

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

**IN RE:** )  
 )  
**CATHERINE M. JEFFERSON** ) **CHAPTER 7**  
 )  
**Debtor.** ) **CASE NO. 13-62618**

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**CATHERINE M. JEFFERSON,** )  
 )  
**Movant,** )  
 )  
**v.** )  
 )  
**MIDLAND FUNDING, LLC and** )  
**ANDREW GOLDSTEIN,** )  
**CHAPTER 7 TRUSTEE,** )  
 )  
**Defendants.** )

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**ORDER**

The Court held a hearing on the Debtor’s Motion to Avoid the Judicial Lien of Midland Funding, LLC on March 20, 2014. The motion was taken under advisement and Debtor’s counsel was asked to submit authority supporting the Debtor’s position that the lien should be avoided in its entirety. The Debtor filed a memorandum on March 28, 2014, which set forth the split in authority on the issue of the application of 11 U.S.C. § 522(f) to jointly owned property. In the case before the Court, the Debtor owns a 1/6th interest in property with a total value of \$56,521.00. The Debtor asserts that all valid liens on the property total \$25,063.25, she claimed an exemption in the amount of \$2,256.00, and Midland Funding, LLC’s judgment lien is \$14,878.61.

Section 522(f) sets out:

(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

(B) a nonpossessory, nonpurchase-money security interest in any--

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(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. . . .

11 U.S.C. § 522(f). Courts have taken different approaches as to the application of Section 522(f) and the split is illustrated through the cases of *Zeigler Eng'g Sales v. Cozad (In re Cozad)*, 208 B.R. 495 (B.A.P 10th Cir. Utah 1997), and *In re Staples*, 2000 Bankr. LEXIS 2204 (Bankr. M.D.N.C. June 7, 2000).

The court in *Cozad* found that Section 522(f) should be applied as written and entirely avoided a judgment lien after determining the valid liens and the exemption combined totaled more than the value of the debtor's fractional interest. *Cozad*, at 498. The court did not allocate the liens between the debtor and the non-filing co-owner, but instead applied the entire amount against the debtor's interest in the property. *Id.* As applied in the case before the Court, the

Debtor's interest in the property is valued at \$9,420.17 (\$56,521.00 divided by six owners) and the liens and the Debtor's claimed exemption total \$42,187.86 (Midland Funding - \$14,878.61, all other liens - \$25,063.25, and exemption - \$2,246.00). Because the amount of liens and the exemption exceed the Debtor's interest in the property by \$32,767.69, *Cozad* would avoid the judgment lien in its entirety.

In contrast, the court in *Staples* allocated the liens on the property proportionate to the fractional interests prior to determining whether to avoid the judgment lien. *Staples*, at \*5-6. For the Debtor in this case, the *Staples* interpretation would lead to a different result. The value of the other liens would first be subtracted from the total value of the property leaving \$31,457.75 (\$56,521.00 minus \$25,063.25). Then this figure would be divided by six with the Debtor's share of the equity reflected as \$5,242.96. That amount is then further reduced by her claimed exemption of \$2,246.00, leaving \$2,996.96 in equity for the judgment lien to attach. Thus, under the *Staples* approach, Midland Funding, LLC's judgment lien would only be avoidable to the extent it exceeds \$2,996.96. The Third Circuit Court of Appeals affirmed this approach and stated:

We conclude, consistently with the majority of the courts addressing the issue, that what might be characterized as a literal application of section 522(f)(2)(A), in particular section 522(f)(2)(A)(ii), produces an illogical result where a debtor owns property jointly with a non-debtor. It is illogical to net the total outstanding secured debt balance attributable to both a debtor and his joint tenant against the debtor's one-half interest in the property alone because Congress could not have intended that a debtor benefit under section 522(f)(2)(A) by the use of what realistically should be regarded as someone else's debt even if the debtor may be liable personally to the creditor for the entire debt. Such a mechanical application of section 522(f)(2)(A) would provide a windfall to the debtor at the expense of a secured creditor.

*Miller v. Okmi Sul (In re Miller)*, 299 F.3d 183, 186 (3d Cir. Pa. 2002).

Upon consideration of the pleadings, the evidence, and the case law the Court holds, in accord with *Staples* and *Miller*, that the judgment lien of Midland Funding, LLC is partially avoided in the amount of \$11,881.65, and remains secured and enforceable in the amount of \$2,996.96.

The Clerk is directed to send copies of this Order to the Debtor; Heidi B. Shafer, Esq., counsel for the Debtor; Midland Funding, LLC, 8875 Aero Drive, Suite 200, San Diego, CA 92123; Midland Funding, LLC c/o Registered Agent Corporation Service Co., Bank of America Center 16th Floor, 1111 East Main Street, Richmond, VA 23219; Sarah J. Zecca, Esq., 222 Central Park Avenue, Suite 210, Virginia Beach, VA 23462; the Chapter 7 Trustee; and the Office of the United States Trustee.

ENTER this 4th day of April, 2014.

  
UNITED STATES BANKRUPTCY JUDGE