522(b)
11 U.S.C. § 522(f)(1)
O.R.S. § 18.428(1)
Homestead exemption
Equitable interest
Lien avoidance

Todd W. Lindquist and
Melody E. Lindquist, Case No. 03-35895-rld7

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At the time the debtors filed their voluntary chapter 7 petition, only debtor wife was the record title owner of their residence property, a mobile home, though debtor husband made all of the payments for the residence property. The debtors claimed a homestead exemption in their residence property pursuant to O.R.S. § 18.428(1). After the debtors received their discharge and the case was closed, the case was reopened to allow the debtors to file a motion to avoid a creditor's judgment lien that impaired their homestead exemption pursuant to 11 U.S.C. § 522(f)(1). The creditor objected, asserting that only debtor wife was entitled to claim an exemption under O.R.S. § 18.428(1), as debtor husband held no legal title interest in the residence property on the date the debtors filed their bankruptcy case.

In light of the broad objective of O.R.S. § 18.428(1) and state and 9th Circuit case law interpreting homestead exemption law, the court held that the homestead exemption extended to equitable interests, as opposed to only legal title interests in residence properties. The court determined that both debtors could claim a homestead exemption in the residence property. The court granted the debtors' motion to avoid the creditor's judgment lien in part, to the extent that the judgment lien impaired the debtors' allowable homestead exemption.

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:) Bankruptcy Case
TODD W. LINDQUIST and MELODY E.) No. 03-35895-rld7
LINDQUIST,) MEMORANDUM OPINION
Debtors.)

The debtors, Todd ("Todd") and Melody ("Melody") Lindquist (collectively, the "Lindquists"), filed an Amended Motion to Avoid Judicial Liens on Debtors' Homestead (the "Motion") to avoid the judicial lien of Fairlane Credit LLC ("Fairlane") on their residence property (the "Property"). Fairlane objected. The Motion came before me for an evidentiary hearing (the "Hearing") on September 12, 2008. Following the Hearing, I took the matter under advisement.

Subsequent to the Hearing, I have reviewed the Motion and Fairlane's Objection to Amended Motion to Avoid Lien, as well as the facts agreed to between the parties and the docket in the Lindquists' chapter 7 case. I also have reviewed and considered the evidentiary exhibits admitted at the Hearing and my notes with respect to the

1 testimony of the Lindquists. I further have reviewed and considered
2 applicable legal authorities. I state the findings of fact and
3 conclusions of law herein pursuant to Fed. R. Civ. P. 52(a), applicable
4 with respect to this contested matter pursuant to Fed. R. Bankr. P. 9014.

5 Factual Background

6 The facts are not in dispute. The Lindquists filed their
7 chapter 7 bankruptcy petition on May 27, 2003. After a "no asset" report
8 was filed by the trustee, the Lindquists received their discharge on
9 September 25, 2003, and the case was closed. The case was reopened on
10 February 11, 2008 to allow the Lindquists to file and prosecute the
11 Motion.

12 On the date that the Lindquists' bankruptcy petition was filed,
13 the value of the Property was \$175,000, and Melody was the sole record
14 title owner of the Property. In addition, on the date of the Lindquists'
15 bankruptcy filing, nonavoidable liens (first trust deed and homeowners
16 association liens) on the Property totaled \$141,000, and Fairlane's
17 judgment lien, including interest, fees and costs, totaled \$10,735.15.

18 The Lindquists moved on to the Property in January 1988, after
19 it had been purchased by Melody's parents. Title to the Property
20 apparently was transferred to Todd in 1991. On or about March 5, 2003,
21 Todd transferred title to the Property to Melody to facilitate a
22 refinance. She had no income, but her credit apparently was better than
23 Todd's. Todd testified that he believed he retained an equitable
24 interest in the Property. The Lindquists both testified, without any
25 contradicting evidence, that Todd made all payments for the Property,
26 including the purchase and secured debt payments.

1 Jurisdiction

2 I have jurisdiction to decide this matter under 28 U.S.C.
3 §§ 1334 and 157(b)(2)(K) and (O).

4 Discussion

5 The Lindquists seek to avoid Fairlane's judgment lien pursuant
6 to § 522(f)(1) of the Bankruptcy Code.¹

7 Section 522(f)(1) allows for the avoidance of judgment liens
8 that impair exemptions to which debtors in bankruptcy are entitled under
9 § 522(b). Because Oregon has opted out of the federal exemption scheme,
10 as authorized under § 522(b), whether Fairlane's judgment lien is
11 avoidable, in whole or in part, is determined under applicable Oregon
12 exemption law.

13 The relevant Oregon exemption provision is O.R.S. § 18.428(1),
14 which provided as follows at the time the Lindquists' bankruptcy petition
15 was filed:

16 A mobile home, and the property upon which the mobile
17 home is situated, that is the actual abode of and
18 occupied by the owner, or the owner's spouse, parent
19 or child, when that mobile home is occupied as a sole
20 residence and no other homestead exemption exists,
21 shall be exempt from execution and from liability in
22 any form for the debts of the owner to the value of
23 \$23,000, except as otherwise provided by law. When
two or more members of a household are debtors whose
interests in the homestead are subject to sale on
execution, the lien of a judgment or liability in any
form, their combined exemptions under this section may
not exceed \$30,000. The exemption shall be effective

24 ¹Unless otherwise indicated, all chapter and section references are
25 to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as enacted and promulgated
26 prior to October 17, 2005, the effective date of most of the provisions
of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,
Pub. L. 109-8, April 20, 2005, 119 Stat. 23.

