

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

IN RE:)	CHAPTER 7
)	CASE NO. 02-12496
JERRY E. JONES,)	
)	
DEBTOR.)	
)	
IN RE:)	CHAPTER 7
)	CASE NO. 02-12497
LARRY E. JONES,)	
)	
DEBTOR.)	

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Debtors: John C. Spurlin
Post Office Box 7566
Tifton, Georgia 31793-7566

For Respondent: David A. Garland
Post Office Drawer 71727
Albany, Georgia 31708-1727

MEMORANDUM OPINION

This matter comes before the Court on Debtors', Jerry Jones and Larry Jones, motions to avoid judicial lien made in their respective cases. Despite the fact that these cases have not been administratively consolidated, the Court combined the hearing of each motion and herein combines its opinion on each motion. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(A), (K), and (O). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

Larry Jones and Jerry Jones filed separate Chapter 7 petitions on October 24, 2002. On the date that Debtors filed their petitions, Sumner-Rainbow Farm Services, Inc. held a claim in the amount of \$150,884.38 against Debtors, arising from a judgment entered in the Superior Court of Worth County, Georgia, on June 22, 2000.

On the petition date, Jerry Jones owned the following real property: (1) a residence on a 34.1 acre tract of land (the "Jerry Jones residence") valued at \$180,000; (2) a 63.71 acre tract of land on which a packing shed is located (the "packing shed tract") valued at \$300,000 to \$382,000; and (3) an undivided half interest in a 401 acre tract of land (the "401 acre tract"), the full value of which is between \$441,166 and \$541,500. On the petition date, Larry Jones owned the following real property: (1) a residence on a 3.89 acre tract of land (the "Larry Jones residence"), valued at \$157,000, and (2) an undivided half interest in the 401 acre tract. In addition, Debtors' father, John Jones, Jr., a nondebtor, owned (1) a 220

acre tract of land, valued at between \$220,000 and \$330,000, and (2) a 340 acre tract, valued at between \$374,000 and \$578,000.

A number of creditors filed proofs of claim in both cases, asserting security interests in the various properties.¹ Ag Georgia Farm Credit filed claims for \$567,034.09, secured by a first priority position in the Jerry Jones residence, a first priority position in the 401 acre tract, and a first priority position in the father's 220 acre tract. MCJR, LLC filed claims for \$188,615.69, secured by a first priority position in the father's 340 acre tract and a second priority position in both residences. Roger Medders filed claims for \$19,357.00, secured by a second priority position in the 401 acre tract. Sylvester Banking Co. filed claims totaling \$544,166.56, secured by a first priority position in the packing shed tract and a third priority position in both residences. SunTrust Bank filed claims totaling \$106,707.67, secured by a first priority position in the Larry Jones residence. The relative positions of each creditor with respect to each piece of property can be charted as follows²:

Larry Jones residence: \$157,000

1. SunTrust: \$106,707.67
2. MCJR: \$188,615.69
3. Sylvester: \$544,166.56

Jerry Jones residence: \$180,000

1. Ag Georgia: \$567,034.09
2. MCJR: \$188,615.69
3. Sylvester: \$544,166.56

¹ Although Debtors' father pledged certain property as collateral for two of the debts, he is not personally liable for any of the debts at issue.

² For purposes of this opinion, where the value of the property is disputed, the Court will assume without deciding that the higher value, which is more favorable for the judgment creditor, applies.

