

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

JAMES A. HATFIELD, )

DEBTOR )

CASE NO. BK83-1788

MEMORANDUM OPINION

This matter is before me on the debtor's motion to avoid lien under 11 U.S. Code §522(f). The facts are before me by stipulation and documents, are not in dispute, and I incorporate the stipulation of facts by reference without setting them out fully herein.

As a part of their dissolution of marriage proceeding, James A. Hatfield, the debtor, and Ruby P. Hatfield entered into a Separation and Property Settlement Agreement which was approved and adopted by the State Court in dissolving their marriage by a decree entered on September 17, 1982. Pursuant to that agreement, the former wife was awarded the residence of the parties. The husband was awarded nine parcels of real estate and his former wife was granted a lien on those nine parcels until such time as the mortgage on the residence was paid in full by the husband. The motion to avoid the lien seeks to avoid the lien on one of the nine parcels known as 108 Iowa Street in York, Nebraska. The facts disclosed that the husband claims that as his homestead and he further claims that the lien created by the agreement and decree impairs his exemption in that property. Thus, he claims it to be avoidable.

My conclusion is that the lien created by the agreement and the dissolution of marriage decree is not the type of "judicial lien" which may be avoided under §522(f), at least in this case.

In this Circuit, In re Boyd f/k/a Robinson, F.2d (No. 83-1976, August 29, 1984)(Court of Appeals, 8th Circuit, 1984), is instructive. To the extent that Boyd holds that the divorce-spawned lien which was judicially created in that case could not be avoided because it protected a pre-existing interest of the spouse in real estate created prior to the marriage dissolution, that reasoning appears applicable here. The real estate here involved, 108 Iowa Street, was acquired by the parties as joint tenants by a deed in evidence before me dated July 30, 1974. Thus, Ruby P. Hatfield acquired an ownership interest in the real estate and the lien can be said to protect that pre-existing interest. Accordingly, under Boyd, the lien is not voidable.

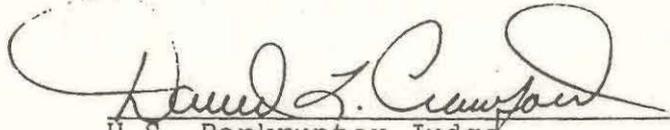
If I have misread Boyd, then an alternative basis for my decision appears present. That alternative basis is that the lien here created appears to be a consensual lien, arising primarily from the property settlement agreement entered into by the parties and simply adopted by the Court in dissolving the marriage. This

type of consensual lien seems more in the category of a security agreement and security interest rather than a judicial lien.

A separate order is entered in accordance with the foregoing.

DATED: November 14, 1984.

BY THE COURT:

  
U.S. Bankruptcy Judge

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