

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:  
Betty L. Porter,

**ENTERED**

MAY 26 1999

Debtor: **K.K.M.**

C/A No. 98-10986-W

**JUDGMENT**

Chapter 7

FILED  
99 MAY 25 PM 4:10  
DIST. OF SOUTH CAROLINA

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Debtor's motion to avoid the judicial lien of General Motors Acceptance Corporation is granted and \$480.54 of the \$3,740.54 judicial lien of GMAC is avoided with \$3,260 of the judicial lien remaining a lien on the property.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
May 25, 1999.

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

*Watkins*

*J.I.*

**MAY 26 1999**

✓

*hester*

*RA*

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

**KELLEY MORGAN**

Deputy Clerk

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
99 MAY 25 PM 4:10  
BANKRUPTCY COURT  
DIST OF SOUTH CAROLINA

IN RE:

C/A No. 98-10986-W

Betty L. Porter,

ENTERED

ORDER

Debtor.

MAY 26 1999

Chapter 7

**K.K.M.**

THIS MATTER comes before the Court upon the objection of the creditor General Motors Acceptance Corporation ("GMAC") to the Debtor's motion to avoid the judicial lien of GMAC pursuant to 11 U.S.C. §522(f).<sup>1</sup> After receiving the arguments of counsel and a review of the file, the Court makes the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

On December 14, 1998, the Debtor filed a voluntary Chapter 7 petition. In her Schedules and Statements, the Debtor listed ownership of real property consisting of her residence which is a mobile home located on 1.193 acres of land located at 5328 E. Old Marion Hwy. in Florence, South Carolina. The Schedules list the value of the real property to be \$8,260.00. The only lien on the property is GMAC's judicial lien in the amount of \$3,740.54.

On December 30, 1998, the Debtor filed a motion to avoid the judicial lien of GMAC in its entirety as impairing her \$5,000.00 homestead exemption. On January 14, 1999, GMAC filed an objection to the motion to avoid its judicial lien stating that the lien should only be avoided to

---

<sup>1</sup> Further references to the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, shall be by section number only.

JW-1 065-

the extent that it impairs the Debtor's homestead exemption, which pursuant to the formula contained in §522(f) is at most \$480.54.

### CONCLUSIONS OF LAW

Section 522(f)(1) provides in part that "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..." 11 U.S.C. §522(f)(1)(A). In cases filed on or after October 22, 1994, §522(f)(2) as amended states:

- (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 absence of any liens.

11 U.S.C. §522(f)(2). In applying the formula of §522(f)(2), a judicial lien impairs an exemption if the sum of the exemption, all other liens and the judicial lien exceed the value of the debtor's interest in the property.

Section 522(f)(2) sets forth the formula by which the court is to determine whether a lien impairs an exemption to which the debtor would be entitled. If the sum of the debtor's exemption, all other liens on the property and the judicial lien exceed the value of the debtor's interest in the property, the judicial lien is considered to impair the exemption to which the debtor would be entitled.

In re Raines, 98-01463 (Bkrtcy.D.S.C. 4/22/98) citing In re Huss, 96-74510-B slip op. at

A handwritten signature in cursive script, appearing to be "JW-2", is located at the bottom center of the page.

(Bkrty.D.S.C. 1/21/97) and Butler, Bankruptcy Handbook, ¶ 21.7 at p. 12-6 (1996).

In applying the formula of §522(f)(2) to the facts of this case, the sum of the Debtor's exemption and the judicial lien equals \$8,740.54 which exceeds \$8,260.00, the value of the debtor's interest in the property and therefore the judicial lien can be avoided. However, GMAC takes the position that based upon the "to the extent" language contained in §522(f)(2), its judicial lien should only be partially avoided in the amount of \$480.54 because the sum of the exemption and the judicial lien only exceeds the value of the Debtor's interest in the property by this amount.

The majority of Courts that have interpreted this provision have found that a partial, rather than full, avoidance of a judicial lien is dictated when the arithmetic test of § 522(f) yields a partial impairment.

