Lien Avoidance in Mississippi Consumer Bankruptcy Cases

11 U.S.C. § 522(f)(1)(A) and (B)

I. Overview

Section 522(f) of the Bankruptcy Code permits an individual debtor to avoid certain liens that impair an exemption to which the debtor would have been entitled. The provision applies in both Chapter 7 and Chapter 13 cases and operates independently of cram down or lien stripping principles under 11 U.S.C. §§ 506 and 1322. *Tower Loan of Mississippi, Inc. v. Maddox (In re Maddox)*, 15 F.3d 1347, 1353–54 (5th Cir. 1994).

Whether a lien is avoidable requires the following analysis:

1. Did the lien "fix" on an interest of the debtor in property?
2. Is the lien either:
    a. A judicial lien within § 522(f)(1)(A); or
    b. A nonpossessory, nonpurchase-money security interest within § 522(f)(1)(B)?
3. Is the property exempt under Mississippi law?
4. Does the lien impair the exemption under the formula set forth in § 522(f)(2)?
5. If the lien impairs the exemption, is it avoidable in full or only in part?

II. Statutory Grounds for Avoidance

Section 522(f)(1) provides, subject to specified exceptions, that a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent the lien impairs an exemption to which the debtor would have been entitled if the lien is:

1. A judicial lien, other than a judicial lien securing a debt of the kind specified in § 523(a)(5); or
2. A nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B).

Section 522(f) permits avoidance of the "fixing" of a lien on an interest of the debtor. The debtor therefore must have possessed an interest in the property before the lien attached to that interest. If the debtor acquired the property interest and the lien simultaneously, § 522(f) does not permit avoidance because the lien did not fix on a preexisting interest of the debtor. See *Farrey v. Sanderfoot,* 500 U.S. 291, 111 S. Ct. 1825, 114 L. Ed. 2d 337 (1991

A. Judicial Liens Under § 522(f)(1)(A)

A "judicial lien" is a lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding. 11 U.S.C. § 101(36).

Miss. Code Ann. § 11-7-189 provides:

> The clerk shall, within twenty (20) days after the adjournment of each term of court, enroll all final judgments rendered at that term in the order in which they were entered on the minutes by entering [the judgment on] The Judgment Roll…

Miss. Code Ann. § 11-7-191 provides:

> A judgment so enrolled shall be a lien upon and bind all the property of the defendant within the county where so enrolled, from the rendition thereof, and shall have priority according to the order of such enrollment, in favor of the judgment creditor, his representatives or assigns, against the judgment debtor and all persons claiming the property under him after the rendition of the judgment. A judgment shall not be a lien on any property of the defendant thereto unless the same be enrolled. In counties having two (2) judicial districts, a judgment shall operate as a lien only in the district or districts in which it is enrolled.

So, properly enrolled judgments automatically attach to any real property of the Judgment Debtor in the county (or judicial district) where the judgment is enrolled.

The only real property which is exempt in Mississippi is qualified homestead (Miss. Code Ann. § 85-3-21).

Judicial liens securing domestic-support obligations of the kind described in § 523(a)(5) are expressly excluded from avoidance under § 522(f)(1)(A).

III. Nonpossessory, Nonpurchase-Money Security Interests Under § 522(f)(1)(B)

Section 522(f)(1)(B) applies more narrowly than § 522(f)(1)(A). It permits avoidance only if:

1. The lien is a nonpossessory, nonpurchase-money security interest;

2. The collateral falls within one of the categories listed in § 522(f)(1)(B); and

3. The lien impairs an exemption to which the debtor would have been entitled.

The categories of items eligible for lien avoidance under § 522(f)(1)(B) are:

1. Household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, and jewelry held primarily for the personal, family, or household use of the debtor or a dependent;

2. Implements, professional books, and tools of the trade of the debtor or a dependent; and

3. Professionally prescribed health aids for the debtor or a dependent.

B. Statutory Definition of "Household Goods"

For purposes of § 522(f)(1)(B), "household goods" is limited by § 522(f)(4)(A) and (B). The statute identifies covered items and also imposes specific exclusions and value limitations.

