

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

HUY NGUYEN

05-92833 B

Debtor

DECISION & ORDER

George R. Faust, Esq.
Rand Building Suite 2006
14 LaFayette Square
Buffalo, New York 14203
Attorney for the Debtor

Bulan, Chiari, Horwitz & Ilecki LLP
William Ilecki, Esq., of counsel
1321 Millersport Hwy Suite 101
Williamsville, New York 14221
Attorneys for AFGM Enterprises Federal Credit Union

John H. Ring III, Esq.
385 Cleveland Drive
Buffalo, New York 14215
Chapter 7 Trustee

Bucki, Chief U.S.B.J., W.D.N.Y.

In 2005, the State of New York amended C.P.L.R. §5206, to the effect of increasing the homestead exemption from \$10,000 to \$50,000. The issue in the present dispute is whether the enhanced exemption has application to judgments docketed prior to the amendment's enactment on August 30, 2005.

Huy Nguyen filed a petition for relief under Chapter 7 of the Bankruptcy Code on October 14, 2005. In due course, this court issued a discharge to the debtor and the case was closed. Three years later, however, the debtor successfully moved to reopen this case for the purpose of making the present motion. Pursuant to 11 U.S.C. §522(f), the debtor has moved to avoid four judgment liens that allegedly impair his homestead exemption. The oldest of these judgments is held by AFGM

Enterprises Federal Credit Union, which filed its lien on December 26, 2002, in the principal amount of \$16,118.60.

Having a market value of \$35,000, the debtor's homestead would be fully exempt if this court were to allow the debtor's claim of an exemption in the amount of \$50,000. But to the extent that the exemption is limited to \$10,000, the homestead would have sufficient value to enable the preservation of judgment liens for the approximate amount of \$25,000. AFGM Enterprises Federal Credit Union has accordingly filed written opposition to the debtor's motion. Without raising any Constitutional challenge to the New York statute, AFGM Enterprises Federal Credit Union argues as a matter of statutory interpretation only that its judgment is not subject to the 2005 amendment that increased New York's homestead exemption.

My esteemed colleague, the Honorable Michael J. Kaplan, has fully considered the present arguments of counsel in his decision in *In re Trudell*, 381 B.R. 441 (Bankr. W.D.N.Y. 2008). For the same reasons stated by Judge Kaplan, I agree with his conclusion that the amended homestead exemption applies to all obligations, even those that were reduced to judgment prior to August 30, 2005. As noted by the New York Court of Appeals in *Watson v. New York Central Railroad Company*, 47 N.Y. 157, 162 (1872), "a judgment creditor of an owner has no estate or proprietary interest in the land." Because a judgment creditor derives its rights from statutes, the legislature may modify those rights with immediate effect.

The controlling statutes contain no suggestion of ambiguity or uncertainty of result. New York's homestead exemption was amended through enactment of Chapter 623 of the state's 2005 Session Laws. Paragraph 2 of this statute provides that the act "shall take effect immediately." As a consequence, C.P.L.R. §5206 was immediately changed to provide that a homestead "not exceeding fifty thousand dollars in value above liens and encumbrances, owned and occupied as a principal

residence, is exempt from application to the satisfaction of a money judgment, unless the judgement was recovered wholly for the purchase price thereof." Pursuant to Debtor and Creditor Law §282, Huy Nguyen has exercised his right to exempt this same property from the bankruptcy estate. Therefore, pursuant to 11 U.S.C. §522(f), the debtor may now avoid judgments that impair a homestead not exceeding \$50,000 in value.

In their briefs, counsel for AFGM Enterprises Federal Credit Union suggest that the avoidance of their client's judgment may violate the United States Constitution. We will not consider this issue for two reasons. First, the creditor's counsel have also stated that they choose not to raise a Constitutional challenge. Second, neither the United States Attorney General nor the New York State Attorney General have been given an opportunity to intervene, as is required by 28 U.S.C. §2403 for consideration of a Constitutional issue.

For the reasons stated herein, the objection of AFGM Enterprises Federal Credit Union is overruled. Accordingly, the motion of Huy Nguyen is in all respects granted, to the effect that the judgments of AFGM Enterprises Federal Credit Union; Excalibur I. LLC/Chase Manhattan Bank ASG; Sage Financial LTD/Discover Bank; and Heritage Asset Management, Inc./Direct Merchants ASG are avoided as liens against the real property at 445 Connecticut Street in the City of Buffalo, New York. This result is subject, however, to the provisions of 11 U.S.C. §349(b)(1), so that the said judgement liens shall be automatically reinstated if the debtor's case is dismissed without the Court having ordered a different result.

So ordered.

Dated: Buffalo, New York
September 22, 2009



Carl L. Bucki, Chief U.S.B.J., W.D.N.Y.