401 acre tract: \$541,500

1. Ag Georgia: \$567,034.09
2. Roger Medders: \$19,357.00

Packing shed tract: \$382,000

1. Sylvester: \$544,166.56

Father's 220 acre tract: \$330,000

1. Ag Georgia: \$567,034.09

Father's 340 acre tract: \$578,000

1. MCJR: \$188,615.69

On November 12, 2002, Debtors separately filed motions to avoid the judgment lien of Sumner-Rainbow. On October 28, 2003, Larry Jones filed amended exemptions as follows: \$1,500 in household furnishings, \$3,000 in a 1996 Chevy pickup, \$5,250 in the 401 acre tract, \$300 in a savings account, \$50 in a checking account, and \$100 in a shotgun. On October 29, 2003, Jerry Jones filed amended exemptions as follows: \$1,500 in household furnishings, \$1,000 in a 1989 Chevy pickup, \$4,000 in a 1997 Chevy pickup, \$5,450 in the 401 acre tract, \$50 in a savings account, \$50 in a checking account, \$10,000 in his residence, \$1,500 in a shotgun and rifle, and \$50 in a second checking account. On October 29, 2003, Debtors amended their motions to avoid the judgment lien to incorporate the amended exemptions. The Court held a hearing on October 30, 2003, on the motions to avoid the judgment lien. During the hearing, both Debtors testified that their intent in amending their schedules was to take full advantage of any exemptions available to them.

Conclusions of Law

Amendment of Exemptions

The Federal Rules of Bankruptcy Procedure take a permissive approach to the

amendment of schedules during the pendency of a bankruptcy case. See In re Brown, 260 B.R. 311, 312 (Bankr. M.D. Ga. 2001) (Walker, J.). Exemptions are reported on Schedule C, and thus are subject to Bankruptcy Rule 1009(a), which provides that “[a] voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed.” As a result, the Court will permit Debtors to amend their schedules as necessary to take full advantage of any exemptions to which they may be entitled. However, their claimed exemptions may not exceed the amount permitted by law.

Avoidance of Judgment Lien

Section 522(f) of the Bankruptcy Code allows a debtor to avoid the fixing of a judgment lien to the extent it impairs the debtor’s exemptions. The Code section provides as follows:

[T]he 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”

. . .

[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.A. § 522(f)(1)(A), (f)(2)(A) (West Supp. 2003).

Thus, Congress has provided a simple mathematical formula for determining whether

a judgment lien may be avoided.³ However, the Eleventh Circuit Court of Appeals has permitted deviation from the plain language of Section 522(f)(2)(A) when its application resulted in a windfall to the debtor. Lehman v. VisionSpan, Inc. (In re Lehman), 205 F.3d 1255, 1257 (11th Cir. 2000). In Lehman, the debtor and his nondebtor wife each owned an undivided half interest in the marital residence, which had a total value of \$225,000. The property was encumbered by a \$165,000 mortgage, leaving a total of \$60,000 in equity, \$30,000 of which was attributable to the debtor's interest. A judgment creditor had a lien against the property in the amount of \$53,878.19. A strict reading of the statute required the full amount of the mortgage to be applied against only the debtor's half interest in the property, apparently leaving no equity on which the judgment lien could fix. In other words, the total of the judgment lien, the full mortgage debt, and debtor's exemption, minus the debtor's one-half interest equaled full avoidance of the judgment lien. Thus, the debtor was able to shield his full \$30,000 in equity even though he was only entitled to an exemption of \$5,312. Id. at 1256. The court of appeals said that in these circumstances, "a literal interpretation [of § 522(f)(2)(A)] would disserve the legislative intent behind the provision,"

³ The judgment creditor has argued that its lien should attach to the Larry Jones residence because Larry Jones failed to claim a homestead exemption on his amended exemptions. Because no exemption was claimed, the lien does not impair an exemption, according to the judgment creditor. However, the formula in § 522 does not require the Court to consider exemptions to which the debtor is entitled or that the debtor has actually claimed. Rather, the Court must consider the exemption to which the debtor would be entitled in the absence of any liens. As the legislative history notes, this section is intended to avoid a judgment lien even when the property is fully encumbered by a senior lienholder so that the debtor would be unable to take advantage of the exemption. Bankruptcy Reform Act of 1994, 140 Congr. Rec. H 10,764, sec. 303 (daily ed. October 4, 1994), reprinted in E Collier on Bankruptcy App. Pt. 9(b) (15th ed. rev'd 2003). Furthermore, as the Court noted, supra, Debtors will be permitted to amend their schedules as necessary to take full advantage of available exemptions.

which was “only to entitle the debtor to the debtor’s exemptions.” *Id.* at 1257. In *Lehman*, the court approved of “substituting, in the statutory formula, the *total value* of the home . . . in place of [the debtor’s] *interest* in the home in the absence of any liens.” *Id.* The court noted that the same result could be achieved “by substituting the value of the . . . mortgage attributable to [*the debtor’s*] *share* of the property . . . in place of the value of the mortgage on the *whole* property.” *Id.* The court concluded that “[t]here was no error in declining to follow a literal application of the language of § 522(f)(2)(A) which would produce an absurd result and would violate the Congressional intent.” *Id.* at 1258.

