

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN re:

HAROLD S. AND MARY J. BUSH

CHAPTER 7

CASE NO. 95-11317

DEBTORS

APPEARANCES:

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

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

MEMORANDUM-DECISION AND ORDER

This matter is before the Court by way of motion dated May 17, 1995 by Mary and Harold Bush (hereinafter "Debtors") seeking to avoid a judicial lien on their homestead pursuant to 11 U.S.C. §522(f) (hereinafter "Motion")

FACTS

As of the date that the Debtors filed their voluntary Chapter 7 petition they owned their principal residence known as East Hill Road, Box 405, S. Colton, New York which they valued in their schedules in the amount of \$27,808 (hereinafter the "Property"). Also as of the petition date, the Property was subject to a first priority consensual lien securing an

obligation in the amount of \$27,607. The Property was also subject to a prepetition judicial lien held by Canton Potsdam Hospital in the amount of \$1,916.94.

A hearing on the Motion was conducted on June 12, 1995 at which the Debtors appeared through counsel and argued that Code §522(f), as amended in October 1994, effected a substantive change which permitted Debtors' avoidance of the judicial lien in its entirety notwithstanding the existence of only \$201 of equity in their homestead.

No opposition to the Debtors' Motion was noted.

DISCUSSION

As amended, Code §522(f) requires a finding that a judicial lien impairs an exemption to the extent that the total of all unavaoided liens plus the maximum statutory exemption exceeds the debtor's interest in the property. The existence of a debtor's equity in the property, i.e., value of the property above aggregate unavoidable liens as of the petition date, has been rendered statutorily irrelevant by the October 1994 amendment.

Here, the total of the liens and Debtors' homestead exemptions (\$49,523.94) exceed the Debtors' interest in the Property (\$27,808) by \$21,705.94 which is the extent of the impairment of Debtors' homestead exemption. Since the extent of the impairment exceeds Canton Potsdam Hospital's judicial lien which is sought to be avoided (\$1,916.94), it is avoidable in its

entirety.

Based upon the foregoing reasons, it is **ORDERED** that the judgment lien entered in favor of Canton Potsdam Hospital in the amount of \$1,916.94 on November 12, 1993 is hereby avoided in its entirety.

Dated: July____, 1995
Albany, New York

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