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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**DANIEL KEVIN
O'CONNELL and VALERY
ANN O'CONNELL,**

Debtors.

Case No. **19-60844-BPH**

ORDER

At Butte in said District this 27th day of April, 2020.

In this Chapter 7¹ bankruptcy, the Court is faced with competing pleadings that involve a judgment lien on property owned by Debtors. Glastonbury Landowners Association, Inc., as lienholder, filed an Objection to Claim of Exemption (“Objection”). These pleadings include, ECF Nos. 19, 21, and 35. Along with the Objection, Debtors filed a Motion to Avoid Lien under 11 U.S.C. § 522(f), (“Motion”). The Motion seeks to avoid the judicial lien held by Glastonbury Landowners Association, Inc. and the current Glastonbury Landowners Association, Inc. Board of Directors (collectively the alleged lienholders are referred to as “Glastonbury”). The collective pleadings associated with the Motion are at ECF Nos. 38, 47, 48, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.²

¹ Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all “Rule” references are to the Federal Rules of Bankruptcy Procedure, and all “Civil Rule” references are to the Federal Rules of Civil Procedure. All references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the Clerk of Court.

² This Order disposes of all the issues raised in the serial briefing filed by the parties. In this case for every filing, their seems to be a further response, reply, sur-reply, repeat.

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The Parties stipulated to certain facts and a briefing schedule and agreed to submit the matter on the briefs. Unfortunately, this agreement has been plagued with disagreement.³ Debtors filed their Reply at 12:36 a.m. on March 11, 2020. ECF No. 59. On March 13, 2020, Glastonbury filed an objection to Debtors' reply arguing that Debtors' reply was filed late and further arguing that exhibits attached to the brief were not agreed to by the parties and outside the scope of the stipulated facts and the parties' prior agreement. ECF No. 60. Debtors responded that the exhibits attached to their brief are responsive to Glastonbury's res judicata and collateral estoppel arguments and are necessary for this Court to make findings that will afford an appellate court a clear understanding of its decision.⁴

Having considered all the briefing, including attachments (virtually all of which are pleadings that were filed in state court), this Court has completed its analysis of the issues and reached conclusions on the Objection and Motion. However, it acknowledges that from Glastonbury's perspective, it has not had an opportunity to address some of the exhibits that Debtors included with their final briefs. If after reviewing this Order, Glastonbury would like to argue any of the law cited, or present evidence on any contested factual issue, Glastonbury may request reconsideration, set the matter for hearing, and proceed with a contested hearing.

³ Recently, the Court has experienced an increase in matters being submitted on the briefs. Unfortunately, the stipulated facts proved to be incomplete, inadequate, or the briefing revealed that the parties did not agree on the facts as previously agreed. This is problematic. One solution is to enforce the stipulation, and the Court will do the best it can with the record provided by the parties. This has proven difficult because the arguments in the brief do not even align with the "agreed facts," by mistake or otherwise a party has agreed to a fact that is clearly inconsistent with a document that is later attached to a pleading. Such is the case here.

⁴ Notably, ECF Nos. 60, 61, 62, 63, and 64 are all procedural and reflect Glastonbury's objection to Debtors' inclusion of attachments that exceed the scope of the stipulated facts, Debtors' Response that they are necessary for rebuttal and characterization of Glastonbury's objection as a Motion to Strike.

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A. The First Action, Second Action and Bankruptcy.

The Objection and Motion involve a judgment Glastonbury obtained against Debtors for attorneys' fees.⁵ The judgment was for \$18,128.75 ("Judgment"). Debtors owned a 1% interest in the following property at the time the judgment was entered:

Lot 5C, Subdivision No. 233, Park County, Montana, according to the official Plat thereof on file and of record in the Office of the County Clerk and Recorder of Park County, Montana.

("Property") ECF No. 56.⁶ From the time a judgment is docketed, it becomes a lien upon all real property of the judgment debtor that is not exempt from execution in the county that is either owned by the judgment debtor at the time or afterward acquired by the judgment debtor before the lien ceases. Mont. Code Ann. § 25-9-301(2). As of May 10, 2017, when the Judgment was entered in the First Action it became a lien on the Property.

