

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

In Proceedings
Under Chapter 7

SANDRA KAY BROWN

Case No. 98-40174

Debtor(s).

OPINION

Debtor, Sandra Brown, seeks to avoid the lien of creditor, First Deposit National Bank ("Bank"), on prepetition wages she has claimed as exempt under the Illinois "wild card" exemption provision. See 735 Ill. Comp. Stat. 5/12-1001(b). She asserts that the Bank's lien on these wages, withheld in a wage deduction proceeding prior to bankruptcy,¹ may be avoided under § 522 (f) (1) as impairing an exemption "to which [she] would have been entitled" but for the lien. See 11 U.S.C. § 522(f)(1)(A).²

The Bank objects that the debtor may not avoid its lien under § 522 (f) (1) (A) because the Illinois personal property exemption provisions are no longer applicable to wages being withheld in a wage deduction proceeding. The Bank maintains that since the debtor would not be entitled to exempt her

¹ Under Illinois law, a judicial lien is created on the debtor's wages at the time of service of summons in a wage deduction proceeding. See 735 Ill. Comp. Stat. 5/12-808(b).

²Under § 522(f)(1), a 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 [applicable exemption law], if such lien is --

(A) a judicial lien

11 U.S.C. § 522(f)(1)(A) (emphasis added).

withheld wages in the absence of any lien, she cannot employ § 522(f)(1)(A) to avoid the Bank's lien.

The issue raised by the parties, whether a debtor claiming exemptions under Illinois law may avoid a lien under § 522(f)(1) on wages withheld in a wage deduction proceeding, has been previously addressed in two thorough and well-reasoned opinions construing Illinois law. See In re Patterson, 216 B.R. 413 (Bankr. C.D. Ill. 1998); In re Franklin, 210 B.R. 560 (Bankr. N.D. Ill. 1997). This Court agrees with the courts' reasoning in those cases and adopts it as its own. The Patterson and Franklin courts began by noting that the Illinois personal property exemption statute was amended, effective December 31, 1996, to preclude a debtor from exempting wages "that are required to be withheld in [an Illinois] wage deduction proceeding."³ 735 Ill. Comp. Stat. 5/12-1001. The courts concluded that, as a result of this change, the debtors had no claim of exemption in withheld wages to be protected by avoidance of the creditors, liens under § 522(f)(1). See Patterson, 216 B.R. at 415; Franklin, 210 B.R. at 563. Accordingly, the courts declined to avoid the creditors, liens and denied the debtors' motions to avoid lien under § 522(f)(1)(A).

The debtor in the present case argues that the Patterson and Franklin decisions are in error as upholding, contrary to the Supreme Court's pronouncement in Owen v. Owen, 500 U.S. 305 (1991), the Illinois legislature's limitation of lien avoidance rights accorded debtors under federal bankruptcy law. However, the Court finds, as did the Patterson court in addressing a similar contention, that the debtor's argument "confuses an impermissible limitation of the lien avoidance power under § 522(f) with a state's power to permissibly restrict the scope of its exemptions." Patterson, at 416. The Court agrees with Patterson that, rather than limiting state law exemptions to unencumbered property and thus impermissibly "opting out" of federal lien avoidance, see Owen, 500 U.S. at 313-14, the Illinois legislature merely

³Prior to amendment, § 12-1001 excluded from exemption only those wages on which a wage deduction order had been entered. See 735 Ill. Comp. Stat. 5/12-1001 (1995).

amended its exemptions to exclude wages withheld in wage deduction proceedings instead of wages on which a wage deduction order has been entered. The state was free to amend its exemptions in this way and did not violate the Bankruptcy Clause of the Constitution by doing so. Patterson, at 416.

The debtor here persists that "if there were no garnishment lien in place," she would be able to exempt all the garnished funds because "the last sentence of the personal property exemption statute [prohibiting exemption of withheld wages] would not be in play," and the money at issue "would [merely] be earned wages in the employer's payroll account," which could be exempted under her wild card exemption. See Debtor's Resp. to Obj. to Mot. to Avd. Lien, filed April 15, 1998, ¶ 9, at 3. This argument, however, misconstrues the effect of lien avoidance under § 522 (f) (1) , equating it with the undoing of a wage deduction proceeding under state law. The debtor could not, by avoiding the lien afforded a creditor under the wage deduction statute, thereby nullify the wage deduction proceeding itself, and the debtor would have no greater exemption rights in wages withheld in that proceeding even in the absence of a lien. It is not the presence of a lien that prevents a debtor from exempting wages withheld in a wage deduction proceeding, but the wage deduction proceeding itself and the concomitant withholding of the debtor's wages. Thus, lien avoidance under § 522 (f) (1) (A) would serve no purpose in protecting the debtor's exemption rights.

For the reasons stated, the Court declines to avoid the Bank's lien in this case and, accordingly, finds that the debtor's motion to avoid lien under § 522(f)(1)(A) should be denied.

SEE WRITTEN ORDER.

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE

ENTERED: July 2, 1998