

United States Bankruptcy Court
Northern District of Illinois
Eastern Division

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Bankruptcy Caption: In re Marcella Marie Mance

Bankruptcy No.: 19-33057

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Judge: Jacqueline P. Cox

Appearance of Counsel:

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Marcella Marie Mance

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 7
)	
Marcella Marie Mance,)	Case No. 19 B 33057
)	
Debtor.)	Judge Jacqueline P. Cox

Order on Motion to Avoid Lien (Docket 22)

The Debtor Marcella Marie Mance sought Chapter 7 bankruptcy relief on November 20, 2019. (The City of Chicago’s Response pleading incorrectly references Chapter 13). The matter in issue is her motion seeking avoidance of the City of Chicago’s lien on her motor vehicle. The City contends that its lien is a statutory lien, not capable of being avoided under 11 U.S.C. § 522(f). Section 522(f) provides that judicial liens on otherwise exempt property may be avoided under certain circumstances. Section 101(36) of the Bankruptcy Code (“Code”) defines a judicial lien as a “lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.” 11 U.S.C. § 101(36).

Jurisdiction

Federal district courts have “original and exclusive jurisdiction” of all cases under the Bankruptcy Code. 28 U.S.C. § 1334(a). District courts may refer their bankruptcy cases to the bankruptcy judges for their districts. 28 U.S.C. § 157(a). The District Court for the Northern District of Illinois has referred its bankruptcy cases to the Bankruptcy Court for the Northern District of Illinois. N.D. Ill. Internal Operating Procedure 15(a).

This matter involves a core proceeding for which this court has authority to enter a final

order or judgment. 28 U.S.C. § 157(b)(2)(B) - allowance or disallowance of claims against the estate or exemptions from property of the estate.

Background

To obtain an order avoiding a lien a debtor has to satisfy four requirements: (1) properly assert the exemption; (2) there has to be a lien on the debtor's property; (3) the lien has to impair the debtor's exemption and (4) the lien must be a judicial lien. *In re Wigfall*, 606 B.R. 784, 786 (Bankr. N.D. Ill. 2019) (citing *In re Rosol*, 114 B.R. 560, 562 (Bankr. N.D. Ill. 1989)).

The parties do not dispute that the Debtor's vehicle is worth \$3000 as asserted in her Schedule A/B - Property, (Docket 16), or that she owes the City of Chicago approximately \$12,000 for moving and parking violations. The Debtor's Schedule C claims a \$2400 exemption in that vehicle pursuant to 735 ILCS 5/12-1001(c) which excepts from attachment, judgment and execution a debtor's interest, not to exceed \$2400, in any one motor vehicle.

The only issue in dispute is the City of Chicago's contention that it holds a statutory lien which arises solely by statute and cannot be avoided by § 522(f) of the Code which allows debtors to avoid judicial liens.

Analysis

Based on the ruling in *Wigfall*, which allowed a debtor to avoid a lien under similar circumstances, this court will grant the Debtor's Motion to Avoid Lien. The lien the City has on the Debtor's motor vehicle, that it impounded for various infractions, was provided for in a statute, but arose only after the city complied with a defined administrative process, making it a quasi-judicial lien, avoidable under 11 U.S.C. § 522(f). The Illinois statute that authorizes the City's administrative adjudications system requires the City to obtain quasi-judicial

determinations before it can seize or boot a vehicle to enforce its traffic regulations.

The bankruptcy court in *In re Peakes*¹ discussed the City of Chicago's ordinances that provide a mechanism for its traffic violations enforcement program, citing the Illinois Vehicle Code:

Any municipality or county may provide by ordinance for a system of administrative adjudication of vehicular standing and parking violations and vehicle compliance violations as described in this subsection, automated traffic law violations as defined in Section 11-208.6, 11-208.9, or 11-1201.1, and automated speed enforcement system violations as defined in Section 11-208.8. 625 ILCS § 5/11-208.3(a).

Illinois law also provides that vehicles may be restrained:

Any municipality or county establishing vehicular standing, parking, compliance automated speed enforcement system, or automated traffic law regulations under this Section may also provide by ordinance for a program of vehicle immobilization for the purpose of facilitating enforcement of those regulations. The program of vehicle immobilization shall provide for immobilizing any eligible vehicle upon the public way by presence of a restraint in a manner to prevent operation of the vehicle. 625 ILCS § 5/11-208.3(c).

An additional Illinois statute provides criteria for immobilization:

Criteria for designation of vehicles eligible for immobilization. A vehicle shall be eligible for immobilization when the registered owner of the vehicle has accumulated the number of incomplete traffic education programs or unpaid final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability, or both, as determined by ordinance. 625 ILCS 5/11-208.3(c)(1).