More than a year after the Judgment was entered, Glastonbury filed a second lawsuit seeking various forms of relief, including foreclosure of their judgment lien, and a determination that the homestead exemption did not apply.⁷ ECF 59-1. In the Second Action, the State Court issued an order on pending motions on July 29, 2019 ("State Court Order"). The State Court Order includes facts along with the observation that "[t]he failure of the Defendants to address the issues in their brief constitutes an admission that the Plaintiffs' Motion for Summary Judgment is well taken." Next, the State Court referred to various arguments Glastonbury made, and concluded:

⁵ This judgment was entered in DV-2011-114, Montana's Sixth Judicial District, Park County ("First Action").

⁶ In 2013, Debtors quitclaimed 99% of their interest in the Property to their three children. ECF No. 49-2, p.4 (paragraph 5).

⁷ This complaint was filed in Montana's Sixth Judicial District, Park County, DV-2018-166 ("Second Action").

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Based upon the forgoing; based upon the law and reasoning asserted by Plaintiffs in their Motion for Summary Judgment and Brief; based upon the fact that the Defendants have not addressed directly the Motion for Summary Judgment; and based upon the law that the Court is not bound to explore the pleadings herein and try to determine what facts or law defendants may assert against the summary judgment motion, the Court finds that the Motion for Summary Judgment is granted. Plaintiffs may proceed with foreclosure against all of the property, free of either Homestead Exemption.

ECF No. 51-2. Glastonbury filed a Motion for Certification of Final Judgment in the Second Action (“Certification Motion”) on August 21, 2019. In its Certification Motion, Glastonbury requested that the State Court designate the State Court Order as a “final judgment.”

The next day, August 22, 2019, Debtors filed their petition. Debtors’ schedules reflect a 1% interest in the Property. ECF No. 1, Schedule C. Debtors claim that their 1% interest in the Property is subject to their homestead exemption and has a value of \$1,804.56. *Id.* Glastonbury objected to Debtors’ homestead exemption while Debtors were representing themselves. To afford Debtors an opportunity to retain counsel, the Court granted Debtors additional time to respond to the Objection. Debtors retained counsel and responded December 11, 2019. ECF No. 35. A hearing was set for January 6, 2020. Glastonbury filed a motion to modify stay, but later withdrew the motion after Debtors’ discharge was entered on December 17, 2019, reasoning the discharge eliminated the stay and therefore its motion is moot. ECF No. 40.

Debtors allege that Glastonbury filed with the State Court a request for ruling on the Certification Motion on December 16, 2019.⁸ On December 28, 2019, Debtors moved to avoid Glastonbury’s Judgment lien. On January 27, 2020, the state court entered an order certifying its State Court Order as final, pursuant to Mont. R. Civ. P. 54(b).

⁸ Although the parties agreed to submit the matter on stipulated facts and briefing, as already noted the Court considered the stipulated facts inadequate and incomplete. Apparently, Debtors reached the same conclusion because in their later briefing they attached additional pleadings that filled in some gaps, but as Glastonbury noted in its response to these filings, these additional facts and pleadings impermissibly supplement the facts agreed to by the parties.

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B. The Parties' Competing Positions.

The Objection relies on the State Court Order in the Second Action and argues that the issue of whether the homestead exemption applies to the Property has been decided, the decision is binding on Debtors and the issue is res judicata. ECF No. 19. Debtors responded to the Objection and coupled their response with the Motion. Debtors argue that they are entitled to their homestead exemption under § 522(b), the Judgment lien impairs the homestead exemption and the Judgment lien is subject to being avoided under § 522(f)(1).

The United States Supreme Court instructs that “exemptions in bankruptcy cases are part and parcel of the fundamental bankruptcy concept of a ‘fresh start.’” *Schwab v. Reilly*, 560 U.S. 770, 791 (2010) (quoting *Rousey v. Jacoway*, 544 U.S. 320, 325 (2005)). An exemption is presumed valid, and under Rule 4003(c) an objecting party has the burden of producing some evidence to rebut that presumption. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. BAP 2014).

