

ORDERED.



Dated: November 16, 2009

Eileen W. Hollowell

EILEEN W. HOLLOWELL
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re)	Chapter 13
)	
PETER TESCIONE, JR.,)	No. 4-09-bk-05569-EWH
)	
)	MEMORANDUM DECISION
Debtor.)	
)	

I. INTRODUCTION

Debtor's fraudulent transfer of his residence to a third party did not void the transfer. Accordingly, Debtor may not avoid a judgment lien which attached to the residence while title was held by the third party.

II. PROCEDURAL HISTORY

Debtor filed a Chapter 13 petition on March 25, 2009. He scheduled real property, located at 4471 West Meggan Place, Tucson, Arizona ("Property"), on Schedule A and claimed the Property as exempt on Schedule C. On June 26, 2009, he filed a Motion to Avoid Judicial Lien of Auto Owners Insurance Co. and Owners Insurance Co. ("Auto Owners").

1 On August 5, 2009, Auto Owners filed an objection (“Objection”) to the lien
2 avoidance motion (“Motion”). Oral argument was held on August 18, 2009, at which the
3 court requested supplemental briefing on the effect of a state court fraudulent
4 conveyance judgment regarding the Debtor’s prepetition transfer of the Property to a
5 third party. The supplemental briefs have been filed and the matter is now ready for
6 decision.
7

8
9 III. FACTS

10 On February 26, 2007, the Debtor transferred the Property to Anisa Tai (“Tai
11 Transfer”). The Tai Transfer occurred one day before judgment was entered against
12 the Debtor in Pima County Case No. C-20045191. Auto Owner is the current holder of
13 that judgment (“Auto Owner Judgment”).
14

15 The Auto Owner Judgment was recorded with the Pima County Recorder’s Office
16 on March 6, 2007. Auto Owners filed a complaint and then an amended complaint
17 against both the Debtor and Tai seeking relief under the Uniform Fraudulent Transfer
18 Act (“ARIZ. REV. STAT. § 44-1004 et. seq.”) (“Fraudulent Transfer Complaint”). Tai did not
19 appear or otherwise answer the Fraudulent Transfer Complaint. A default judgment
20 was entered against Tai on October 31, 2007 (“Tai Default Judgment”). The Tai Default
21 Judgment provided, among other things, that:
22

- 23 (1) Pursuant to ARIZ. REV. STAT. § 44-1007(A)(2), the transfer of the Property to
24 Tai from the Debtor was “avoided” to any extent necessary to satisfy the
25 Auto Owner Judgment; and,
26
27

1 (2) Tai was permanently enjoined from further transferring the Property until
2 the Auto Owner's Judgment was satisfied in full.

3 Auto Owners recorded the Tai Default Judgment on October 31, 2007. On
4 November 19, 2009, notwithstanding the Tai Default Judgment injunction, Tai
5 reconveyed the Property to the Debtor.
6

7
8 IV. STATEMENT OF JURISDICTION

9 Jurisdiction is proper under 28 U.S.C. § 157(b)(2)(A), (B) and (O).
10

11
12 V. ISSUE

13 Did the Debtor's fraudulent transfer of the Property void the transfer so that when
14 the Auto Owner judgment attached, the Debtor remained the owner of the Property?
15

16 VI. DISCUSSION

17 The Objection raised a number of arguments, only one of which needs to be
18 addressed by the Court. Auto Owners argues that the Debtor cannot avoid either the
19 Auto Owner Judgment or the Tai Default Judgment under 11 U.S.C. § 522(f) because
20 both judgments were attached to the Property when Tai, not the Debtor, owned the
21 Property. Section 522(f)(1) only permits a debtor to avoid a lien in property in which a
22 debtor has an interest. See Farrey v. Sanderfoot, 500 U.S. 291, 296 (1991). See also
23 In re Pederson v. Weeks, 230 B.R. 158, 161 (9th Cir. BAP 1999) ("unless the debtor
24 had the property interest to which the lien attached at some point before the lien
25
26
27
28

1 An order setting a status hearing on the Auto Owner's Motion for Relief from Stay will
2 also be issued.

3 Dated and signed above.
4

5 Notice to be sent through the
6 Bankruptcy Noticing Center "BNC"
7 to the following:

8 Peter Tescione, Jr.
9 4471 West Meggan Place
Tucson, AZ 85741

Dianne C. Kerns
7320 North La Cholla #154 PMB 413
Tucson, AZ 85741-2305

10 Cheryl K. Copperstone
11 Law Office of Cheryl K. Copperstone
12 252 West Ina Rd., Suite 203
Tucson, AZ 85704

Office of the U.S. Trustee
230 North First Ave., Suite 204
Phoenix, AZ 85003