

ORS 18.350(1)
ORS 23.240
11 U.S.C. § 522(f)
Licenses

In re Jones Case No. 390-37035-P7
11/19//91 Judge Perris unpublished

The debtor's sole interest in his residence consisted of bare legal title and a license to occupy the premises. The debtor sought to avoid a judgment lien as impairing the debtor's homestead exemption in those interests. The court held that the license was not an interest in real property to which the judgment lien attached. Since there was no impairment of the debtor's license by a judgment lien, § 522(f) was inapplicable to that interest. Nor could the debtor use § 522(f) to avoid the lien on bare legal title, as the lien did not impair an exemption. Bare legal title is insufficient to support a homestead exemption.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re)
) Case No. 390-37035-P7
TERRY JONES,)
) MEMORANDUM
Debtor)

On May 13, 1981, a California state court entered a Judgment of Dissolution concerning the marriage of the debtor and Jane Jones. That Judgment incorporated a settlement agreement which provided for spousal and child support. The debtor failed to make support payments, and Jane Jones registered the judgment in Oregon and obtained a judgment determining that the debtor's support arrearage totalled \$111,666.09 as of October 31, 1989.

The debtor commenced this bankruptcy case on December 28, 1990. On June 11, 1991, the debtor filed an amended schedule B-1 which listed the debtor's interest in his residence as follows: "bare legal title and possessory

interest." The debtor explains that at one time he owned real property, which he conveyed in 1987 to Pamela Jones, his present wife. The debtor contends that he only holds bare legal title and the right to possession of the property. In his amended schedule B-4, the debtor claimed a homestead exemption in those interests under ORS 23.240.

The debtor seeks to avoid the judgment lien of Jane Jones under § 522(f) as impairing the homestead exemption. Since I conclude that the judgment lien does not encumber the debtor's possessory interest in the property, 522(f) is inapplicable to that interest. The right to possession is not claimed under any lease or estate in the property, and therefore must be treated as a revocable license which is in the nature of personalty and conveys no interest in the property. See Blue River Sawmills, Ltd. v. Gates, 255 Or. 439, 358 P.2d 239, 255 (1960). Under ORS 18.350(1), a judgment lien attaches to "all the real property of the judgment debtor within the county where the same is docketed" The license to occupy the premises, however, cannot be considered real property within the meaning of ORS 23.240 because it does not confer an interest in the land. Since the license to occupy the property was not subject to the judgment lien, there is no encumbrance to avoid under §522(f).

Nor may the debtor employ § 522(f) to avoid the

lien on the bare legal title. A lien may be avoided under 522(f) only if it impairs an exemption. Bare legal title is insufficient to support an exemption in property. In re Fandrich. 63 B.R. 250, 251-52 (Bankr. D. N.D. 1986). Under Oregon law a homestead exemption may only be claimed in an interest in property which carries the right of possession. See In re White, 727 F.2d 884 (9th Cir. 1984). Bare legal title with no beneficial ownership interest does not carry a right of possession.

Finally, the debtor argues that under Oregon law, if he and Pamela Jones were to divorce he might obtain a beneficial interest in the property under ORS 107.105(f), and such an interest could be protected by the exemption. However, the argument that such an expectancy can support a homestead exemption must be rejected under the White reasoning. The fact that the debtor might be able to claim an interest in the property in a dissolution proceeding does not give him any present ownership rights in the property. In re Luby, 89 B.R. 120, 126 (Bankr. D. Or. 1988). Such an expectancy does not put a roof over the debtor's head and is too tenuous to support a homestead exemption.

The debtor argues that under Chaffin v. Solomon, 255 Or. 141, 465 P.2d 217 (1970), Pamela Jones' interest in the residence is superior to that of Jane Jones. I need not express any opinion on the question, as the priority of the

interests of Pamela Jones and Jane Jones is irrelevant to the threshold issue of whether the debtor has an interest which can support a homestead exemption and which is also impaired by a lien. An appropriate order will be entered.

Elizabeth L. Perris
Bankruptcy Judge

cc: Bradley O. Baker
Jane Jones
Ronald A. Watson