

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

-----)	CASE NO. 03-32086 (ASD)
IN RE:)	
)	CHAPTER 7
ANN T. GRIFFIN,)	
)	Re: DOC. I.D. NO. 36
DEBTOR.)	

BRIEF MEMORANDUM AND ORDER ON MOTION TO AVOID LIENS

The above-captioned contested matter was initiated by the Debtor's motion pursuant to 11 U.S.C. § 522(f) to avoid certain liens upon real property as impairing her available exemptions. The matter came before the Court for hearing on July 27, 2005, at which time the parties agreed that the material operative facts were not contested. Among the items stipulated is the fact that the liens sought to be avoided by the Debtor are *mechanic's* liens.

As was stated by counsel for the Debtor, ". . . the question for the Court to adjudicate is whether in fact Section 522(f)(1) would allow an avoidance of those mechanic's liens; and that is really the singular issue." Tr. 10:57:19 - 34. Given this framing of the issue, it is odd that the parties' ensuing argument did not touch upon what the Court finds to be the dispositive question in this matter, namely, whether a mechanic's lien is a "judicial lien" within the meaning of Sections 522(f)(1)(A) and 101(36).

This issue, implicating Connecticut state law as well as federal bankruptcy law, was definitively explored in this District by United States Bankruptcy Judge Robert L. Krechevsky in Matter of Reardon, 10 B.R. 697 (Bankr. D. Conn. 1981). As stated by Judge Krechevsky --

11 U.S.C. § 522(f)[(1)(A)] permits the avoidance of judicial liens . . . , and mechanic's liens are not *judicial* liens, they are *statutory* liens. A judicial lien is defined in 11 U.S.C. § 101(27) [now § 101(36)] as a "lien obtained by

judgment, levy, sequestration, or other legal or equitable process or proceeding". 11 U.S.C. § 101(38) [now § 101(53)] defines a "statutory lien" as a "lien arising solely by force of a statute on specified circumstances or conditions . . . but does not include . . . judicial lien, whether or not such . . . lien is provided by or is dependent on a statute . . . or . . . is made fully effective by statute". The legislative history of § 101(38) as contained in H.R.No.95-595, 95th Cong. 1st Sess. (1977) 314; S.R.No.95-989, 95th Cong. 2nd Sess. (1978) 27, U.S.Code Cong. & Admin.News 1978, pp. 5787, 5813, points out that a statutory lien "is only one that arises automatically, and is not based on an agreement to give a lien or on judicial action". (Emphasis supplied). Examples given are mechanic's, materialmen's, and warehousemen's liens. Connecticut mechanic's liens are provided for by Conn.Gen.Stat. § 49-33. Connecticut cases have uniformly held that a mechanic's lien is purely a creature of statute, in derogation of the common law, and arises automatically upon the performance by a contractor of certain services. *New Haven Orphan Asylum v. Haggerty Co.*, 108 Conn. 232, 142 A. 847 (1928); *J. L. Purcell, Inc. v. Libbey*, 111 Conn. 132, 149 A. 225 (1930). Such a lien is clearly within the definition of 11 U.S.C. § 101(38), and not within the definition of § 101(27). Section 522(f), therefore, as a matter of law, does not permit the avoidance of the fixing of such statutory liens as Connecticut mechanic's liens.

Id. at 699-700 (bracketed material added).

This Court fully concurs with the Reardon result and rationale, and hereby adopts as it own the foregoing quoted passages of that opinion. Because mechanic's liens are not "judicial liens" for purposes of avoidance under Code Section 522(f), the Debtor has failed to establish a legal basis for the relief she seeks. Accordingly, it is hereby

ORDERED that the Debtor's Motion to Void Lien Impairing Exemption (Doc. I.D. No. 36) is **DENIED**.

BY THE COURT

DATED: July 28, 2005



Albert S. Dabrowski
Chief United States Bankruptcy Judge

7/28/2005