



UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re: Jonathan Andrew Arid,  
Debtor.

Case No.: 2:20-bk-11316-ER

Chapter: 7

**MEMORANDUM OF DECISION  
GRANTING DEBTOR'S MOTION TO  
AVOID LIEN UNDER 11 U.S.C. § 522(f),  
AND, IF APPLICABLE, FOR  
TURNOVER OF PROPERTY  
(PERSONAL PROPERTY)**

[No hearing required pursuant to Federal Rule  
of Civil Procedure 78(b) and Local  
Bankruptcy Rule 9013-1(j)(3)]

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**I. Background**

On February 5, 2020, Jonathan Andrew Arid (the “Debtor”) filed a voluntary chapter 7 petition. On March 2, 2020, the Debtor filed a *Motion to Avoid Lien under 11 U.S.C. § 522(f), and, if Applicable, for Turnover of Property* [Doc. No. 9] (the “Motion”), seeking to avoid an involuntary judicial lien held by creditor Luis Rodriguez (the “Creditor”). On March 18, 2020, the Creditor responded by timely filing the *Creditor’s Opposition to Debtor’s Motion to Avoid Lien* [Doc. No. 13] (the “Opposition”), in which he requested a hearing date on the Motion. Based on its review of the parties’ briefs, the Court determined that this matter was suitable for disposition without oral argument. *See* Order Setting Holding Date of April 22, 2020 for Debtor’s Motion to Avoid Lien under 11 U.S.C. § 522(f), and, if Applicable, for Turnover of Property (Personal Property) [Doc. No. 14]. For the reasons set forth below, the Motion is GRANTED.

## II. Facts and Summary of Pleadings

Pursuant to § 522(f), the Motion attempts to avoid a judicial lien against certain bank account funds, resulting from a \$72,260.29 money judgment awarded to the Creditor in a suit asserted against the Debtor and MKB Home Design, LLC (“MKB”). The Debtor’s *Schedule A* identified an interest in a Bank of America checking account valued at \$12,800 (the “BOA Account”). *See* Doc. No. 1. The Debtor also listed a 100% ownership interest in MKB. *See id.* On *Schedule C*, the Debtor claimed a wildcard exemption in the BOA Account, in full, pursuant to California Code of Civil Procedure (“CCP”) § 703.140(b)(5). *See id.* The Creditor sought to collect his money judgment by filing a *Notice of Levy* against the BOA Account on January 28, 2020. *See* Motion, Ex. F. According to the Motion, the BOA Account funds were in the possession of Bank of America as of the petition date. Memorandum of Points and Authorities (“MPA”) at 9.

The Debtor asserts the following arguments in support of the Motion. Under California law, the Debtor advances that the levy of the funds did not constitute the transfer of ownership, but rather, such act merely entitled the Creditor to a judgment lien against the funds. MPA at 6-7 (citing to CCP § 697.710 and *Ramirez v. Fusilier (In re Ramirez)*, 183 B.R. 583, 591-592 (B.A.P. 9th Cir. 1995)). The Debtor further claims that the BOA Account remained estate property because this case was commenced within the exemption period prescribed by CCP § 703.520(a)—allowing debtors to file an exemption claim no later than 10 days after the notice of levy was served on the judgment debtor. Arguing that turnover of the BOA Account funds is in order, the Debtor relies on *In re Hernandez*, 468 B.R. 396, 399 (Bankr. S.D. Cal. 2012), which is comparable to the present circumstances. In *Hernandez*, a bankruptcy court adjudicated a judgment creditor’s rights with respect to funds seized by the levying officer prior to the bankruptcy filing, and which had not been transferred to the creditor. According to the Motion, the upshot of *Hernandez* is that the levied funds were deemed to be part of the estate, and as such, the court rejected the creditor’s request to vacate a turnover order previously entered. In sum, as the BOA Account belongs to the estate, and because such asset has been appropriately exempted, the Debtor submits that he is entitled to avoid the Creditor’s entire lien.

The Creditor opposes the Motion and makes the following arguments and representations in support of his Opposition [Doc. No. 13].

First, the Debtor has not proven that he is entitled to a \$12,800 exemption under CCP § 703.140(b)(5), which limits debtors to a \$1,280 exemption. Second, at the § 341(a) Meeting of the Creditors held on March 16, 2020, the Debtor purportedly acknowledged that the BOA Account was also used by MKB. As MKB is a non-debtor party, the Creditor is entitled to any BOA Account funds traceable to MKB. Accordingly, the Debtor inappropriately commingled his personal funds with those of MKB to avoid paying the Creditor. The Court notes that the only evidence supporting the Creditor’s allegation is the declaration of Brian D. Center, the Creditor’s counsel. *See* Center Decl., ¶ 3. Third, the Creditor concedes that the BOA Account is estate property. *See* Opposition at 2. However, because the Creditor obtained a default judgment against MKB, and the levied funds in the BOA Account belong to MKB (Creditor does not specify an amount), the Creditor has the right to a constructive trust that will hold MKB’s

portion, pending resolution by way of an adversary proceeding. In support of the foregoing, the Creditor cites to *In re Advent Mgmt. Corp.*, 178 B.R. 480 (B.A.P. 9th Cir. 1995).

The Debtor did not file a reply in support of the Motion.

