

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
Western Division

In re: )  
CHARLES GERARD DWYER ) Bankr. Case No. 94-50152  
Social Security No. [REDACTED]-7164 ) Chapter 7  
Debtor. ) MEMORANDUM OF DECISION RE:  
SATISFACTION OF JUDGMENT LIEN  
)

The matter before the Court is Debtor's Motion to Discharge Non-bankruptcy Judgments and to Avoid Judicial Liens and the response thereto filed by creditor Gina Littrel. This is a core proceeding under 28 United States Code (U.S.C.) section (§) 157(b)(2). This Memorandum of Decision and subsequent order shall constitute findings and conclusions under Federal Rule of Bankruptcy Procedure (F.R.Bankr.P.) 7052. As set forth below more fully, the Court concludes that the judgment of Gina Littrel has been discharged and may be removed from the records of the Pennington County Clerk of Courts.

I.

On May 5, 1994, Gina Littrel obtained a judgment for \$512.00 against Charles G. Dwyer. Mr. Dwyer paid only \$150.00 of the judgment.

On July 25, 1994, Mr. Dwyer ("Debtor") filed a Chapter 7 petition in bankruptcy. No objections to his discharge of debts were timely filed and a discharge order was entered November 1, 1994.

On November 23, 1994, Debtor filed a Motion to Discharge Non-bankruptcy Judgments and to Avoid Judicial Liens. Therein, he asked that several judgments against Debtor, including the judgment held by Ms. Littrel, be satisfied and that any judicial liens be avoided under 11 U.S.C. § 522(f).

On December 14, 1994, Ms. Littrel filed an Objection to the Motion and an affidavit in support of her Objection. She asked that the judgment and any lien she has against Debtor and his property be retained. She cited her financial need as cause.

A hearing was held February 16, 1995.<sup>1</sup> Appearances included Attorney Doyle D. Estes for Debtor and Gina Littrel, *pro se* [acting as her own attorney]. The Court took the matter under advisement in conjunction with *In re Traversie*, Bankr. No. 94-10110,<sup>2</sup> where a similar issue was raised and where the parties were filing briefs on how and when judgments and judgment liens should be removed.

## II.

Section 524(a)(1) of the Bankruptcy Code provides:

- (a) A discharge in a case under this title --  
    (I) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived[.]

It is a key part of a debtor's discharge and clearly discharges a

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<sup>1</sup> The first hearing scheduled for January 12, 1995 was not held due to Ms. Littrel's illness.

<sup>2</sup> A decision in *In re Traversie* is being entered at the same time as this Memorandum of Decision.

debtor's personal liability under a judgment.

Section 522(f) governs the removal of certain liens on exempt property. It provides:

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

(A) a judicial lien, other than a judicial lien that secures a debt--

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and  
(ii) to the extent that such debt--

(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.

(B) a nonpossessory, nonpurchase-money security interest in any--

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2) (A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of--

- (i) the lien;
- (ii) all other liens on the property; and
- (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor--

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property otherwise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds \$5,000.

Section 15-16-20 of the South Dakota Code establishes the procedure for removing a judgment from the records of a county clerk of courts. Once a bankruptcy debtor receives a discharge, he must file a motion before the Court and get an order that lists the judgments to be discharged. When the clerk of courts receives that order, she must indicate on her records that the judgment is deemed discharged or satisfied.

III.

Ms. Littrel's judgment was discharged on November 1, 1994. The law is clear on that point. Debtor no longer has any personal liability for that debt. The question raised here is whether Ms. Littrel retains the right to enforce any lien created by the judgment. Based on applicable law and the facts of this case, she does not.

If Debtor had owned non homestead real property (land) in Pennington County when he filed his petition in bankruptcy, Ms. Littrel would have had a lien on that property based on her judgment. Her claim could have been paid from the sale proceeds when the land was sold by the Trustee or her lien would have survived Debtor's bankruptcy and she could have enforced it later. Since Debtor did not have any real property when he filed, however, there was no property to which Ms. Littrel's judgment could attach and become an enforceable lien. Further, since the judgment has now been discharged, Ms. Littrel does not have a judgment that can become a lien on any real property Debtor may acquire after bankruptcy.

Pursuant to S.D.C.L. § 15-16-20, Debtor has now complied with all procedures for having Ms. Littrel's judgment removed from the Pennington County's Clerk of Courts' records. Therefore, the judgment should be removed and Ms. Littrel may no longer collect on her debt nor attempt to enforce any judgment for that debt.

Debtor cited § 522(f) for the statute that governs the relief sought. Section 522(f), however, applies only when a lien against exempt property is sought to be removed because the lien impairs the exemption. Under South Dakota law, S.D.C.L. §§ 15-16-7 and 15-16-35, a judgment lien may attach only to real property. The mobile home Debtor declared exempt, while a homestead as defined by South Dakota law, is unlikely to be considered real property to which a judgment lien could ever attach. Therefore, the judgment lien may never have impaired that exemption.

Debtor should have cited § 524(a)(1), instead of or in addition to § 522(f), since it is § 524(a)(1) that discharges Ms. Littrel's judgment. Nonetheless, this citing error does not change what the law provides. Ms. Littrel's judgment was still discharged under § 524(a)(1) and the judgment may be removed by the Pennington County Clerk of Courts pursuant to S.D.C.L. § 15-16-20.

The Court is sympathetic to Ms. Littrel's financial problems to which Debtor has contributed. However, the bankruptcy laws established by Congress do not allow the Court to consider Ms. Littrel's financial condition when determining whether the judgment she held against Debtor is discharged.

Counsel for Debtor shall submit an appropriate order.

So ordered this \_\_\_\_\_ day of April, 1995.

BY THE COURT:

\_\_\_\_\_  
Irvin N. Hoyt  
Chief Bankruptcy Judge

ATTEST:

PATRICIA A. JOHNSON, ACTING CLERK

By \_\_\_\_\_  
Deputy Clerk

(SEAL)