The purpose of § 522(f)(1) is to provide relief for an overburdened debtor. *Farrey v. Sanderfoot*, 500 U.S. 291, 297-98, (1991) (citing H.R.Rep. No. 95-595, at 126-27 (1977), U.S. Code Cong. & Admin. News 5963, 6087-88). Debtors have the burden of showing they are entitled to lien avoidance under section 522(f). *Estate of Catli v. Catli (In re Catli)*, 999 F.2d 1405, 1406 (9th Cir.1993).

C. Glastonbury's Objection (to the exemption) and opposition to the Motion (to avoid lien) are dependent on the finality of the State Court Order in the Second Action.

Glastonbury's Objection, and opposition to the Motion are premised on the finality of the

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State Court Order in the Second Action. To prevail on their full faith and credit⁹, res judicata¹⁰, and collateral estoppel arguments, Glastonbury must establish that the State Court Order in the Second Action was a “final” judgment. “Records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.” 28 U.S.C. § 1738. “It is now settled that a federal court must give to a state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.” *Migra v. Warren City School Dist. Bd. of Ed.*, 465 U.S. 75, 81, 104 S.Ct. 892, 896, 79 L.Ed.2d 56 (1984).

Under Montana law, “a final judgment may have a preclusive effect on future litigation by way of either res judicata or collateral estoppel.” *Adams v. Two Rivers Apartments, LLLP*, 444 P.3d 415 (Mont. 2019) citing *Baltrusch v. Baltrusch*, 130 P.3d 1267 (Mont. 2006). In *Baltrusch*, the Montana Supreme Court explained:

Res judicata and collateral estoppel are doctrines that embody a judicial policy that favors a definite end to litigation, whereby we seek to prevent parties from incessantly waging piecemeal, collateral attacks against judgments. The doctrines deter plaintiffs from splitting a single cause of action into more than one lawsuit, thereby conserving judicial resources and encouraging reliance on adjudication by preventing inconsistent judgments. Res judicata, or claim preclusion, bars the relitigation of a claim that the party has already had an opportunity to litigate. Collateral estoppel, or issue preclusion, bars the reopening of an issue that has been litigated and determined in a prior suit.

Baltrusch v. Baltrusch, 130 P.3d at 1273.¹¹ Res judicata applies when:

⁹ Glastonbury refers to full faith and credit and collateral estoppel at ECF No. 21, in support of its objection to claim of exemption.

¹⁰ Glastonbury refers to res judicata in its brief at ECF Nos. 19, 47.

¹¹ This explanation causes this Court to question whether Glastonbury had any basis for filing the Second Action. The record before this Court screams judicial inefficiency: one action asserting a claim for attorney’s fees and entry of judgment; a second action to foreclose the judicial lien that resulted from the first judgment; and, now a third court must consider Glastonbury’s Judgment

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- (1) the parties or their privies are the same;
- (2) the subject matter of the present and past actions is the same;
- (3) the issues are the same and relate to the same subject matter;
- (4) the capacities of the persons are the same in reference to the subject matter and to the issues between them; and
- (5) a final judgment has been entered on the merits in the first action.

Adams v. Two Rivers Apartments, LLLP, 444 P.3d 415, 419 (Mont. 2019) citing *Bugli v. Ravalli County*, 2018 MT 177, ¶ 9, 392 Mont. 131, 422 P.3d 131.

Although similar, the requirements for collateral estoppel are different and include:

- (1) the identical issue raised was previously decided in a prior adjudication;
- (2) a final judgment on the merits was issued in the prior adjudication;
- (3) the party against whom the plea is now asserted was a party or in privity with a party to the prior adjudication; and
- (4) the party against whom preclusion is now asserted was afforded a full and fair opportunity to litigate the issue.

Adams v. Two Rivers Apartments, LLLP, 444 P.3d 415, 419 (Mont. 2019) citing *McDaniel v. State*, 2009 MT 159, ¶ 28, 350 Mont. 422, 208 P.3d 817. All four elements must be met before collateral estoppel may be invoked. *McDaniel v. State*, 208 P.3d 817, 826 (Mont.2009). While the specific requirements vary, a final judgment is essential to both res judicata and collateral estoppel. The State Court Order was not a final judgment for purposes of res judicata or collateral estoppel.