With the above framework in mind, application of the Section 522(f)(2)(A) formula to each of Debtors’ properties would result in avoidance of the judgment lien as to each property, as follows⁴:

Larry Jones’s residence

	\$150,884.38 (judgment lien)
+	\$839,489.92 (all other liens)
+	\$ 1.00 (exemption debtor could claim in absence of liens)
-	<u>\$157,000.00</u> (value debtor’s interest would have in absence of liens)
=	\$833,375.30 (extent to which lien may be avoided)

Jerry Jones’s residence

	\$ 150,884.38 (judgment lien)
+	\$1,299,816.34 (all other liens)
+	\$ 1.00 (exemption debtor could claim in absence of liens)
-	<u>\$ 180,000.00</u> (value debtor’s interest would have in absence of liens)
=	\$1,270,701.72 (extent to which lien may be avoided)

⁴ The Official Code of Georgia provides an exemption of up to \$10,000 in a residence. O.C.G.A. § 44-13-100(a)(1) (2002) In addition, a debtor is entitled to an exemption of up to \$600 in other property, plus any unused amount of the homestead exemption up to \$5,000. *Id.* § 44-13-100(a)(6). Thus, in the absence of any liens, Debtors could claim some portion of each real property as exempt. For purposes of this analysis, in order to consider Debtors’ motions most favorably for the judgment creditor, the Court will assume a minimum exemption of \$1 on each property.

Packing shed tract

	\$150,884.38 (judgment lien)
+	\$544,166.56 (all other liens)
+	\$ 1.00 (exemption debtor could claim in absence of liens)
-	<u>\$382,000.00</u> (value debtor's interest in the property would have in absence of liens)
=	\$313,051.94 (extent to which the lien may be avoided)

Each debtor's half interest in 401 acre tract

	\$150,884.38 (judgment lien)
+	\$586,391.09 (all other liens)
+	\$ 1.00 (exemption debtor could claim in absence of lien)
-	<u>\$270,750.00</u> (value debtor's one-half undivided interest in the absence of liens)
=	\$466,526.47 (extent to which the lien may be avoided)

Because each Debtor owns an undivided half interest in the 401 acre tract, Lehman may apply to prevent a windfall to Debtors. However, in this case, application of Lehman does not alter the outcome.

Each debtor's interest in 401 acre tract, using Lehman analysis

	\$150,884.38 (judgment lien)
+	\$586,391.09 (all other liens)
+	\$ 1.00 (exemption debtor could claim in absence of lien)
-	<u>\$541,500.00</u> (full value of the property in the absence of liens)
=	\$195,776.47 (extent to which the lien may be avoided)

In each of the above calculations, the extent to which the judgment lien may be avoided exceeds the amount of the judgment lien. As a result, under the plain language of Section 522, Debtors may avoid the fixing of the judgment lien in its entirety with respect to both of their residences, the packing shed tract, and the 401 acre tract.

The judgment creditor urges the Court to depart from the plain language of the statute by considering the impact of the father's two tracts in its analysis. According to the judgment creditor, if the Court considers the father's two properties in addition to Debtors' properties, it is possible to allocate the various debts among the various properties in such a

way that Debtors can realize equity in the 401 acres. Thus, allowing Debtors to avoid the lien with respect to the 401 acres would result in a windfall to them.

The judgment creditor would like the Court to split Ag Georgia's debt, allocating a portion of it to each of Ag Georgia's three pieces of collateral according to the property's percentage of the total value of the collateral. For purposes of this analysis, the Court will assume, without deciding, that it may consider the father's two properties.

Ag Georgia is owed \$567,034.09 and has first priority liens against three properties: the father's 220 acre tract, worth \$330,000; the Jerry Jones residence, worth \$180,000; and the 401 acre tract, worth \$541,500. The total value of these properties is \$1,051,500. The father's 220 acre tract is worth 31.38 percent of the total value, so it should be allocated 31.38 percent of the debt, or \$177,935.30. The Jerry Jones residence is worth 17.12 percent of the total value, so it should be allocated 17.12 percent of the debt, or \$97,076.24. The 401 acre tract is worth 51.50 percent of the total value, so it should be allocated 51.50 percent of the debt, or \$292,022.55.

Applying the judgment creditor's formula and evaluating the value remaining to satisfy other creditors would result as follows: MCJR's \$188,615.69 would be fully satisfied by the father's 340 acre tract. Ag Georgia would be fully satisfied by \$97,076.24 in the Jerry Jones residence, \$292,022.55 in the 401 acre tract, and \$177,935.30 in the father's 220 acre tract. SunTrust would be fully satisfied by the Larry Jones residence. Roger Medders would be fully satisfied by the 401 acre tract. And Sylvester would be partially satisfied by \$50,292.33 in the Larry Jones residence, \$82,923.76 in the Jerry Jones residence, and \$382,000 in the packing shed tract.

As to each property, the result can be charted as follows:

Larry Jones residence: \$157,000.00

1. SunTrust: \$106,707.67 (fully satisfied by this property)
2. MCJR: \$188,615.69 (fully satisfied by the father's 340 acres)
3. Sylvester: \$544,166.56 (\$50,292.33 satisfied by this property)

Jerry Jones residence: \$180,000

1. Ag Georgia: \$567,034.09 (\$97,076.24 satisfied by this property)
2. MCJR: \$188,615.69 (fully satisfied by father's 340 acres)
3. Sylvester: \$544,166.56 (\$82,923.76 satisfied by this property)

401 acres: \$541,550

1. Ag Georgia: \$567,034.09 (\$292,022.55 satisfied by this property)
2. R. Medders: \$19,357.00 (fully satisfied by this property)
3. judgment creditor: \$150,884.38 (fully satisfied by this property)
4. equity remaining for exemption: \$79,286.07

Packing shed tract: \$382,000

1. Sylvester: \$544,166.56 (\$382,000 satisfied by this property)

Father's 220 acre tract: \$330,000

1. Ag Georgia: \$567,034.09 (\$177,935.30 satisfied by this property)
2. equity remaining: \$152,064.70

Father's 340 acre tract: \$578,000

1. MCJR: \$188,615.69 (fully satisfied by this property)
2. equity remaining: \$389,384.31

This calculation leaves \$230,107.45 equity in the 401 acres, which is sufficient to satisfy the maximum allowable exemption of both debtors (\$5,600 each or \$11,200 total) and the judgment creditor. However, this calculation also leaves Sylvester, a secured creditor, with a shortfall. Sylvester will realize a total of \$515,216.09, which is \$28,950.47 less than it is owed.

The Court will not deviate from the plain language of the statute to benefit a judgment creditor at the expense of a senior secured creditor. However, Sylvester's shortfall

can be remedied while retaining the judgment creditor's lien by modifying the allocation of Ag Georgia's debt as follows: MCJR's \$188,615.69 would be fully satisfied by the father's 340 acres. Ag Georgia would be fully satisfied by \$68,125.77 in the Jerry Jones residence, \$168,908.32 in the 401 acres, and \$330,000 in the father's 220 acres. SunTrust would be fully satisfied by the Larry Jones residence. Roger Medders would be fully satisfied by the 401 acres. Sylvester would be fully satisfied by \$50,292.33 in the Larry Jones residence, \$111,874.23 in the Jerry Jones residence, and \$382,000 in the packing shed tract.

As to each property, the result can be charted as follows:

Larry Jones residence: \$157,000

1. SunTrust: \$106,707.67 (fully satisfied by this property)
2. MCJR: \$188,615.69 (fully satisfied by the father's 340 acres)
3. Sylvester: \$544,166.56 (\$50,292.33 satisfied by this property)

Jerry Jones residence: \$180,000

1. Ag Georgia: \$567,034.09 (\$68,125.77 satisfied by this property)
2. MCJR: \$188,615.69 (fully satisfied by father's 340 acres)
3. Sylvester: \$544,166.56 (\$111,874.23 satisfied by this property)

401 acres: \$541,550

1. Ag Georgia: \$567,034.09 (\$168,908.32 satisfied by this property)
2. R. Medders: \$19,357.00 (fully satisfied by this property)
3. judgment creditor: \$150,884.38 (fully satisfied by this property)
4. equity remaining for exemption: \$202,400.30

Packing shed tract: \$382,000

1. Sylvester: \$544,166.56 (\$382,000 satisfied by this property)

Father's 220 acre tract: \$330,000

1. Ag Georgia: \$567,034.09 (\$330,000 satisfied by this property)

Father's 340 acre tract: \$578,000

1. MCJR: \$188,615.69 (fully satisfied by this property)
2. equity remaining: \$389,384.31

In the above scenario, allowing Debtors to avoid the judgment lien would result in a

windfall to them because they could protect equity in the 401 acre tract in excess of the maximum allowable exemption. However, while such a scenario is possible, it is by no means probable (for example, Ag Georgia would have to be willing to foreclose on all three pieces of its collateral even though it could fully satisfy its debt by foreclosing on only two). Furthermore, equitable marshaling is unavailable to force the secured creditors with multiple pieces of collateral to draw from the various properties in a particular order. “The elements generally required to invoke the doctrine of marshaling are (i) two creditors of the same debtor; (ii) two or more funds belonging to that debtor; and (iii) one creditor with the right to resort to both funds with the other creditor having rights against only one.” In re Talmo, 192 B.R. 272, 275 (Bankr. S.D. Fla. 1996). In this case, two of the properties are solely owned by a nondebtor, Debtors’ father. Thus, the second element of the doctrine of equitable marshaling is not satisfied.

The uncertainty of a windfall distinguishes this case from Lehman, in which there was no escaping the conclusion that the court’s decision determined whether the debtor would receive a windfall. The potential windfall to Debtors in this case is dependant solely on the actions of creditors. The Court’s deviation from the plain language of the statute cannot, by itself, prevent that windfall. The mere possibility of a windfall to Debtors does not produce the absurd result necessary to justify such a deviation. The Court, therefore, will apply the statute as written. As demonstrated, supra, the judgment creditor’s lien cannot attach to any property of Debtors under the formula supplied by Congress in Section 522. As a result, Debtors’ motions to avoid the lien as to both Debtors’ residences, the 401 acre tract, and the packing shed tract will be granted, subject to Debtors’ amending their

exemptions so as not to exceed the amounts permitted under O.C.G.A. § 44-13-100(a).

An Order in accordance with this Opinion will be entered on this date.

Dated this 12th day of December, 2003.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

John C. Spurlin
Post Office Box 7566
Tifton, Georgia 31793-7566

David A. Garland
Post Office Drawer 71727
Albany, Georgia 31708-1727

David Mullis
Chapter 7 Trustee
Post Office Box 945
Valdosta, Georgia 31603-0945

Paul Cames
Chapter 7 Trustee
Post Office Box 8499
Warner Robins, Georgia 31095

This 12th day of December, 2003.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
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IN RE:)	CHAPTER 7
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ORDER

In accordance with the Memorandum Opinion entered on this date, the Court hereby GRANTS the motions made by Debtors' Jerry E. Jones and Larry E. Jones in their respective cases to avoid the judgment lien of Sumner-Rainbow Farm Services, Inc. The Court further hereby ORDERS Debtors to amend their exemptions to conform with the limits provided by law.

So ORDERED, this 12th day of December, 2003.

James D. Walker, Jr.
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

John C. Spurlin
Post Office Box 7566
Tifton, Georgia 31793-7566

David A. Garland
Post Office Drawer 71727
Albany, Georgia 31708-1727

David Mullis
Chapter 7 Trustee
Post Office Box 945
Valdosta, Georgia 31603-0945

Paul Cames
Chapter 7 Trustee
Post Office Box 8499
Warner Robins, Georgia 31095

This 12th day of December, 2003.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court