

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF: ) CASE NO. BK11-42075-TJM  
 )  
VIOLET ADALINE SHEEN, ) CH. 7  
 )  
Debtor(s). )

ORDER

This matter is before the court on the Motion to Avoid Lien of Citifinancial, Fil. #12, filed by the debtor. Jerry Jay Milner represents the debtor.

The debtor has filed a motion to avoid the lien held by Citifinancial on her residence. The debtor is unmarried and more than 65 years of age. She claims that the judicial lien held by Citifinancial impairs her homestead exemption.

Originally, she did not claim a homestead exemption on her bankruptcy documents. The court gave her the opportunity to amend her claim of exemption and present either a legal or factual basis for her eligibility for homestead exemption under Neb. Rev. Stat. § 40-101, et. seq. In response, she amended the claim of exemption to include a homestead and filed an affidavit, Fil. #16. In the affidavit she asserts that she owns a 50% interest in the home in which she lives and that there is a judicial lien on the real estate. She concludes by stating, "As the debtor, I am entitled to homestead exemption on the said property pursuant to §40-101."

The problem is that simply being a debtor does not make one eligible to claim the homestead exemption under § 40-101, et seq. She has not claimed to be head of household or to fit into any of the other categories included in the definition of an individual who is eligible for homestead exemption.

Perhaps the debtor has confused the homestead exemption eligibility in § 40-101, et seq., with the homestead exemption provisions of Neb. Rev. Stat. § 77-3501 to -3523, which deal with certain exemptions from payment of real property taxes.

Whether there is confusion or not, I find that she is not eligible for homestead exemption under § 40-101, et seq. Therefore, she is not eligible to avoid the lien held by Citifinancial.

IT IS ORDERED that the Motion to Avoid Lien of Citifinancial, Fil. #12, is denied.

DATED: November 1, 2011

BY THE COURT:

/s/ Timothy J. Mahoney  
United States Bankruptcy Judge

Notice given by the Court to:  
\*Jerry Jay Milner  
U.S. Trustee

\*Movant is responsible for giving notice to other parties if required by rule or statute.