### III. Findings and Conclusions

#### A. The Debtor is Entitled to Avoid the Creditor's Lien on the BOA Account Funds

Section 522(f) allows a debtor to “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.” To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the property; (2) he is entitled to the exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). “As the moving party, the debtor carries the burden of proof on all factors.” *Id.*; see also *In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

The Debtor asserts that his wildcard exemption as to the BOA Account valued at \$12,800 is impaired by the Creditor's judicial lien. In opposition, the Creditor contends that (a) the Debtor's wildcard exemption is capped at \$1,280, and (b) an unspecified portion of the funds belongs to MKB, not the Debtor. Both of the Creditor's arguments fail as a matter of law.

The wildcard exemption allows debtors to exempt their aggregate interest “in any property” “not to exceed [\$1,550] plus any unused amount of the exemption provided under paragraph (1).” CCP § 703.140(b)(5). Under § 703.140(b)(1), debtors are permitted to exempt up to \$29,275. That means that debtors who choose not to avail themselves of any exemptions under § 703.140(b)(1), possess a wildcard exemption totaling \$30,825.<sup>1</sup> Based on its review of *Schedule C*, attached to the Motion as Exhibit A, the Court finds that the Debtor did not claim any (b)(1) exemptions; therefore, he is entitled to claim a wildcard exemption of \$30,825, which is more than enough to exempt the entirety of the BOA Account funds.

The argument that Creditor is entitled to funds traceable to MKB also misses the mark. A claimed exemption is “presumptively valid.” *In re Diener*, 483 B.R. 196, 203 (B.A.P. 9th Cir. 2012) (citing *Carter v. Anderson (In re Carter)*, 182 F.3d 1027, 1029 n.3 (9th Cir. 1999)). Once an exemption has been claimed, it is the objecting party's burden to prove by a preponderance of the evidence that the exemption is improper. *Id.* (citing FRBP 4003(c)). Furthermore, a debtor's right to claim particular exemptions and the amount of those exemptions is defined by California law. See *Law v. Siegel*, 134 S.Ct. 1188, 1196-97 (2014). “The California exemption statutes are liberally construed, for their manifest purpose is to protect income and property needed for the subsistence of the judgment debtor.” *In re Payne*, 323 B.R. 723, 727 (B.A.P. 9th Cir. 2005) (internal citation omitted); see also *Schwartzman v. Wilshinsky*, 50 Cal. App. 4th 619, 630 (1996) (California exemption statutes should be construed to benefit the judgment debtor).

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<sup>1</sup> The figures outlined above reflect the most current California bankruptcy exemption amounts. See Judicial Council of California, *Current Dollar Amounts of Exemptions from Enforcement of Judgments* (April 1, 2019), <https://www.courts.ca.gov/documents/ej156.pdf>.

Here, the Debtor's claimed wildcard exemption of the BOA Account is deemed presumptively valid. The Creditor objects to the claimed exemption based on the Debtor's purported admission that the BOA Account was used by both MKB and the Debtor. The Creditor's position is poorly briefed, but it appears to be that MKB's alleged ownership of a portion of the funds somehow overcomes the Debtor's wildcard exemption. However, the Creditor did not cite any supporting legal authority, nor adequately explain why the Debtor's wildcard exemption is invalid. However, even if the Court were to adopt the position that the funds can be traced to both the Debtor and MKB, the Creditor's argument would fare no better. Under California law, the Debtor may claim a wildcard exemption "*in any property*" within the dollar limits discussed above. *See* CCP § 703.140(b)(5) (emphasis added). Hence, because the Debtor possesses a 100% interest in MKB, the Court finds that the funds held in the BOA Account constitute property that the Debtor may exempt. *See In re Garcia*, 709 F.3d 861, 864 (9th Cir. 2013) (affirming the lower court's ruling that "'any property' means just that—any property—up to the statutory amount."). Accordingly, the Creditor has provided little to no evidence to rebut the presumption in favor of the Debtor's claimed exemption. In so finding, the Court determines that the Debtor's exemption must be construed broadly and liberally in his favor under both the Bankruptcy Code and California law. *See In re Rolland*, 317 B.R. 402, 413 (Bankr. C.D. Cal. 2004). Therefore, the Debtor's wildcard exemption with respect to the BOA Account is valid.

Based on the foregoing, the Creditor's lien impairs the Debtor's exemption of the BOA Account; therefore, the Debtor is entitled to avoid the Creditor's lien pursuant to § 522(f).<sup>2</sup>

#### **B. The Bankruptcy Code Requires Turnover of the BOA Account Funds**

Property subject to turnover includes any property that the trustee may use, sell, or lease, or that the debtor may exempt pursuant to § 522. *See* 11 U.S.C. § 542(a). Additionally, § 542(a) provides that an entity in possession of estate property "shall" deliver such property to the trustee. *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996). This is a mandatory duty arising upon the filing of the bankruptcy petition. *Id.*

Therefore, pursuant to § 542(a), the custodian of the BOA Account shall identify all property of the estate and to turn over the same, unless the property is of inconsequential value, to the Trustee.

#### **IV. Conclusion**


For the reasons set forth above, the Debtor's Motion is GRANTED. The Court will enter an order consistent with this Memorandum Decision.

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<sup>2</sup> Because the Debtor is entitled to avoid the lien against the BOA Account, the Court further overrules the Creditor's request for a constructive trust.

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Date: April 21, 2020

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles  
United States Bankruptcy Judge