1. As of the petition date, there was no final judgment in the Second Action for res judicata or collateral estoppel purposes.

As of the petition date, the State Court Order in the Second Action was a not a final judgment. The Certification Motion filed the day before Debtors' bankruptcy petition was filed demonstrates the State Court Order in the Second Action was not a final judgment. The Montana Supreme Court has explained, "A final judgment is one which constitutes a final determination of the rights of the parties; any judgment, order or decree leaving matters undetermined is

for attorneys' fees.

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interlocutory in nature and not a final judgment for purposes of appeal.” *In the Matter of B.P.*, 2000 MT 39, ¶ 15, 298 Mont. 287, 995 P.2d 982 (citing *Matter of Litigation Relating to Riot* (1997), 283 Mont. 277, 280, 939 P.2d 1013, 1015). “A summary judgment order is interlocutory, but is appealable after a final judgment is rendered.” *Cechovic v. Hardin & Assoc., Inc.* (1995), 273 Mont. 104, 118, 902 P.2d 520, 528. The State Court Order addressed Glastonbury’s summary judgment motion. In order to render it a final judgment, Glastonbury filed the Certification Motion pursuant to M. R. Civ. P. Rule 54(b). Therefore, on the petition date, there was no final order for purposes of res judicata, because the Certification Motion was pending.

A more relaxed requirement for finality exists for collateral estoppel purposes under Montana law. *Baltrusch v. Baltrusch*, 130 P.3d at 1275 (Mont. 2006). To decide “whether to give preclusive effect to issues resolved in a judgment or order that has not been entered as final[,]” state courts consider the following factors:

- (1) whether the prior decision was adequately deliberated and firm and not avowedly tentative;
- (2) whether the parties were fully heard;
- (3) whether the court supported its decision with a reasoned opinion; [and]
- (4) whether the court’s prior decision was subject to appeal or was in fact reviewed on appeal.

Baltrusch, 130 P.3d at 1276. Based on the record before this Court, even under the relaxed standard articulated in *Baltrusch*, Glastonbury has not established that as of the petition date, the State Court Order was “final” and entitled to preclusive effect.

Debtors had an opportunity to be fully heard, but it appears they squandered it. The State Court explained that the Debtors’ response to summary judgment, “does not address any of the facts, law, arguments, or positions expressed by Plaintiff’s in their Motion for Summary Judgment and Brief.” ECF No. 51-2. The State Court Order was not subject to appeal because it was interlocutory. While the State Court Order was not tentative, whether the State Court Order

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in the Second Action was “adequately deliberated,” is a close call. Further, while the decision includes “reasoning” that reasoning mirrors and adopts Glastonbury’s arguments, arguments that on this record appear flawed.

The record before this Court suggests Glastonbury’s rationale for the relief it sought in the Second Action was ill-conceived and not the product of adequate deliberation. The State Court explained, “Plaintiffs argue that covenants that run with the land have a ‘super priority’ that survives foreclosure, tax deeds and Homestead Exemptions.” Glastonbury cited *RN & DB, LLC v. Stewart*, 2015 MT 327, ¶ 13, 381 Mont. 429, 362 P.3d 61, for the proposition that the homestead exemption statutes do not apply to property tax lien or property tax deed sales. It then urged the State Court to proceed by analogy and treat its money judgment (emphasis added) for attorney’s fees as analogous to a tax imposed by the state entitled to “super-priority” status because the underlying basis of the judgment was a covenant on Debtor’s real property.

Glastonbury’s arguments seem to conflate their rights under the Judgment with their rights under certain covenants.¹² To the extent the basis for their attorney’s fees claim in the First Action was the covenants, it seems peculiar to file a Second Action that once again involves the same parties and is premised on the same covenants.¹³ If Glastonbury had wanted its money Judgment for attorneys’ fees to relate back to the covenants, this Court questions why Glastonbury failed to make such arguments in the First Action, and was permitted to make those

¹² The operative instrument in the Second Action is the Judgment, not the covenants. The Judgment entered in the First Action is nothing more than a money judgment.

