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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:)	
)	No. 02-03464-W1G
TODD G. and TINA KENNEDY,)	
)	MEMORANDUM DECISION RE:
Debtor.)	DEBTORS' MOTION RE AVOIDANCE OF
)	JUDICIAL LIEN OF KEY BANK

THIS MATTER came on for hearing before the Honorable Patricia C. Williams on October 10, 2002 upon debtors' Motion Re Avoidance of Judicial Lien of Key Bank. Debtors were represented by Greg Lockwood and creditor Key Bank was represented by Mary Ellen Gaffney-Brown. The court now enters its Memorandum Decision.

This Chapter 7 proceeding was commenced on April 26, 2002. Nearly three years prior, the debtor, Todd Kennedy, agreed to the entry of a judgment against him by the state court sitting in the county in which his residence is located. Key Bank had commenced suit against the debtor seeking recovery pursuant to a personal guarantee for a now defunct business. After correspondence between counsel, the debtor agreed that a judgment for \$96,165.35 could be entered and signed a stipulated judgment for that amount which judgment was then entered by the court.

FILED

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MEMORANDUM DECISION RE: . . . - 1

T.S. MCGREGOR, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

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1 In the bankruptcy proceeding, the debtors filed a motion under
2 11 U.S.C. § 522(f)(1) to void the judgment lien as it impaired the
3 debtors' homestead exemption. The only issue now before the court is
4 purely a legal issue: Is the lien arising from the entry of a consent
5 judgment a judicial lien subject to avoidance under 11 U.S.C.
6 § 522(f)(1)?

7 11 U.S.C. § 101(37) defines liens as ". . . a charge against or
8 interest in property to secure payment of a debt or performance of an
9 obligation." There are three types of liens under the Code: A
10 statutory lien defined in § 101(53); a security interest defined under
11 § 101(50); or a judicial lien defined under § 101(36). A security
12 interest is a lien "created by agreement" whereas a judicial lien is one
13 created by "judgment, levy, sequestration, or other legal or equitable
14 process or proceeding." The legislative history of 101 states that
15 these three categories are mutually exclusive and except for certain
16 common law liens not relevant to these facts, the list is exhaustive.
17 A debtor has the right under § 522(f) to ". . . avoid the fixing of a
18 lien" if it impairs an exemption and is a judicial lien other than a
19 judicial lien arising from dissolution of a marriage.

20 Under Washington state law, a judgment rendered by a state court is
21 a lien upon real estate located in the county in which the judgment is
22 entered. The lien commences or affixes to the real estate from the time
23 of the entry of the judgment. R.C.W. 4.56.190 and 200. The provisions
24 of § 522(f) do not render the entry of the judgment void, rather it
25 renders avoidable the fixing of the lien which arises from the entry of
26 the judgment. Absent application of some other provision of the Code,

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28 MEMORANDUM DECISION RE: . . . - 2

1 the judgment itself remains a valid final determination of liability and
2 a liquidation of the amount due. It is the lien which arises upon entry
3 of the judgment which is subject to avoidance under § 522(f).

4 The lien which affixes upon entry of a consent judgment is the same
5 lien which would affix upon entry of a judgment rendered after a
6 contested trial on liability. The lien arises not from the consent of
7 the involved parties but from the exercise of judicial power. *In re*
8 *Stone*, 119 B.R. 222 (Bankr. E.D. Wash. 1990). It is not created and
9 does not affix unless there is judicial action, i.e., the entry of the
10 judgment. This is inherently different than a lien which owes its
11 creation and existence to an agreement between the parties.


12 As noted in *In re Applebaum*, 162 B.R. 548 (Bankr. E.D. Cal. 1993),
13 one of the primary purposes of bankruptcy law, and specifically
14 § 522(f), is to provide the debtor with a fresh start. If consent
15 judgments were not included within the definition of judicial liens much
16 of the fresh start authorized by Congress through exemptions would be
17 lost.

18 Section 522 of the Bankruptcy Code allows debtors to protect
19 certain property from creditor claims by exempting that property from
20 the estate. Section 522(f) is the mechanism by which debtors may avoid
21 the fixing of a lien on an interest of the debtor in property to the
22 extent that a judicial lien impairs that exemption. In cases of
23 statutory construction, "the plain meaning of legislation should be
24 conclusive, except in rare cases in which the literal application of a
25 statute will produce a result demonstrably at odds with the intention of
26 its drafters." *U.S. v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989).

1 Key Bank's lien is a judicial lien because it arose from the exercise of
2 judicial power upon entry of the judgment. This is clearly the type of
3 lien Congress intended to allow the debtor to avoid pursuant to
4 § 522(f). See *In re Been*, 153 F.3d 1034 (9th Cir. 1998).

5 In conclusion, the lien which arose upon entry of the state court
6 consent judgment is a "judicial lien" voidable under § 522(f)(1).

7 DATED this 31st day of October, 2002.

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10 PATRICIA C. WILLIAMS, Bankruptcy Judge

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