

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF ALASKA**

In re:

NICHOLAS JOSEPH VETTER,

Debtor.

Case No. 12-00203-GS

Chapter 7

**ORDER REGARDING MOTION TO AVOID JUDGMENT LIEN**

The court has before it the Motion to Avoid Lien of Creditor Ford Motor Credit Company LLC in Debtor's Real Property (ECF No. 36) ("Motion to Avoid Lien") filed by debtor Nicholas Vetter to avoid a judgment lien held by Ford Motor Credit Company. The motion was duly noticed and served upon the chairman and chief executive officer of the company. No opposition has been filed. However, the court is unable to grant the relief requested on the record before it because the debtor has not exempted any interest in the real property encumbered by the judicial lien.

The debtor's right to avoid a judgment lien is defined in § 522(f)(1);

Notwithstanding any waiver of exemptions but subject to paragraph (3), 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, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)[.]

The Bankruptcy Appellate Panel has summarized the elements of lien avoidance under § 522)(f)(1)(A) as follows:

First there must be an exemption to which the debtor "would have been entitled under subsection (b) of this section." 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed exempt. Third, the lien must impair that

exemption. Fourth, the lien must be . . . a judicial lien.

*Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390–91 (9th Cir. B.A.P. 2003) (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal.1992), *aff'd*, 24 F.3d 247 (9th Cir. 1994)); see also *Green v. Hapo Cmty. Credit Union (In re Green)*, 2013 WL 4055846, at \*4 (9th Cir. B.A.P. Aug. 12, 2013).

In this instance, the debtor has not fully satisfied the second element required under *Goswami* because he did not claim any exemption in the real property encumbered by the judgment lien. The debtor explains that he did not claim an exemption because there was no equity in the real property at the time he filed his bankruptcy. While understandable, a claimed exemption remains the keystone of lien avoidance under § 522(f). Otherwise, there can be no impairment by the judicial lien. Moreover, the debtor is permitted to exempt property without present equity based on the anticipation that he will amass equity in the future. *In re Goswami*, 304 B.R. at 390 n.4 (citing *Higgins v. Household Fin. Corp. (In re Higgins)*, 201 B.R. 965, 967 (9th Cir. B.A.P. 1996)(debtor who claimed exemption of \$1.00 was permitted to avoid lien, even though “the claimed exemption amount was de minimis.”); *In re Green*, 2013 WL 4055846, at \*6 (debtor’s exemption of \$0.00 supported lien avoidance).

The debtor’s failure to exempt an interest in his property is not fatal. The debtor’s right to amend exemptions does not terminate on the closure of his case. However, unlike the motion to avoid the lien, the debtor must seek to reopen the bankruptcy case to amend his exemptions. Fed. R. Civ. P. 1009(a); see also *In re Green*, 2013 WL 4055846, at \*4-\*6 (BAP held that debtors could reopen their case and amend their exemptions for the purpose of seeking to avoid a judicial lien). It is also worth noting that reopening the bankruptcy and amending the debtor’s exemptions does not entitle the debtor to immediate relief on the motion to avoid the judicial lien. The debtor must serve notice of his amended Schedule C on the trustee and Ford Motor

Credit as provided in Rule 1009(a). Further, amendment of his exemptions necessarily brings a new period to object to the amended exemption. *See* Fed. R. Bankr. P. 4003(b)(1). The court will defer ruling on the pending motion for 60 days to afford the debtor the opportunity to remedy these deficiencies.

For these reasons,

**IT IS ORDERED** that the court shall defer ruling on the debtor's Motion to Avoid Lien of Creditor Ford Motor Credit Company LLC in Debtor's Real Property (ECF No. 36) until **April 7, 2017**, to permit the debtor to reopen his bankruptcy case, amend his exemptions, and serve notice of the amended exemptions as required under Fed. R. Bankr. P. 1009(a). If no objections to the amended exemptions are filed within 30 days after service of such notice, the debtor may then file a certificate of no objection to the existing Motion to Avoid Lien. *If the debtor fails to accomplish these tasks by April 7, 2017, the Motion to Avoid Lien shall be DENIED without further order or hearing.*

DATED: February 7, 2017.

BY THE COURT

/s/ Gary Spraker  
GARY SPRAKER  
United States Bankruptcy Judge

Serve: Valerie Therrien, Esq.  
Ford Motor Company, Attn: Nancy Joy Falotico, CEO, One American Road, Dearborn, MI 48126  
L. Compton, Trustee  
U.S. Trustee  
SVS