¹³ This Court has been provided piecemeal snippets, a motion, an order, the judgment, and been asked to consider the parties’ submissions. The record provided does not convince this Court that the decision was the product of adequate deliberation for collateral estoppel purposes.

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arguments in the Second Action.¹⁴ In essence, Glastonbury used the Second Action to recharacterize its Judgment for attorneys' fees in the First Action as an encumbrance entitled to super-priority over all other interests. The State Court Order reflects Glastonbury's recharacterization of its money Judgment as a unique exception to the homestead exemption entitled to "super priority."

The rationale outlined in the State Court Order in the Second Action, concluding that Debtors' homestead exemption should not apply to a basic money judgment for attorneys' fees in the First Action is not persuasive, particularly given the liberal construction to be applied to exemption claims. The reasoning of the State Court seems to encourage multiple suits on the same transaction, permit the splitting of causes of action, and ignore concepts of merger and bar.¹⁵ Taken to its logical extreme, it is the antithesis of judicial efficiency or economy and promotes the piecemeal adjudication of claims. Further, it is irreconcilable with the liberal construction afforded the homestead exemption. *See* Mont. Const. Art. XIII, Sect. 5; *Neel v. First Fed. Sav. & Loan Ass'n*, 207 Mont. 376 (1984).

Despite these misgivings regarding the adequacy of the deliberations, this Court is mindful that it does not have the benefit of the same record the State Court enjoyed, and more importantly, it is not an appellate court. Instead, the limits of its inquiry are whether the

¹⁴ Ordinarily, recorded covenants put the world on notice of rules and restrictions that have been placed on real property in connection with a general plan. Often covenants include provisions that allow for assessments and provide an enforcement mechanism, usually through a homeowner's association, including filing a lien on the property for the unpaid assessments. Once filed, the lien can be foreclosed with a judgment, decree of foreclosure and order of sale. The record is unclear on these points, but the State Court Order seems to reason that if a homeowner can claim their homestead exemption, homeowner's associations would have no enforcement mechanism and this is simply not the case.

¹⁵ For a discussion of these concepts, see *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494.

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homestead issue was adequately deliberated in the Second Action. On this record, this Court cannot conclude the State Court Order was reasoned or adequately deliberated. Absent a well-reasoned decision that is adequately deliberated, the State Court Order cannot be final for collateral estoppel purposes.

2. Postpetition there was no final judgment in the Second Action for res judicata or collateral estoppel purposes.

The January 27, 2020, postpetition certification of the State Court Order in the Second Action is not binding on this Court because the State Court lacked jurisdiction to rule on the homestead exemption issue, or otherwise adjudicate issues involving Debtors, and their homestead exemption postpetition. On January 27, 2020, when the State Court certified its summary judgment order as final, the exemption and lien avoidance issues were pending before this Court. Although Debtors' discharge had been entered, the pending motions involve issues that are critical to the administration of a Chapter 7 case.

This Court has jurisdiction of this Chapter 7 case under 28 U.S.C. § 1334(a). Proceedings in bankruptcy cases are referred to as “core” and “non-core.” The distinction between core and none-core is important because “[c]ongress identified as ‘[c]ore’ a nonexclusive list of 16 types of proceedings, § 157(b)(2), in which it thought bankruptcy courts could constitutionally enter judgment.” See *Wellness Int’l Network, Ltd. v. Sharif*, — U.S. —, 135 S.Ct. 1932, 1940 n.13, (2015). “Congress gave bankruptcy courts the power to hear and determine core proceedings and to ‘enter appropriate orders and judgments’ subject to appellate review by the district court. *Id.* Core proceedings include allowance or disallowance of exemptions from property of the estate. 28 U.S.C. § 157(b)(2)(B).¹⁶

¹⁶ The bankruptcy court’s exclusive jurisdiction over exemption allowance or disallowance was recognized prior to adoption of the Code, and the core non-core dichotomy. See *Goldsmith v.*

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Resolution of Debtors' exemption in their homestead is a matter to be determined by this Court in this bankruptcy proceeding, not the State Court in the Second Action. State court intrusions on all bankruptcy court orders or other "core" bankruptcy proceedings are barred in this circuit. *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074 (9th Cir.2000). The *Gruntz* Court explained:

The current bankruptcy jurisdictional statute, 28 U.S.C. § 1334, expands the historic role of the federal district courts in bankruptcy. District courts have original and exclusive jurisdiction of all cases under title 11. By the plain wording of the statute, Congress has expressed its intent that bankruptcy matters be handled exclusively in a federal forum. In short, Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.

