



Judgment creditor City National Bank of Los Angeles, CA objected to the Motions (the “Objection”) on two grounds: (1) that 11 U.S.C. § 522(f)(2)(C) precludes the Debtor from avoiding its judicial lien because that lien arose from a foreclosure proceeding;<sup>2</sup> and (2) that the value of the Property alleged by the Debtor is disputed.<sup>3</sup> A hearing on the Motions was held on January 7, 2021, whereat the parties were able to advance their respective positions before the Court. At the conclusion of that hearing, the Court took the matter under advisement (ECF Nos. 31, 32).

In line with *In re Carson*, 274 B.R. 577 (Bankr. D. Conn. 2002), appellate authority from various circuits and bankruptcy policy,<sup>4</sup> this Court is persuaded, even after examining the profound split in authority between courts across the country that have interpreted Section 522(f)(2)(C)—including splits among prior jurists of this Court (who are both held in high regard by this judge for their contributions to bankruptcy jurisprudence)—that Section 522(f)(2)(C) does not preclude the Debtor from pursuing the present motion. *In re Carson*, *supra*, 274 B.R. at

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<sup>2</sup> The subject foreclosure action pertained to a property located in Norwich, Connecticut that was held in the name of a commercial entity of which the Debtor was a guarantor. *See* Debtor’s Memorandum of Law in Support, ECF No. 30, pp. 3–4. These are the facts that are undisputed and that have been mutually represented to the Court: In early 2011, City National Bank brought a foreclosure action against an entity called New Empire, LLC, which pertained to property located at 81-87 Franklin Street, Norwich, CT. *See* Superior Court, judicial district of New London, Docket No. CV-11-6007316-S (January 4, 2011). The Debtor was a guarantor of the mortgage granted by New Empire, LLC to City National Bank but was, nonetheless, not an owner of the above referenced Norwich property. City National Bank obtained default judgments in the case against New Empire, LLC, as well as the Debtor (in his capacity as guarantor). Thereafter, City National Bank placed a judgment lien on the Debtor’s principal residence, which is located at 365 Mountain Road West Hartford, CT, and subsequently commenced a foreclosure proceeding based upon said judgment lien in Connecticut Superior Court, which remains pending. *See* Superior Court, judicial district of Hartford, Docket No. CV-19-6116065-S (August 22, 2019).

<sup>3</sup> The Chapter 13 Trustee filed a separate objection challenging the Debtor’s ability to avoid City National Bank’s judicial lien, also alleging that 11 U.S.C. § 522(f)(2)(C) precludes the avoidance of liens that arise from a foreclosure proceeding. *See* ECF No. 21.

<sup>4</sup> *See In re Hart*, 328 F.3d 45, 46 (1st Cir. 2003); *In re Pace*, 569 B.R. 264, 265 (B.A.P. 6th Cir. 2017); 4 COLLIER ON BANKRUPTCY, P 522.11 (16th 2020) (“In addition, the mathematical formula in section 522(f)(2) does not apply to a judgment arising out of a mortgage foreclosure. This provision was intended to clarify that a court judgment effectuating a mortgage foreclosure, such as an order authorizing a sale of mortgaged property under a state judicial foreclosure procedure, may not be avoided. In contrast, section 522(f)(2)(C) does not affect the avoidance of a judicial lien based on a deficiency judgment obtained in or after a foreclosure proceeding.”).

580 (“the most compelling construction to be placed upon subsection (C) is to take into account the primary purpose of § 522(f) to benefit debtors.”).

Accordingly, after notice and a hearing pursuant to 11 U.S.C. § 102(1), and in compliance with the Court's Contested Matter Procedure, and to the extent the lien of City impairs the exemption, it is hereby AVOIDED. *See* 11 U.S.C. §§ 522(f)(1) and (2)(A). However, as the value of the debtor’s interest in the property is disputed (*see* ECF No. 23), that valuation must be determined before the Court can decree whether that lien claim is wholly unsecured or partially secured. Accordingly, unless the matter is resolved or presented to this Court by stipulation, the parties shall file and exchange any proposed expert reports within 30 days hereof and appear with their witnesses and any pre-marked exhibits for a contested hearing (at a date to be determined) in late February.

**IT IS SO ORDERED** at Hartford, Connecticut this 25th day of January 2021.



*James J. Tancredi*  
United States Bankruptcy Judge  
District of Connecticut