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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

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In re) Bankruptcy Case No. 81-00162
MARK A. WALL,)
Debtor.) O R D E R

On October 25, 1982, debtor filed an application to reopen his bankruptcy case which was closed on April 30, 1982, for the purpose of attempting to avoid two judicial liens on his residence pursuant to § 522(f) of the Bankruptcy Code. Lorin McRae dba McRae Sales & Distributing, one of the lien claimants, objected to the application on the ground that "the debtor was fully aware of the judgment and no good cause can be shown for re-opening the case." The creditor also argues that once closed, a case should remain closed.

There is no time limitation fixed in § 523(f) for avoidance of lien. In re Pine 11 B.R. 595 (ED. Tenn. 1981). Section 1471 gives this Court jurisdiction over all civil proceedings arising under or related to a case under Title 11. A civil proceeding seeking avoidance of liens under § 522(f) does not affect the administration of the bankruptcy case. "It affects only a personal property right of the debtor. Thus there is no compelling reason to require a closed bankruptcy case to be reopened as a condition precedent to bringing an avoidance action. Such an action is merely related to a bankruptcy case, and since it does

not affect the administration of the case, the Court has jurisdiction under 28 U.S.C. § 1471 to entertain such actions after a bankruptcy case is closed without reopening the case." In re Schneider 18 B.R. 274, 276 (N. D. 1982). Therefore, the Court declines to reopen the case because such action is unnecessary.

Upon the facts of a particular case, even though there is no time limitation for the assertion of rights under § 522(f)(1), the doctrine of laches may be applicable. In less extreme cases in which the creditor has taken action in reliance upon debtor's failure to take action with regards to a lien, it may be appropriate to order that the creditor be reimbursed for some or all of the costs incurred. In re Collins 13 B.R. 645 (W. D. Mich. 1981). Conversely, where a creditor refuses to consent to the avoidance of a lien which is clearly voidable pursuant to § 522(f), thereby requiring the debtor to commence a civil proceeding, the Court will look with favor upon a motion for reimbursement of debtor's costs and attorneys fees. (In re Montney) 17 B.R. 353 (E. D. Mich., S. D., 1982).

DATED this 10 day of December, 1982.

BY THE COURT:

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GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE