

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF KENTUCKY  
LEXINGTON DIVISION**

**IN RE:**

**ELIZABETH G. BARTILOW**

**CASE NO. 13-50290**

**DEBTOR**

**ORDER**

This matter is before the Court on the Debtor's Motion to Avoid Lien of Lexington Rental Homes ("Motion") [Doc. 12], and Lexington Rental Homes' Objection ("Objection") [Doc. 13]. The Motion seeks to avoid the creditor's judgment lien (\$17,758.69) against Debtor's residence located at 3284 Leestown Road, Lexington, Kentucky (the "Property") pursuant to 11 U.S.C. § 522(f)(1)(A).

Debtor filed her chapter 7 voluntary petition on February 8, 2013. Debtor was represented by Ginger C. Cord, Esq. On July 22, 2013, Ms. Cord filed a Motion to Withdraw as Counsel for Debtor which was granted and the Debtor has proceeded *pro se*. The Objection and the parties' dispute initially centered around the Property value.

On October 10, 2013, the Court held a valuation hearing and determined the Property value to be \$140,000.00 [Doc. 45]. The hearing on the Motion and Objection was continued to November 14, 2013 to afford the parties an opportunity to calculate the extent of any lien avoidance pursuant to § 522(f)(2)(A). The parties have been unable to agree on the calculation.

At the November 14, 2013 hearing, the parties agreed to the amount of the judgment lien (\$17,758.69) and the amount of the mortgage (\$107,907.96). The parties disagreed as to the amount of the exemption.

Debtor asserts the maximum amount, \$22,975.00, of the homestead exemption allowed under § 522(d)(1) of the Bankruptcy Code.<sup>1</sup> She also claims \$1,225.00 under the wildcard exemption under § 522(d)(5), plus \$6,225.00 under § 522(f)(3). See Debtor's Response to Valuation Hearing Determination [Doc. 47].

Lexington Rental Homes disputes both the wildcard exemption claim and the § 522(f)(3) claim.

As discussed by one treatise, in Owen v. Owen, 500 U.S. 305, 111 S. Ct. 1833, 114 L. Ed. 2d 350 (1991), the Supreme Court held that "the question to consider in determining whether avoidance is possible under § 522(f) is to ask not whether the debtor is entitled to exempt the property that is subject to the lien, but rather to ask whether the property would be exempt if the lien did not exist. If this is the case, then the judicial lien impairs the exemption and is subject to avoidance." 4 COLLIER ON BANKRUPTCY ¶ 522.11[3] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013).

Section 522(d)(5) provides:

(d) The following property may be exempted under subsection (b)(2) of this section:

...

(5) The debtor's aggregate interest in any property, not to exceed in value \$1,225 plus up to \$11,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.

11 U.S.C. § 522(d)(5). Debtor has claimed the full amount of the exemption under § 522(d)(1), but seeks an exemption in the amount of \$1,225.00 for her "aggregate interest in any property." The creditor objects to stacking this \$1,225.00 onto the \$22,975.00 claimed under § 522(d)(1) for purposes of calculating the extent of lien avoidance. Debtor has already claimed more than \$1,225.00 under § 522(d)(5) by claiming a \$900.00 exemption for a personal checking account

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<sup>1</sup> Debtor only claimed \$14,092.04 in her schedules under § 522(d)(1).

under § 522(d)(5) and \$3,500.00 for a 2012 tax refund under § 522(d)(5). [Doc. 1, p. 12].

Debtor may not now claim another exemption under § 522(d)(5) based on her interest in the Property.

Section 522(f)(3) does not provide a debtor with additional exemptions. Rather, the section places a cap on the lien avoidance powers available to debtors. In re Ehlen, 202 B.R. 742, 746 (Bankr. W.D. Wis. 1996).

The Court finds that the correct exemption amount to be used in the § 522(f)(2)(A) calculation is \$22,975.00.

Section 522(f)(2)(A) provides that a judgment lien impairs 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. § 522(f)(2)(A). The proper calculation here is: \$17,758.69 plus \$107,907.96 plus \$22,975.00 equals \$148,641.65 which exceeds \$140,000.00 by \$8,641.65.

IT IS HEREBY ORDERED that the judgment lien of \$17,758.69 is avoided to the extent of \$8,641.65.

Copy to:  
Debtor

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
***Tracey N. Wise***  
**Bankruptcy Judge**  
**Dated: Friday, November 22, 2013**  
**(tnw)**