

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

RICHARD DAVID AVILA LATINO &)
NANCY LOU AVILA,)

CASE NO. BK81-648

DEBTORS)

A81-217

RICHARD DAVID AVILA LATINO)
& NANCY LOU AVILA,)

Plaintiffs)

vs.)

FRANCIS TRITZ,)

Defendant)

MEMORANDUM OPINION

As stipulated by the parties, the facts surrounding this adversary proceeding are these. On May 3, 1979, Francis Tritz recovered a default judgment in Omaha Municipal Court for \$1,095 against Richard D. Avila, joint plaintiff-debtor in this action.

On July 3, 1980, Mr. Avila deposited cash appearance bonds with Douglas County District Court in connection with two criminal proceedings. The bonds were for \$2,500 and \$750 respectively.

On October 2, 1980, Tritz filed a transcript of his Municipal Court judgment and caused to be issued a garnishment summons upon the cash appearance bonds to the Clerk of the Douglas County District Court. Execution of sentences imposed in the criminal proceedings on December 30, 1980, was suspended. The cash appearance bonds were ordered on that date to remain in effect.

On March 25, 1981, Richard and Nancy Avila filed a Chapter 7 Petition for Relief under the Bankruptcy Code.

The following day, March 26th, the prior-imposed criminal sentences were ordered to commence and the cash appearance bonds were exonerated. That same day, Tritz sought and obtained an order from the District Court of Douglas County ordering that that court's Clerk, as garnishee, pay \$1,202.52 to Tritz, such sum to be deducted from the cash appearance bonds deposited by Mr. Avila. The sum as ordered, was paid over to Tritz; debtors received \$413.63, the balance of the bond amount after court costs.

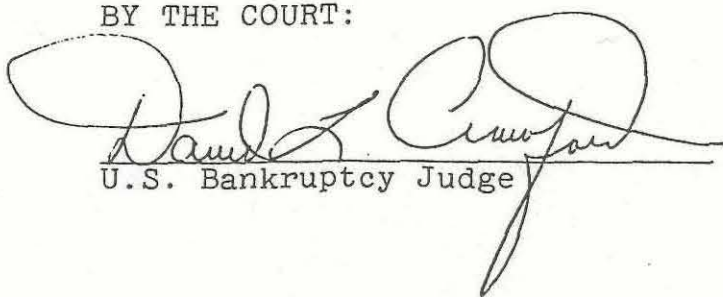
Schedule B-4 of the debtors' bankruptcy petition, filed March 25, 1981, claims the total amount of the cash appearance bonds as exempt property under the laws of the State of Nebraska, Section 25-1552 and Section 522 of the Bankruptcy Code.

Based upon these facts, I find that prior to the date of the debtors' petition for relief there existed a garnishment lien upon their property in the amount of \$1,095 by virtue of a default judgment rendered in Omaha Municipal Court. The provisions of Bankruptcy Code Section 522(f)(1) allow a debtor to avoid any judicial lien upon his property to the extent such lien impairs an exemption to which he would otherwise have been entitled.

I find the garnishment lien to be a judicial lien subject to Section 522(f)(1) and as such voidable. A separate judgment is entered in accordance with the foregoing.

DATED: January 21, 1982.

BY THE COURT:


U.S. Bankruptcy Judge

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