

Dated: February 12, 2020



Daniel P. Collins

Daniel P. Collins, Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p>	<p>In re</p> <p>SARGON E. AWDISHO and</p> <p>MARINA I. AWDISHO,</p> <p>Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 7 Proceedings</p> <p>Case No: 2:14-bk-06594-DPC</p> <p>ORDER RE MOTION TO REOPEN</p> <p>BANKRUPTCY CASE AND MOTION</p> <p>TO AVOID LIEN ON REAL</p> <p>PROPERTY</p> <p>[NOT FOR PUBLICATION]</p>
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Debtors Sargon E. Awdisho and Marina I. Awdisho (“Debtors”), filed their Motion to Reopen Bankruptcy Case (“Motion to Reopen”) on February 6, 2020 (DE 39) in order to proceed with their Motion to Avoid Lien on Real Property (“Motion to Avoid Lien”) (DE 34).

On May 2, 2014, Debtors filed their Chapter 7 bankruptcy petition (“Petition Date”). On the Petition Date, Debtors owned a residence for which they claimed an exemption in these bankruptcy proceedings (DE 7). No timely objections were filed to their claimed homestead exemption. Prior to the Petition Date, Midland Funding, LLC (“Midland”) recorded a judgment against Debtors in the office of the Maricopa County Recorder. Midland failed to renew the judgment within the five-year period pursuant to A.R.S. § 33-964. However, in 2018, that statute was amended to extend the judgment renewal period to ten years.

Debtors obtained their discharge on September 18, 2014 (DE 31). Midland did not obtain an order of this Court denying Debtors’ discharge or the dischargeability of their claim. Debtors are now concerned Midland’s pre-petition judgment might be

1 renewed and may impair their homestead exemption. Therefore, Debtors seek an order
2 of this Court, pursuant to 11 U.S.C. § 522(f), avoiding Midland’s judgment “lien.”

3 The Arizona Court of Appeals discussed the interplay of judgment liens and
4 homestead exemptions in *Pacific Western Bank v. Castleton*, 434 P.3d 1187 (Ariz.App.
5 Div. 1 2018). The Court first cited A.R.S. § 33-964(B) which states:

6 Except as provided in § 33-1103, a recorded judgment shall
7 **not** become a lien on any homestead property. Any person
8 entitled to a homestead on real property as provided by law
9 holds the homestead property free and clear of the judgment
10 lien.

11 A.R.S. § 33-964(B) (emphasis added). The Court then quoted A.R.S. § 33-964(A) (a
12 judgment “shall become a lien ... on all real property of the judgment debtor except real
13 property exempt from execution, including homestead property”).

14 The Court went on to hold that:

15 Section 33-964 thus establishes the general rule that a
16 recorded judgment does not become a lien on homestead
17 property. *See also Union Oil Co. of Ariz. v. Norton Morgan
18 Commercial Co.*, 23 Ariz. 236, 245, 202 P. 1077 (1922)
19 (holding that “no lien shall be permitted to attach to the real
20 property claimed as a homestead”). As the statute states
21 expressly, individuals hold their “homestead property free
22 and clear” of any judgment liens. *See* A.R.S. § 33-964(B).

23 434 P.3d 1187, 1189-90. Bankruptcy Judge Haines also pointed out in the case of *In re*
24 *Rand*, 400 B.R. 749 (Bkrtcy. D. Ariz. 2008), that under Arizona law, a recorded judgment
25 does not constitute a lien on a debtor’s properly claimed homestead property. Because
26 the judgment “is not a lien at all, it is not a lien that impairs the debtors’ homestead that
can be avoided pursuant to Code §522(f).” *Id.* at 755.

Based on the foregoing,

IT IS ORDERED denying Debtors’ Motion to Reopen.

IT IS FURTHER ORDERED denying Debtors’ Motion to Avoid Lien. The
judgment recorded by Midland prior to the Petition Date does not constitute a lien against

1 the homestead property owned by the Debtors. Midland's claim has been discharged in
2 Debtors' bankruptcy proceedings. Should Midland refuse to voluntarily remove its
3 judgment from the Recorder's records, the Debtors may seek relief in State Court under
4 A.R.S. § 33-420.

5 **DATED AND SIGNED ABOVE.**

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8 COPY of the foregoing mailed
9 by the BNC to Interested Parties:

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