The plain language of these provisions, stating that the judicial lien shall be avoided to the extent of any impairment, allows for partial avoidance when there is only partial impairment. The phrase "to the extent that" appears in both subsections and it sets forth both the condition for avoidance (to the extent there is an impairment) and the amount to be avoided (the extent of such impairment). This Court does not read this language to mean that whenever there is any impairment, the judicial lien must be avoided in its entirety as an all or nothing rule. Such a reading negates the inclusion of the phrase "to the extent that" in subsection (2)(A) stating that an impairment exists to the extent that value is less than the sum of all liens plus the exemption. This Court, therefore, holds that the plain language requires partial avoidance of a judicial lien to the extent there is only a partial impairment of the exemption. The majority of the courts considering this issue have reached the same result. See, e.g., In re Finn, 211 B.R. 780 (1st Cir. BAP 1997); In re Silveira, 141 F.3d 34 (1st Cir.1998); In re Ryan, 210 B.R. 7 (Bankr.D.Mass.1997); In re Corson, 206 B.R. 17 (Bankr.D.Conn.1997); In re Todd, 194 B.R. 893 (Bankr.D.Mont.1996); In re Moe, 199 B.R. 737 (Bankr.D.Mass.1995); In re Johnson, 184 B.R. 141



(Bankr.D.Wyo.1995); In re Thomsen, 181 B.R. 1013  
(Bankr.M.D.Ga.1995).

In re Sheth, 225 B.R. 913 (Bkrcty. N.D. Ill. 1998). Also see In re Lehman, 223 B.R. 32 (Bkrcty. N.D.Ga. 1998), In re Pascucci, 225 B.R. 25 (Bkrcty. D.Mass. 1998), In re Plott, 220 B.R. 596 (Bkrcty. N.D. Ohio 1998) and In re Falvo, 227 B.R. 662 (6th Cir. B.A.P. 1998).

In a recent opinion from the First Circuit Court of Appeals, the Court found that the plain language and purpose of §522(f) mandates a partial, rather than full avoidance in these situations.

If Congress intended for avoidance of judicial liens to be an "all-or-nothing" matter, one might wonder why the provisions' drafters chose to use the connective phrase "to the extent that," in lieu of the word "if," which obviously would have been a simpler construction. See In re Furkes, 65 B.R. 232, 235 (D.R.I.1986) ("The 'to the extent that' clause cannot be seen as some sort of *legislative slip of the pen*.... [H]ad Congress intended ... an all-or-nothing proposition, it would have drafted the statutory language more infrangibly...."). The statutory directive that a debtor may avoid a judicial lien "to the extent that" the lien impairs an exemption favors--or is at least readily amenable to--reading the definition of "impairment" in § 522(f)(2)(A) not only as a condition of avoidability, but also as a proportional measure of the scope of the debtor's avoidance power.

East Cambridge Savs. Bank v. Silveria (In re Silveria), 141 F.3d 34 (1st Cir. 1998).

Also see, Riley and Conlon, Recent First Circuit Developments and Persisting Problems Regarding Avoidance of Impairing Liens, 17 Jan. Am. Bankr. Inst. J. 16 (1999).

This Court agrees with the First Circuit and the majority of opinions that when applicable, §522(f)(2) mandates a partial avoidance of a judicial lien. Therefore, the Debtor's motion to avoid the judicial lien of General Motors Acceptance Corporation is granted and \$480.54 of the \$3,740.54 judicial lien of GMAC is avoided with \$3,260 of the judicial lien remaining a lien on the property.



AND IT IS SO ORDERED.

Columbia, South Carolina,  
May 25, 1999.

  
UNITED STATES BANKRUPTCY JUDGE

*js*

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy Court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

*J.I.*

**MAY 26 1999**

*watkins*

✓ *hester* *RA*  
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

**KELLEY MORGAN**

Deputy Clerk