

03854, the debtors filed motions to avoid judicial liens, attached to real property used by the debtors as their residence, in favor of BPPR and Banco Santander Puerto Rico ("BSPR"). The debtors claimed that the liens of BPPR and BSPR impaired their homestead exemption. This Court found that even before consideration of the judicial liens, the debtors had no equity in the real property from which to claim a homestead exemption. Accordingly, this Court held that the liens of BPPR and BSPR did not impair an exemption of the debtors and thus could not be avoided under 11 U.S.C. § 522(f).

In the present case, the Court found that the facts had not changed, that the same property was at issue, that the mortgages on the property still exceeded the value of the property and that the debtors were seeking to avoid the lien of one of the same creditors as in the previous petition. The Court found that the lien of BPPR could not be avoided because it did not impair an exemption to which the debtors were entitled. The Court also found that the debtors' motion to avoid BPPR's lien was frivolous, having been decided against the debtors in a previous case. Accordingly, the Court denied the debtors' motion to avoid the judicial lien of BPPR and awarded BPPR \$300 as reasonable attorney's fees as a sanction against debtors for filing their frivolous request.

In the debtors' motion for reconsideration, the debtors correctly point out that 11 U.S.C. § 522(f) was amended in 1994 and that the amendment changes the outcome of this matter. The debtors

are permitted to exempt \$15,000 each in value in real property used as a residence pursuant to 11 U.S.C. § 522(d)(1). This subsection indicates that the exemption is under subsection (b)(1) of § 522.

For purposes of lien avoidance the Bankruptcy Code, as amended, provides that:

Notwithstanding any waiver of exemptions . . . 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). This section further provides that:

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 the absence of any liens.

11 U.S.C. § 522(f)(2)(A).

Citing the legislative history of the Bankruptcy Reform Act of 1994, Collier on Bankruptcy indicates that:

[n]ow it is clear that a debtor may avoid a judicial lien when the debtor has no equity in the property over and above a lien which is senior to the judicial lien the debtor is attempting to avoid. . . . Congress intended to protect a debtor's residual interests in the property, such as a possessory interest, from a judicial lien.

2 Collier on Bankruptcy 522-100, 522-101 (15th ed. Supp. 1995).

Accordingly, the Court will apply the new test for determining whether the lien of BPPR impairs an exemption to which the debtors

are entitled. BPPR indicates that its judicial lien is in the amount of \$220,000 for personal loans. The debtors indicate that there are two mortgages on the property, one that has been reduced to the amount of \$68,000 and the other in the amount of \$200,000. If there were no liens on the property the debtors could claim \$15,000 each as exempt under 11 U.S.C. § 522(d)(1). Assuming no other exemptions apply to this property, the debtors could claim an aggregate exemption of \$30,000. In the absence of any liens, the value of the debtors' interest in the property would be \$200,000 or, in this case, the value of the property. Thus, BPPR's lien impairs the debtors' exemption to the extent that the sum of the lien (\$220,000), the mortgages on the property (\$268,000), Santander's lien on the property in the amount of (\$45,000) and the debtors' exemption (\$30,000), exceed the value that the debtors' interest in the property would have in the absence of any liens (\$200,000). The total of BPPR's lien, the other liens and the debtors' exemption is \$563,000. This exceeds the value of the debtors' interest in the property in the absence of any liens by \$363,000. Accordingly, based on the information provided by the debtors, they may avoid the entire amount of BPPR's lien.

BPPR, however, has raised an issue regarding the validity of the second mortgage on the debtors' property. The second mortgage is in the amount of \$200,000 and payable to the holder in due course. BPPR requests that the debtors be ordered to amend their

schedules to indicate the name and address of the holder of the mortgage note for \$200,000 and the outstanding balance of the debt it guarantees. The debtors will be required to provide this information before the Court will issue an order avoiding BPPR's lien on the property. If the debtors are able to provide evidence of the \$200,000 mortgage note, information regarding the holder of the note and the outstanding balance, the Court will grant the debtors' motion to avoid the lien of BPPR.

BSPR has filed a motion requesting dismissal of the debtors' motion to avoid its lien and requesting attorney's fees (Dkt. #10). The debtors have indicated in their motion for reconsideration of the decision denying their motion to avoid BPPR's lien that a motion to avoid the lien of BSPR is pending resolution by the Court. Neither the file nor the case docket reflect that the debtors have filed a motion to avoid the lien of BSPR in this case. Thus, BSPR's answer is not ripe and will not be decided at this time.

ORDER

Wherefore, IT IS ORDERED that the debtors' motion to reconsider this Court's Decision and Order entered on July 20, 1995 is GRANTED. This Court's Decision and Order entered on July 20, 1995 is hereby VACATED.

IT IS FURTHER ORDERED that the debtors shall amend their schedules within twenty (20) days to indicate the name and address

of the holder of the mortgage note for \$200,000 and provide evidence as to the outstanding balance of the debt the note guarantees.

SO ORDERED.

Dated at San Juan, Puerto Rico, this _____ day of August, 1995.

BY THE COURT:

GERARDO A. CARLO
U. S. Bankruptcy Judge