

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF VIRGINIA
Lynchburg Division**

In re SHAREN MARIE BREIDERT,) Case No. 07-62329-LYN
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MEMORANDUM and ORDER

This matter comes before the court on a motion by the debtor to avoid the judgment lien of “Beneficial”.¹

This Court has jurisdiction over this matter. 28 U.S.C. § 1334(a) & 157(a). This proceeding is a core proceeding. 28 U.S.C. § 157(b)(2)(A). This Court may enter a final order. This memorandum shall constitute the Court’s findings of fact and conclusions of law as required by Fed. R. Civ. P. 52, which is made applicable in this proceeding by Fed. R. Bankr. P. 7052.

Facts

On December 7, 2007, the Debtor filed the above styled petition. The Debtor scheduled real property, her residence, at a fair market value of \$127,100.00. The real property secures a consensual lien in the amount of \$62,156.07. The Debtor claimed the real property exempt in the amount of \$1,370.00. There is a judgment lien in favor of “Beneficial” in the amount of \$15,388.80 that attaches to the real property.

¹ The creditor in question identified itself only as “Beneficial” on its proof of claim.

On January 29, 2008, the Debtor filed a motion to avoid the judgment lien of Beneficial under 11 U.S.C. § 522(f).

Discussion.

The Court accepts well-pleaded facts as true, but those facts must give rise under the law to the relief requested.

. . . “[A] defendant's default does not in itself warrant the court in entering a default judgment. There must be a sufficient basis in the pleadings for the judgment entered. [Footnote omitted] As the Supreme Court stated in the “venerable but still definitive case”[Footnote omitted] of Thomson v. Wooster: a default judgment may be lawfully entered only “according to what is proper to be decreed upon the statements of the bill, assumed to be true,” and not “as of course according to the prayer of the bill.” 114 U.S. at 113, 5 S.Ct. at 792, 29 L.Ed. at 108. The defendant is not held to admit facts that are not well-pleaded or to admit conclusions of law. In short, despite occasional statements to the contrary, [Footnote omitted] a default is not treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover. Thomson v. Wooster; Ohio Central Railroad Company v. Central Trust Company of New York;

Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank, 515 F.2d 1200 (5th Cir 1975).

Section 522(f)(1)(A) provides:

- (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\(a\)\(5\)](#); or

Section 522(f)(2)(A) provides the manner by which it is to be determined whether a lien impairs an exemption.

- (2)(A) For the purposes of this subsection, 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.

Added together, the judgment lien amount and the consensual lien amount and the exemption amount total \$78,914.87 (= \$15,388.80 + \$62,156.07 + \$1,370.00). This amount is less than the value of the property, \$127,100.00. The judgment lien does not impair the exemption. The motion cannot be granted on these facts, the failure of Beneficial to respond notwithstanding.

ORDER

The Debtor's motion to avoid the judicial lien of Beneficial shall be and hereby is denied.

So ORDERED.

Upon entry of this Memorandum and Order the Clerk shall forward a copy to Henry Clark, IV, Esq., counsel for the debtor, Beneficial and the chapter 13 trustee.

Entered on this 16th day of April, 2008.



A handwritten signature in black ink, appearing to read "William E. Anderson", is written over a horizontal line. The signature is fluid and cursive.

William E. Anderson
United States Bankruptcy Judge