

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

C/A No. 11-05407-JW

Patricia D. Weldon and Ronald A. Weldon,
Debtor(s).

Chapter 7

ORDER

This matter comes before the Court on the Motions to Avoid Judicial Liens filed by Patricia D. Weldon and Ronald A. Weldon (“Debtors”). Crop Production Services (“Crop”) filed an objection to Debtors’ motion to avoid its judicial lien. Tucker Oil Company (“Tucker”) has filed no response to the motion to avoid its judicial lien and did not appear at the hearing on the Motions.¹ The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334(a) and (b). Pursuant to Fed. R. Civ. P. 52, which is made applicable to contested matters by Fed. R. Bankr. P. 7052 and 9014(c), the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Debtors filed a joint voluntary petition for relief under chapter 7 of the Bankruptcy Code on August 30, 2011. Debtors own four contiguous tracts of real property in Sumter County, South Carolina, located at 3755 Red Lane Road, 3775 Red Lane Road and 3777 Red Lane Road, Dalzell, SC (collectively, the “Real Property”):²

1. Parcel #1500003045, located at 3775 Red Lane Road, which includes Debtors’ house and part of the pool. Fair market value is listed as \$40,227.00.

Entered: 12/07/2011

¹ The Court nevertheless shall consider whether the motion is proper as to Tucker’s judicial lien based on the same grounds as those asserted by Crop.

² The following information is based upon tax map records introduced into evidence and relief upon by Debtors.

2. Parcel #1500003057, located at 3777 Red Lane Road, which includes Debtors' driveway, part of the pool, and a building used for parking of tractors and other equipment. Fair market value is listed as \$8,470.00.
3. Parcel #1500003059, located between 3775 and 3755, which contains 0.48 acres (the ".48-acre Tract"). Fair market value is listed as \$672.00.
4. Parcel #1500003060, 3755 Red Lane Road, which is 12.64 acres of unimproved land (the "12-acre Tract"). Fair market value is listed as \$17,696.00.

Debtors listed the four tracts on their Amended Schedule A – Real Property, which was filed on September 25, 2011, and indicated that the four tracts have a combined fair market value of \$67,065. Debtors claimed an exemption under S.C. Code Ann. § 15-41-30(A)(1) for the real property on Amended Schedule C – Property Claimed as Exempt, which was also filed on September 25, 2011. The real property listed as exempt on Amended Schedule C includes the parcels located at 3775 Red Lane Road and 3777 Red Lane Road and the 12-acre Tract.³ Debtors' Amended Schedule D - Creditors Holding Secured Claims lists Crop as holding a judgment lien in the amount of \$63,990.25 secured by the Real Property and lists Tucker as holding a judgment lien in the amount of \$1,746.00 secured by the Real Property. Schedule D also lists NBSC as holding a mortgage lien in the amount of \$89,100.00, which is senior to both judgment liens, secured by 3775 Red Lane Road, Dalzell, South Carolina. Debtors' counsel advised the Court that NBSC's mortgage lien is secured by all four tracts owned by Debtors, but did not present a copy of the mortgage into evidence.

³ Debtors did not list the .48-acre Tract as exempt on Amended Schedule C, although the combined value of the real property for the three parcels listed is the same as the combined value of the four parcels listed on Amended Schedule A.

Debtors presented the testimony of Patricia D. Weldon (“Mrs. Weldon”) in support of their Motions. Mrs. Weldon testified that she considered all four tracts as her residence. No testimony or other evidence was presented regarding the Debtors’ present or historical use of the .48-acre Tract and the 12-acre Tract.

CONCLUSIONS OF LAW

In the Motions, Debtors seek to avoid a judicial lien held by Crop Production Services (“Crop”) and a judicial lien held by Tucker Oil Company (“Tucker”) pursuant to 11 U.S.C. § 522(f)(1)(A) on the basis that the liens impair their homestead exemption. The Motions are both deficient because they do not provide a description of the property securing the lien and the value of Debtors’ interest in property is listed on the Motions as \$57,923.00, although the current value of the Real Property is listed on Amended Schedule A as \$67,065.00.

Crop objects to the motion to avoid its judicial lien on the grounds that it is unclear what property is the subject matter of the Motions and some of the property being claimed as exempt is not Debtors’ residence. At the hearing, Debtors asserted that they are seeking to avoid the judicial liens held by Crop and Tucker on all four tracts and that they considered all four tracts as their “residence.”