1 without the necessity of a claim thereof by the
2 judgment debtor.²

3 When the \$141,000 total of unavoidable liens is subtracted from
4 the \$175,000 agreed value of the Property on the petition date, the
5 balance of \$34,000 leaves avoidable all but \$4,000 of Fairlane's judgment
6 lien in order to protect the Lindquists' homestead exemption if they can
7 claim the full \$30,000 joint exemption under O.R.S. § 18.428(1).
8 However, Fairlane argues that only Melody is entitled to claim an
9 exemption under O.R.S. § 18.428(1) in the amount of \$23,000, as Todd held
10 no legal title interest in the Property on the date the Lindquists filed
11 their bankruptcy case. If Fairlane's argument prevails, its judgment
12 lien does not impair Melody's exemption, and its lien cannot be avoided.

13 I start the analysis from the proposition that homestead
14 exemptions in Oregon are liberally interpreted in order to "assure the
15 unfortunate debtor...the shelter and influence of home." In re
16 Banfield's Estate, 298 P. 905, 907 (1931), quoted in Sticka v. Casserino
17 (In re Casserino), 379 F.3d 1069, 1072 (9th Cir. 2004).

18 The question here is whether application of a homestead
19 exemption extends to equitable interests, as opposed only to legal title
20 interests in residence properties. While I have been unable to find any
21 Oregon or other authority that addresses the particular situation before
22 me, there are Oregon decisions and at least one Ninth Circuit decision
23 interpreting Oregon exemption law stating that the homestead exemption
24 extends beyond pure fee ownership claims. See Marvin & Co. v. Piazza,

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26 ²O.R.S. § 18.428(1) has since been amended, but the stated exemption
amounts for a single owner and joint owners have not been altered.

1 276 P. 680, 681 (Or. 1929):

2 A homestead right is not an estate in land, but a mere
3 privilege or exemption of such an estate as the holder
4 has in the land. *Mansfield v. Hill*, 56 Or. 400, 107
5 P. 471, 108 P. 1007. Our statute, section 221, Or.
6 L., uses the term "owner" in defining the person who
7 shall be entitled to a homestead exemption, but it
8 does not define the word "owner," or require that the
9 homestead claimant shall be the absolute owner in fee
10 of the land. There is abundant authority for holding,
11 and we think that the rule is supported by the great
12 weight of authority, that under a statute as broad as
13 ours a tenant in common may acquire a homestead
14 exemption in lands of which he is a cotenant only if
15 the land claimed as a homestead is occupied by him as
16 his actual abode and place of residence, and that his
17 homestead right does not depend upon the character or
18 extent of the estate owned by him, provided he is not
19 a mere intruder. (citations omitted).

20 *Sticka v. Casserino (In re Casserino)*, 379 F.3d at 1072-73; *Troutman v.*
21 *Erlandson*, 605 P.2d 1200, 1204 (Or. App. 1980) (applying the predecessor
22 statute to O.R.S. 18.428 to recognize a homestead exemption claim with
23 respect to a right to possession of real property granted in a
24 partnership dissolution decree until a purchase option was exercised or
25 lapsed).

26 *In re Mitchell*, 9 B.R. 577 (Bankr. D. Or. 1981), provides some
support for Fairlane's position. In *Mitchell*, Mrs. Mitchell purchased a
home in her name. Both she and her husband were employed and contributed
to pay the secured debt on the home. Mrs. Mitchell testified that she
considered her husband to be a half owner of the home property. However,
following the Mitchells' bankruptcy filing, the trustee objected to Mr.
Mitchell's homestead exemption claim, relying on the trustee's bona fide
purchaser status under § 544(a)(3), and O.R.S. § 93.604(1) to cut off Mr.
Mitchell's interest in the property. The bankruptcy court accepted the

1 trustee's argument that Mr. Mitchell's unrecorded interest in the home
2 property would not support an exemption claim against the estate's
3 interest and sustained the trustee's objection. Id. at 578-79.

4 Mitchell is distinguishable from this case in that Fairlane is
5 neither an actual purchaser of the Property in good faith and for value
6 protected by O.R.S. § 93.640(1), nor a trustee entitled to hypothetical
7 bona fide purchaser status under § 544(a)(3). There is no specific
8 statutory exception to the application of the homestead exemption in
9 O.R.S. § 18.428(1) in this case, and my ultimate conclusion is that the
10 exemption should be interpreted not only to cover Melody's exemption
11 claim, but Todd's as well. Both of the Lindquists have lived at the
12 property since 1988; so, there is no question that it is the actual abode
13 of both. Although Todd's name was removed from title to the Property
14 shortly before the Lindquists' bankruptcy filing to allow for a
15 refinance, it was Todd who made the payments for the Property. Melody
16 did not have income to make the payments. I find that Todd has an
17 equitable ownership interest in the Property for which he can claim a
18 homestead exemption. Recognizing Todd's homestead exemption claim for
19 lien avoidance purposes is consistent with the objective of O.R.S.
20 § 18.428(1) and is not inconsistent with its terms.

21 Accordingly, I will grant the Motion, in part, to avoid
22 Fairlane's judgment lien to the extent that it exceeds \$4,000, as of the
23 Lindquists' bankruptcy filing date. Fairlane's judgment lien shall
24 remain a lien on the Property to the extent of \$4,000, as of May 27,
25 2003, plus interest accruing at the appropriate Oregon state judgment
26 rate from that date until paid. The court will enter an order consistent

1 with this Memorandum Opinion.

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