

In re Bentley, BAP No. OR-94-1995-VRH, Case No. 390-32057-elp7

6/27/95

BAP aff'd ELP

unpublished

With \$2,000 of equity remaining in the debtor's homestead, the debtor filed motions to avoid certain judgment liens under § 522(f). Judge Perris denied the motion based on In re Chabot, 992 P.2d 891 (9th Cir. 1993). The Bankruptcy Appellate Panel affirmed. The liens did not impair the debtor's homestead under § 522(f), because the liens did not diminish the value of the debtor's exemption under Oregon law. The Panel noted that the Bankruptcy Reform Act of 1994 has overruled Chabot, but that the amendment did not apply here.

Affirmed see P97-4.

NO. FOR PUBLICATION

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DISTRICT OF OREGON

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OF THE NINTH CIRCUIT

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re) BAP No. OR-94-1995-VRH
)
PATRICK J. BENTLEY, fdba) BK. No. 390-32057-elp7
King of Hearts, fdba Between)
The Sheets,)
Debtor.)
_____)
)
PATRICK J. BENTLEY,)
)
Appellant,)
)
v.) **M E M O R A N D U M**
)
EL DORADO PROPERTIES; DESIGN)
IMPORTS INDIA,)
Appellees.)
_____)

Argued and Submitted on May 18, 1995
at San Francisco, California

Filed - JUN 27 1995

Appeal from the United States Bankruptcy Court
for the District of Oregon

Honorable Elizabeth L. Perris, Bankruptcy Judge, Presiding

Before: VOLINN, RUSSELL, and HAGAN, Bankruptcy Judges.

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1 OVERVIEW

2 The debtor moved to avoid judicial liens as impairing his
3 homestead pursuant to 11 U.S.C. § 522(f). The court denied the
4 motion; we AFFIRM.

5 FACTS AND PROCEEDINGS BELOW

6 The debtor, Patrick J. Bentley, filed a chapter 7 petition
7 in May 1990. He claimed his residence had a value of \$65,000,
8 encumbered by a consensual lien securing some \$63,000 in debt,
9 leaving only \$2,000 in equity. Bentley received his discharge
10 in September 1990.

11 Prior to the bankruptcy, various creditors had received
12 judgments against the debtor, totalling \$78,231. Pursuant to
13 Oregon statute, these judgments became liens upon all of the
14 debtor's real property located in the county where, and at the
15 time when, the judgments were docketed. O.R.S. § 18.350 (West
16 1993).

17 Under Oregon's homestead statute, a judgment debtor is
18 entitled to a \$25,000 homestead exemption. O.R.S. § 23.240
19 (West 1993). (On his schedule B-4, Bentley valued his homestead
20 claim at \$15,000, the homestead amount available in 1990.)
21 Alleging that only \$2,000 of equity existed in his homestead
22 property, the debtor filed motions to avoid six judgment liens
23 in May 1994. Two lienholders objected, and a hearing was held
24 on July 5, 1994.

25 The bankruptcy court ruled that the issue was controlled by
26 In re Chabot, 992 F.2d 891 (9th Cir. 1993). Pursuant to Chabot,

1 the liens at issue did not "impair" the debtor's homestead as
2 that term is used in § 522(f), because the liens would never
3 diminish in value the full amount of the debtor's exemption.
4 The court therefore denied the motions to avoid the liens. This
5 timely appeal followed.

6 ISSUE PRESENTED

7 Whether the court committed reversible error by denying the
8 debtor's motion to avoid the liens.

9 STANDARD OF REVIEW

10 The question is one of law, reviewed de novo. In re
11 Chabot, 992 F.2d at 893.

12 DISCUSSION

13 In Chabot, a case decided under California law, debtors
14 attempted to avoid the lien of a judgment creditor in property
15 where equity existed over and above their homestead exemption to
16 satisfy a partial amount of the judgment debt.

17 The court concluded that the judgment lien did not impair
18 the homestead because under the California statute, debtors are
19 entitled to receive the full amount of the homestead exemption
20 before the property can be levied upon to satisfy a judgment
21 lien. Thus the case limited "impairment" to a diminution in
22 value.

23 Debtor makes an effort to distinguish Chabot by pointing
24 out that Chabot analyzed California law, and that the
25 circumstances of the case involved an equity over and above the
26 debtor's homestead amount. Neither point is well-taken.

1 Chabot based its ruling on the legal effect of the
2 homestead statute, which essentially protects the full value of
3 the exemption to which a judgment debtor is entitled under the
4 statute. The Oregon statute similarly will protect the full
5 amount of the debtor's homestead against execution by a levying
6 creditor.

7 In Chabot, the lien at issue was partially undersecured.
8 Under the debtor's reasoning, the Chabot court would have
9 avoided that portion of the lien, which it did not. The Chabot
10 court ruled that the debtor is not entitled to the post-petition
11 appreciation in the value of the equity in his homestead
12 property over and above the homestead amount.

13 Chabot has been overruled by amendment to § 522(f) in the
14 Bankruptcy Reform Act of 1994, Pub. L. 103-394 (Oct. 22, 1994),
15 § 303, effective in cases filed after October 22, 1994. The
16 Reform Act adds new language to § 522(f) that expressly defines
17 "impairment" by means of a mathematical calculation to determine
18 when an exemption is impaired. The Reform Act, however, states
19 that its effective date is October 22, 1994, and that its
20 amendments are not to be applied with respect to cases commenced
21 before that date. See § 702. Therefore, Chabot's definition
22 must be considered prevailing law as to the instant proceeding.
23 We are therefore constrained to AFFIRM.