Id. at 1080. The explicit statutory recognition that exemption matters are "core" demonstrates the significance these issues have to the broader administration of bankruptcy cases and Debtor's "fresh start." Not only did Congress intend that bankruptcy be handled exclusively in a federal forum, it designated as "core" those matters it considered integral to the administration of cases, including debtors' exemptions. Given this exclusivity, this Court cannot discern any basis upon which the State Court might have enjoyed jurisdiction to enter its Certification Order while this case was pending. Absent jurisdiction, the Certification Order has no effect, is not binding on this Court and is not entitled to any preclusive effect.¹⁷

Less relevant to the Court's analysis, but worth noting, if Glastonbury requested from the State Court a ruling on its Certification Motion on December 16, 2019, Glastonbury violated the automatic stay under § 362. On December 16, 2019, the stay under § 362 had not been modified

Jackman & Sons, Inc., 327 F.2d 184, 185 (10th Cir.1964).

¹⁷ Further, exemptions are determined as of the petition date, so even if the certification was effective, it does not change the fact that on the petition date there was no final order.

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and was in effect. To the extent Glastonbury sought a ruling on December 16, 2019, on its Certification Motion adverse to Debtors, the request violated § 362(a)(1). Further, “judicial proceedings, taken in violation of the automatic stay are void.” *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir.1992). Bankruptcy Courts are not obliged to extend full faith and credit to such judgments that stem from judicial proceedings in violation of the stay because such proceedings are void ab initio. *In re Gruntz*, 202 F.3d 1074 at n. 6 (9th Cir.2000).

D. Glastonbury’s Objection to Debtors’ Homestead Exemption.

The allowance or disallowance of exemptions under § 522 is critical to a debtor’s fresh start. One commentator explains:

A fundamental component of an individual debtor’s fresh start in bankruptcy is the debtor’s ability to set aside certain property as exempt from the claims of creditors. Exemption of property, together with the discharge of claims, lets the debtor maintain an appropriate standard of living as he or she goes forward after the bankruptcy case.

4 COLLIER ON BANKRUPTCY P 522.01 (16th ed. 2020). The specific exemptions available to debtors are statutorily defined. Montana has opted out of the federal exemption scheme. *See* Mont. Code Ann. § 31-2-106 (2020). When a state opts out of the federal exemption scheme, state law is applicable to the determination of homestead exemptions in bankruptcy. § 522(b)(2)(A), (d). Thus, this Court considers Montana’s exemption statutes, rather than federal law to determine the allowance of a debtor’s claimed homestead exemption. *In re Wright*, 525 B.R. 464, 471 (Bankr. D. Mont. 2015). Homestead exemption statutes must be liberally construed in favor of debtors. Constitution of the State of Montana, Article XIII, Section 5. Debtors listed their homestead exemption in Schedule C in the amount of \$1,804.56, pursuant to § 522(b)(2) and Rule 4003(a).

Under Montana law, to be eligible for the homestead exemption, the debtor must have executed a homestead declaration on the subject property and filed it with the county clerk and

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recorder. Mont. Code Ann. § 70-32-105. Further, a declaration of homestead must include a statement by the claimant that they are “residing on the premises.” § 70-32-106. Montana’s homestead exemption is currently limited to \$250,000, which amount is limited by the proportionality rule of Mont Code Ann. § 70-32-104(2). *See also, In re Alderman*, 195 B.R 106, 111, 15 Mont. B.R. 231 (9th Cir. BAP 1996) (“Montana law clearly provides that a claimant’s homestead exemption is limited to an amount proportional to his ownership interest in the property.”) Glastonbury has not challenged Debtors’ homestead exemption on any of these grounds.

