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Hon. Thomas T. Glover
Chapter 7

4 UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

5 In re:) NO. 07-13402
6 ,)
7) MEMORANDUM IN SUPPORT OF MOTION
Debtor.) TO AVOID LIENS WHICH IMPAIR
8) HOMESTEAD

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10 The judgment liens held by Impart, Inc., Alan David Lien and Patricia S. Lien and Boeing
11 Employees Credit Union impair the debtor’s homestead and should be removed.

12 ISSUE PRESENTED

13 1. May the debtor avoid the lien of a Judgment Lien Creditor that impairs the
14 homestead even if the debt is ultimately found to be non-dischargeable?

15 ARGUMENT

16 Lien avoidance is found in §522 of the code. It provides that the debtor can avoid
17 a lien if in encumbers his homestead exemption. There is no mention made anywhere in the
18 section of the dischargeability or nondischargeability of the debt. In *In re F. James Ash* 166 B.R.
19 202, 30 Collier Bankr.Cas.2d 1961, Bankr. L. Rep. P 75,858 (Bky Conn 1994) the court held:

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21 A substantial number of courts considering this issue agree that a
22 debtor's avoidance power is not conditioned upon whether the
23 underlying debt is dischargeable unless the debt comes within the
24 categories of nondischargeable debts Congress expressly excepted
25 from the operation of § 522(c), none of which are relevant to the
26 present matter. [FN5] See *Walters v. United States Nat'l Bank of*
27 *Johnstown*, 879 F.2d 95, 97 (3d Cir.1989) (holding that a judicial
28 lien impairing an exempted homestead interest which is securing a
debt found to be nondischargeable under § 523(a)(2)(A) (fraud)
may still be avoided under § 522(f) ("Congress was well aware of
the relationship between [§§ 522 and 523], and carefully excepted
from the exemption section some, but not all, non-dischargeable
debts."); *In re Liming*, 797 F.2d 895, 898 (10th Cir.1986)
(nonpossessory, nonpurchase-money security interest avoided
pursuant to § 522(f)(2) notwithstanding that underlying debt was
found to be nondischargeable under § 523(a)(2)(B) (false financial
statement)) ("[A] debtor may bring an action to avoid a lien under
[§ 522(f)] even if the debt secured by that lien is declared
nondischargeable."); *In re Evaul*, 152 B.R. 31, 32
(Bankr.W.D.N.Y.1993) (judicial lien securing nondischargeable

1 student loan avoided because it impaired the debtor's homestead
2 exemption) ("[B]ecause [§ 522(c)] specifically enumerates certain
3 non-dischargeable pre-petition debts for which exempt property is
4 liable, Congress intended that [§ 522(f)] could be used to avoid
5 judicial liens on exempt property secured by non-dischargeable
6 debts not specifically protected by [§ 522(c)]."); *In re Henderson*,
7 155 B.R. 157, 159 (Bankr.W.D.Tex.1992) ("In a situation in which
8 the lien to be avoided is secured by a non-dischargeable debt,
9 Congress has determined that the prevailing concern is the federal
10 interest in seeing the debtor through bankruptcy with the sufficient
11 means necessary to maintain a basic standard of living. Thus, the
12 avoidance of a judicial lien which may impair a debtor's right to
13 exemptions is unaffected by the nature of the debt which is secured
14 by the lien."); *In re D'Amelio*, 142 B.R. 8, 9 (Bankr.D.Mass.1992)
15 (rejecting creditors' contention that a judicial lien securing
16 nondischargeable debt may not be avoided); *In re Gartrell*, 119
17 B.R. 405, 406 (Bankr.W.D.N.Y.1990) (judicial lien securing debt
18 claimed to be nondischargeable under § 523(a)(7) may be avoided
19 by the debtor); *In re Hampton*, 104 B.R. 527, 528
20 (Bankr.M.D.Ga.1989) (judgment lien based on a debt found to be
21 nondischargeable under § 523(a)(6) (willful and malicious injury)
22 avoidable to the extent that it impaired the debtor's homestead
23 exemption); *Miller v. Hulvey (In re Hulvey)*, 102 B.R. 703, 705
24 (Bankr.C.D.Ill.1988) ("[T]he provisions permitting lien avoidance
25 [do not] restrict the debtor's right to debts which are
26 dischargeable."); *In re Pipes*, 78 B.R. 981, 983
27 (Bankr.W.D.Mo.1987) ("[T]he ability to avoid a lien ... is not
28 dependent upon dischargeability."); *In re Ewiak*, 75 B.R. 211, 212
(Bankr.W.D.Pa.1987) ("[A] judicial lien based upon a
nondischargeable claim is ... avoidable, otherwise the protection
envisioned by § 522(c) would fail.").

FN5. Section 522(c) provides that "property exempted
under this section is not liable during or after the case for
any debt of the debtor that arose ... before the
commencement of the case," except that exempted property
remains liable to the kinds of nondischargeable debts
specified by Code § 523(a)(1) (taxes and customs duties)
and 523(a)(5) (alimony and child support), and for debts
related to financial-institution fraud. 11 U.S.C. § 522(c).

The court concurs with the reasoning of the above-cited cases and holds **that the judicial lien may be avoided in its entirety as impairing the debtor's exemption under § 522(d)(1), notwithstanding that any debt *205 resulting from this unliquidated claim may prove to be nondischargeable.** [emphasis supplied]

A similar conclusion was reached by Judge Klobucher of the Eastern District of Washington in *In Re Slater*, 188 B.R. 852 (Bankr.E.D.Wash., Aug 18, 1995). More recently, in *In re Yogesh B. Desai* 2005 WL 1719318 (Bankr.M.D.Fla.) the court addressed this same issue. It held:

The dischargeability provisions of the Bankruptcy Code do not govern the question of whether a judgment is avoidable under the Bankruptcy Code, unless the debt comes within the debts

1 Congress specifically excepted from Section 522(c), none of which
2 apply to this case. See *In re Ash*, 166 B.R. 202
(Bankr.D.Conn.1994) citing *Walters v. United States Nat'l Bank of*
3 *Johnstown*, 879 F.2d 95, 97 (3d Cir.1989); *In re Liming*, 797 F.2d
4 895, 898 (10th Cir.1986); *In re Evaul*, 152 B.R. 31, 32
(Bankr.W.D.N.Y.1993); *In re Gartrell*, 119 B.R. 405, 406
(Bankr.W.D.N.Y.1990) (judicial lien securing allegedly
5 nondischargeable debt under § 523(a)(7) may be avoided); *In re*
Hampton, 104 B.R. 527, 528 (Bankr.M.D.Ga.1989); *In re Hulvey*,
6 102 B.R. 703, 705 (Bankr.C.D.Ill.1988); *In re Pipes*, 78 B.R. 981,
983 (Bankr.W.D.Mo.1987).

7 There is no basis to deny lien avoidance based upon the dischargeability or non-
8 dischargeability of the judgment.

9 Dated this 8th day of May, 2008.

10 /s/ Marc S. Stern
11 Marc S. Stern
12 WSBA 8194
13 Attorney for Debtor
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