

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

GORDON AND DEBRA M. FLEMING

CASE NO.95-11210  
CHAPTER 7

Debtors  
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APPEARANCES:

PAUL M. FISCHER, ESQ.  
Attorney for debtors  
36 Park Street  
Canton, New York 13617

Hon. Robert E. Littlefield, U.S. Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

This matter is before the Court by way of motion dated May 17, 1995 by Gordon and Debra Fleming (hereinafter "Debtors") to avoid certain judgment liens pursuant to 11 U.S.C. §522(f)(2) (1995) (11 U.S.C. §§101-1330 as amended by Pub.L.No. 103-394 hereinafter the "Code"). This matter is within the Court's core jurisdiction under 28 U.S.C. §§1334(b) and 157(b)(2)(B).

FACTS

The facts are not in dispute.

The Debtors' principal residence known as HC-61, Box 392, Massena, St. Lawrence County, New York possessed a value as of the petition date in the amount of \$14,000 (hereinafter "Property"). The Property is owned solely by Debtor Gordon Fleming. As of the petition date, the Property was not

encumbered by any mortgages but was subject to an unavoidable tax lien in the amount of \$31,039. The Property was also subject to the following judicial liens:

a) \$1,777 entered on December 17, 1993 in favor of Charles Negus, DDS ("Negus");

b) \$1,335.94 entered on May 3, 1994 in favor of Beneficial Finance ("Beneficial"); and

c) \$680 entered on June 6, 1994 in favor of Webb Wilhelm Surveyors ("Wilhelm").

New York's homestead exemption permits an individual debtor to exempt up to \$10,000. No opposition was offered to the Debtors' motion.

#### DISCUSSION

The Debtors seek to avoid the judicial liens in their entirety. The Debtors concede that they do not possess equity in the Property above the unavoidable tax lien. They assert that, pursuant to Code §522(f), the liens may be avoided in the absence of equity in the Property.

The applicable homestead exemption is set forth at §5206 of the New York Civil Practice Law and Rules (hereinafter "NYCPLR"). It permits the exemption in an amount not exceeding \$10,000 "in value above liens and encumbrances" from application to the satisfaction of a "money judgment." NYCPLR §5206(a). The

exemption does not apply to "taxation" or "sale for non-payment of taxes or assessments." Id. The applicability of the exemption to a money judgment requires a determination of equity over and above unavoidable liens. See e.g. In re Bovay, 112 B.R. 503, 505 (Bankr.N.D.N.Y. 1989).

Here, if the exemption were applied in a straightforward fashion, none of the judicial liens would be exempt because the tax lien alone in the amount of \$31,039 exceeds the value of the Property by \$17,039. The absence of equity above the tax lien would render the homestead exemption inapplicable. In In re Bovay, supra, the Court (Gerling, J.) reasoned that where the debtor would not be entitled to an exemption in the absence of the judicial lien in question, the exemption would not be "impaired" thereby, and concluded that therefore the judicial lien could not be avoided under pre-amendment §522(f).

Although New York's homestead exemption has remained substantively unchanged, Congress's 1994 amendments to Code 22(f) operate to expand the exemption. Debtors are no longer required to possess equity in their homestead as of the petition date in order to avoid judicial liens pursuant to Code §522(f). Code §522(f)(2), as amended, expressly provides that a judicial lien "shall be considered to impair an exemption" to the extent that the total of all unavaoided liens plus that maximum statutory exemption exceeds the debtor's maximum interest in the property. Here, the total of the liens and exemption (\$44,831) exceed the Debtors' interest in the Property (\$14,000) by

\$30,831. According to the amended statute, the full amount of each of the judicial liens impair the Debtor's homestead exemption.

Based upon the foregoing reasons, it is **ORDERED** that the above-referenced liens against the Property in favor of Negus, Beneficial and Wilhelm are hereby avoided in their entirety.

Dated: Albany, New York  
July , 1995

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Hon. Robert E. Littlefield  
U.S. Bankruptcy Judge