Under 11 U.S.C. § 522(f)(1)(A), Debtors may avoid the fixing of a judicial lien on an interest of Debtors in property to the extent that such lien impairs an exemption to which Debtors would have been entitled. Section 522(b) allows Debtors to exempt from property of the estate property that is exempt under applicable state or federal law. South Carolina has opted out of the federal exemption scheme, thus Debtors are limited to claiming the available state law exemptions with respect to their real property. See S.C.

Code Ann. § 15-41-35 (providing that “[n]o individual may exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. § 522(d) except as may be expressly permitted by this chapter or by other provisions of law of this State.”) S.C. Code Ann. § 15-41-30(A)(1) allows a debtor to claim an exemption for “[t]he debtor’s aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor *uses as a residence*.” (emphasis added). “A residence is defined as, ‘Place where one actually lives or has his home; a person’s dwelling place or place of habitation; an abode; house where one’s home is; a dwelling house.” In re Jones, 397 B.R. 765 (Bankr. D.S.C. 2008) (citing Black’s Law Dictionary 1309 (7th ed. 1999)).

Debtors bear the burden of demonstrating by a preponderance of the evidence that lien avoidance pursuant to § 522(f) is proper. In re Armenakis, 406 B.R. 589, 504 (Bankr. S.D.N.Y. 2009) (“The debtor bears the burden of proof by a preponderance of the evidence on every element of § 522(f).”) (citing In re Banner, 394 B.R. 292, 300 (Bankr. D.Conn. 2008)). As part of that burden, Debtors must demonstrate that they are entitled to claim an exemption in the property encumbered by the lien they seek to avoid. Debtors claim an exemption pursuant to S.C. Code Ann. § 15-41-30(A)(1) in the parcels located at 3775 Red Lane Road and 3777 Red Lane Road and the 12-acre Tract. Based on the evidence and testimony presented, the Court finds that Debtors have sufficiently demonstrated that they are entitled to claim an exemption pursuant to § 15-41-30(A)(1) in the parcels located at 3775 Red Lane Road and 3777 Red Lane Road, as real property that Debtors use as a residence. The evidence indicated that the parcel at 3775 Red Lane Road contains the house where Debtors presently reside and that the parcel at 3777 Red

Lane Road contains the driveway used by Debtors to access their house and also contains part of their pool and a building used by Debtors for the storage of tractors and other equipment. Accordingly, the Court finds that Debtors' Motions should be granted and the judicial liens of Crop and Tucker avoided as to the parcel at 3775 Red Lane Road and the parcel at 3777 Red Lane Road.

With respect to the .48-acre Tract and 12-acre Tract, the Court is unable to conclude from the evidence and testimony presented that these two tracts are real property that Debtors use as a residence, since no evidence or testimony was presented regarding the Debtors' use of that property, other than Ms. Weldon's self-serving testimony that she considers all of the properties part of her residence. There was also no evidence presented regarding Debtors' acquisition or financing of the property, except the statement of counsel that he believed the mortgage held by NBSC encumbered all four parcels.⁴ Accordingly, the Court finds that Debtors have failed to meet their burden of demonstrating that they are entitled to claim an exemption in the .48-acre Tract and the 12-acre Tract pursuant to S.C. Code. Ann. § 15-41-30(A)(1) and the Motions should thus be denied as to these two Tracts.

Based on the foregoing, it is hereby

ORDERED that Debtors' motions to avoid the judicial liens held by Crop and Tucker are granted as to Debtors' real property located at 3775 Red Lane Road and 3777 Red Lane Road and are denied as to Debtors' real property identified herein as the .48-

⁴ The Court notes that when Debtors' counsel was asked to produce a copy of NBSC's mortgage to corroborate such statement, counsel advised that he only had a copy of one of the mortgages. On Amended Schedule D, Debtors listed only the property located at 3775 Red Lane Road as being subject to NBSC's mortgage lien. NBSC has not filed a proof of claim in this case.

acre Tract and the 12-acre Tract. The judicial liens held by Crop and Tucker shall continue to encumber the .48-acre Tract and the 12-acre Tract.

AND IT IS SO ORDERED.

**FILED BY THE COURT
12/07/2011**



Entered: 12/07/2011

Chief US Bankruptcy Judge
District of South Carolina