522(f)(4)(A) provides that, subject to specifically excluded items listed in 522(f)(4)(B) the term “household goods”, as used in paragraph (1)(B), means-

(i)clothing;

(ii)furniture;

(iii)appliances;

(iv)1 radio;

(v)1 television;

(vi)1 VCR;

(vii)linens;

(viii)china;

(ix)crockery;

(x)kitchenware;

(xi)educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

(xii)medical equipment and supplies;

(xiii)furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

(xiv)personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

(xv) 1 personal computer and related equipment.

Pursuant to 522(f)(4)(B) household goods does not include

(i) works of art (unless by or of the debtor, or any relative of the debtor);

(ii) electronic entertainment equipment with a fair market value of more than $900 in the aggregate (except 1 television, 1 radio, and 1 VCR);

(iii) items acquired as antiques with a fair market value of more than $900 in the aggregate;

(iv) jewelry with a fair market value of more than $900 in the aggregate (except wedding rings); and

(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

IV. Mississippi Exemptions

For a lien on property to be avoidable the item must be eligible for lien avoidance as set forth above in § 522 and also exempt under Mississippi law (Mississippi has opted out of the federal exemption scheme. Miss. Code Ann. § 85-3-2).

A. Real Property

Miss. Code Ann. § 85-3-21 provides for a homestead exemption of $75,000 of equity. Miss. Code Ann. § 85-3-1(h) provides for an additional exemption of property having a value of $50,000.00 of whatever type, whether real, personal or mixed, tangible or intangible to any Mississippi resident who is seventy 70 years of age or older.

B. Personal Property

Miss. Code Ann. § 85-3-1(a), allows a Debtor to exempt the following tangible personal property up to $10,000 in value:

- (i) Household goods, wearing apparel, books, animals or crops;
- (ii) Motor vehicles;
- (iii) Implements, professional books or tools of the trade;
- (iv) Cash on hand;

- (v) Professionally prescribed health aids;
- (vi) Any items of tangible personal property worth less than Two Hundred Dollars ($200.00) each.

The statute further defines "household goods" to mean clothing, furniture, appliances, one (1) radio and one (1) television, one (1) firearm, one (1) lawn mower, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the debtor and his dependents; however, works of art, electronic entertainment equipment (except one (1) television and one (1) radio), jewelry (other than wedding rings), and items acquired as antiques are not included within the scope of the term "household goods."

V. Does the Lien Impair an Exemption?

Section 522(f)(2)(A) provides a mathematical formula to determine whether a lien "impairs an exemption" and is thus subject to avoidance. A lien is considered to impair an exemption only to the extent that the sum of—

1. The targeted lien;

2. All other liens on the property; and

3. The allowed exemption on the property subject to the lien;

exceeds the value that the debtor's interest in the property would have been in the absence of any liens.

The amount avoided is the lesser of:

1. The amount of impairment produced by the formula; or

2. The amount of the targeted lien.

If the calculation produces zero or a negative number, the lien does not impair the exemption and cannot be avoided under § 522(f).

VI. Surplus Equity and Partial Avoidance

A. Surplus Equity

If the value of the debtor's interest exceeds the total of:

1. The targeted lien;

2. All other liens; and

3. The available exemption,

the formula produces no impairment. In that circumstance, the targeted lien cannot be avoided under § 522(f).

B. Partial Avoidance

Section 522(f) authorizes avoidance only "to the extent" the lien impairs the exemption. If the impairment is less than the amount of the targeted lien, the lien is avoided only in part. The remaining portion continues to encumber the property.

VII. Multiple Liens and Order of Calculation

Section 522(f)(2)(B) provides that, when property is subject to more than one lien, a lien already avoided is not included when calculating impairment with respect to another lien.

As a practical matter, liens should be tested in reverse order of priority:

1. Apply the formula first to the most junior avoidable lien.

2. Determine the amount, if any, avoided.

3. Exclude the avoided amount when testing the next more senior lien.

4. Continue the process until each targeted lien has been analyzed.

Failing to recalculate after avoiding a junior lien can improperly overstate the impairment of a more senior lien. *Hanger v. Bank of America, N.T. & S.A. (In re Hanger)*, 196 F.3d 1292, 1296–97 (9th Cir. 1999)