



Opinion 591

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Opinion Title: 11/08/2016, PUBLISHED In re Petersen, 16-20042, Judge Thurman.

Body:

Chapter 13 debtors filed a motion to avoid a judicial lien impairing their homestead exemption per 11 U.S.C. § 522(f). The Debtors sought to avoid the lien immediately and argued that the Code allowed for the same. The Chapter 13 Trustee objected to the motion and argued that the lien should only be avoided after debtors' completion of their chapter 13 plan and a discharge relying on §§ 105(a) and 349(b)(1)(B). The Trustee urged the Court to follow its line of reasoning in *In re Woolsey*, 438 B.R. 432 (Bankr. D. Utah 2010), *aff'd*, 696 F.3d 1266 (10th Cir. 2012), which analyzed lien avoidance under § 506(d), because of the potential harm to creditors if the property is sold without the lien attached and the case is thereafter dismissed without a discharge. The Court granted the motion and created a two-step process for avoiding a judicial lien. In ruling, the Court explained that the lien may be avoided immediately for plan consummation purposes and once the debtors complete their plan, the lien could be completely avoided by the recordation of an order and discharge with the county recorder's office.

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Judge: [Judge William T. Thurman](#) [2]

Date: Tuesday, November 8, 2016

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