Once the City obtains a certain number of determinations of liability it may take the owner's vehicle in satisfaction of its judgment debt by way of supplementary proceedings or the regular execution process. *See* 735 ILCS §§ 5/2-1402(c)(1), (e) and 735 ILCS §§ 5/12-111,

¹588 B.R. 811, 817-18 (Bankr. N.D. Ill. 2018) (*aff'd sub nom. In re Fulton*, 926 F.3d 916 (7th Cir. 2019))

5/12-112, 5/12-158 and 5/12-166. A court could order the judgment debtor to deliver the vehicle to the sheriff to be sold to satisfy the City's judgment. 735 ILCS § 5/2-1402(c)(1), (e). In addition, the sheriff could forcibly seize the judgment debtor's vehicle to sell it to satisfy the City's judgment. *Peakes*, 588 B.R. at 819 (citing *In re Marriage of Logston*, 103 Ill.2d 266, 469 N.E.2d 167, 172 (1984) (That court noted that if a judgment goes unpaid, it could be enforced through the remedy of execution, whereby as much of the debtor's property may be taken and sold as is necessary to satisfy the obligation)). A certified copy of a judgment serves the function of a writ of execution. See 735 ILCS § 5/2-1501.²

As the *Peakes* court noted, "the legislature has authorized municipalities to take a short-cut on the path to the effective enforcement of their final determinations of liability where those final determinations are for violations of ordinances concerned with standing, parking and automated traffic law violations." *Id.*

In *In re Fulton*, in affirming the *Peakes* ruling, the Seventh Circuit described the relevant municipal ordinances, M.C.C. § 9-100-120(b) and § 9-80-240(a):

The Chicago Municipal Code permits creditor-appellant the City of Chicago to immobilize and then impound a vehicle if its owner has three or more 'final determinations of liability,' or two final determinations that are over a year old, 'for parking, standing, compliance, automated traffic law enforcement system, or automated speed enforcement system violation[s].' *Fulton*, 926 F.3d at 920.

If the city did not have to pursue judicial or quasi-judicial process and obtain final determinations to receive the benefit of its lien, it would be a statutory lien, not avoidable under

²See *Elmhurst Auto Parts, Inc. v. Fencil-Tufo Chevrolet, Inc.*, 235 Ill.App.3d 88, 93 (2d Dist. 1992) ("Upon presentment of the certified copy of the judgment, the sheriff may seize and levy upon the property of the debtor to satisfy the judgment. Illinois law no longer refers to 'writs of execution' but to the enforcement of judgments and levies.").

Section 522(f). The ordinance, however, pursuant to Illinois statute, allows the City to confiscate an owner's vehicle only after a specific number of determinations of liability have been entered.

The City's Response to the Debtor's Motion to Avoid Lien contends that its lien springs into existence pursuant to M.C.C. § 9-92-080(f)³ which gives it a possessory lien when it impounds a vehicle and that the fact that possession occurs after liability determinations are made is not relevant. The possessory lien is not independent of the quasi-judicial process; its operation is conditioned on compliance with a quasi-judicial process, as it has to first obtain liability determinations.

The ordinance that declares that the City has a possessory lien does not appear to be based on Illinois law which defines a "possessory lien" as an interest, other than a security interest, which secures payment or performance of an obligation for services or materials, created by statute and whose effectiveness depends on the person's possession of the goods furnished. 810 ILCS § 5/9-333. The lien herein, is not effective on the City's possession alone.

Generally, a possessory lien allows a creditor to retain possession of its collateral until its debt gets paid independent of court processes. *Ally Financial Inc. v. Pira*, 2017 IL App (2d) 170213, 96 N.E.3d 61, 69-74 (2017). The legislative condition that a municipality may use the enforcement short-cut after first obtaining liability determinations, means that the City of Chicago does not have a statutory lien since it cannot immobilize vehicles unless it first obtains

³"Any vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle."

quasi-judicial determinations.

Conclusion

The City of Chicago's lien is a judicial lien that may be avoided under § 522(f). All elements necessary to avoid the lien have been established. The Motion to Avoid Lien is granted. The City of Chicago's lien is avoided and held for naught pursuant to § 522(f) of the Code. The City of Chicago is hereby ordered to deliver possession of the Debtor's Mitsubishi Outlander vehicle to her on or before February 10, 2020.

Date: February 6, 2020

ENTERED:

Jacqueline P. Cox
United States Bankruptcy Judge