Instead, Glastonbury’s Objection is limited to its legal argument that the exemption issue is res judicata, or has otherwise been decided in another action and that decision is binding on this Court. Based on the record presented to this Court, there is no binding decision that this Court must adopt or follow. To the contrary, the prepetition decision of the State Court was interlocutory and not final, so res judicata is not applicable. Collateral estoppel is not available to Glastonbury because it has failed to establish the State Court Order was the subject of adequate deliberation and “final.” Further, the postpetition effort by Glastonbury to make the interlocutory summary judgment decision “final” for purposes of full faith and credit, res judicata and collateral estoppel, impermissibly intruded into a core matter over which this Court has jurisdiction. Glastonbury’s Objection is overruled.

E. Motion to Avoid Lien.

According to Debtors’ Motion, Glastonbury’s judicial lien impairs Debtors’ homestead exemption. Debtors allege that the market value of their interest in the homestead property is

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\$1,804.56.¹⁸ Glastonbury's Judgment lien is the only lien on the homestead property. The avoidance of liens, in general, is governed by § 522(f), which provides in relevant part:

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is-

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)[.]

See also, In re Chiu, 304 F.3d 905, 907 (9th Cir. 2002); *In re Quane*, 16 Mont. B.R. 475, 476-77

(Bankr. D. Mont. 1998). The Ninth Circuit has explained:

The purpose of § 522(f)(1) is to provide relief for an overburdened debtor. *Farrey v. Sanderfoot*, 500 U.S. 291, 297-98, 111 S.Ct. 1825, 1829-30, 114 L.Ed.2d 337 (1991) (citing H.R.Rep. No. 95-595, at 126-27 (1977), U.S. Code Cong. & Admin. News 5963, 6087-88). “[A] principal reason Congress singled out judicial liens was because they are a device commonly used by creditors to defeat the protection bankruptcy law accords exempt property against debts.” *Id.*

Chiu, 304 F.3d at 908.

In *Chiu*, the Ninth Circuit noted that “under § 522(f)(1) a debtor may avoid a lien if three conditions are met: (1) there was a fixing of a lien on an interest of the debtor in property; (2) such lien impairs an exemption to which the debtor would have been entitled; and (3) such lien is a judicial lien.” *Id.*, quoting *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993); *Quane*, 16 Mont. B.R. at 477. As a threshold matter, under § 522(f)(2)(A) Debtors can only avoid the fixing of a judgment lien “on an interest of *the debtor* in property[.]” Debtors own a 1% interest in the property. Debtors cannot use § 522(f)(2)(A) to avoid Glastonbury's lien on the remaining 99% interest owned by their daughters, who are not debtors. The parties do not dispute that the

¹⁸ Debtors disclose in their schedules that the current market value of the entire property is \$180,456. Debtors conveyed 99% of the property to their three daughters in 2013 by quitclaim deed.

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Judgment from the First Action is a judicial lien on Debtors' interest in the Property. It impairs Debtors' homestead exemption. This Court has determined that Debtors are entitled to the homestead exemption. As a result, Glastonbury's Judgment lien is subject to being avoided under § 522(f).

For the reasons discussed herein, and subject to Glastonbury's right to object, request a hearing and schedule a hearing to reconsider the issuance of this Order within fourteen (14) days of the date of the Order: **IT IS ORDERED** Glastonbury Landowners Association, Inc. Objection to Claim of Exemption filed at ECF No. 19 is overruled; **IT IS FURTHER ORDERED** that Debtors' Motion to Avoid Lien under 11 U.S.C. § 522(f) filed at ECF No. 55 is granted; pursuant to 11 U.S.C. § 522(f)(1)(A), the judicial lien held by Glastonbury against Debtors' homestead property is avoided; and, **IT IS FURTHER ORDERED** that any relief requested by Glastonbury or the Debtors at ECF Nos. 60, 61, 62, 63, and 64 is denied.

If Glastonbury requests reconsideration of this Order within fourteen (14) days of the date of this Order, it must state with particularity that portion of the Order it wants reconsidered, the specific issue to be addressed, and any law that supports its position. Debtors shall not file any pleadings responsive to the request for reconsideration unless ordered to do so by the Court.

BY THE COURT:



Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana