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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SAN FERNANDO VALLEY DIVISION**
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13 In re:

14 Larissa Anatolia Kenney

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18 Debtor(s).

Case No.: 1:10-bk-11635-GM

CHAPTER 7

**ORDER DENYING MOTION TO AVOID LIEN
UNDER 11 USC §522(f) WITH AMERICAN
EXPRESS BANK, FSB IN THAT NO LIEN
CAN ATTACH**

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20 Larissa Kenney (“Debtor”) filed this voluntary chapter 7 bankruptcy on February 15,
21 2010. A discharge was entered on June 7, 2010 and the case was closed on June 15, 2010. Debtor
22 brought a motion to reopen this case on September 14, 2018 (Doc. No. 16) for purposes of filing
23 a lien avoidance motion against American Express Bank, FRB (“Creditor”). The motion to
24 reopen was granted on October 1, 2018. (Doc. No. 18) Debtor then filed the instant Motion to
25 Avoid Lien under 11 U.S.C. § 522(f) (the “Motion”). (Doc No. 21) The proof of service of the
26 motion does not indicate that American Express Bank was served, but given the law as set forth
27 below, this lack of service is not critical to the decision of the Court. The Court will serve them
28 with a copy of this ruling.

1 Debtor attached as Exhibit 1 to the Motion an Abstract of Judgment—Civil and Small
2 Claims by Omni Bank against Debtor on December 7, 2012. The abstract of judgment was
3 recorded in Los Angeles County on September 9, 2009.

4 Under California law, recordation of an abstract of money judgment with a county
5 recorder's office creates a lien against any property in the county in which the abstract of
6 judgment is recorded. C.C.P. 397.340(a). The lien also attaches to any property in the county in
7 which the abstract of judgment was recorded acquired after the judgment lien was created.
8 C.C.P. 397.340(b). Such a lien continues for 10 years from the date of the entry of judgment.

9 Debtor at no point owned property to which the abstract of judgment could attach, but
10 now appears to be seeking financing to purchase a home. This case raises the issue of whether an
11 abstract of judgment recorded before debtor filed bankruptcy, which never attached to any
12 property, could become a lien on any property acquired after the debt is discharged in
13 bankruptcy. The issue has been considered previously by a bankruptcy court in the Eastern
14 District of California. In re Thomas, 102 B.R. 199 (Bankr. E.D. Cal. 1989). The facts in Thomas
15 are very similar to the facts here. In Thomas, the creditor obtained a judgment against the debtors
16 and recorded an abstract of judgment thereon in Sutter County. Id. at 200. The debtors
17 subsequently filed chapter 7 bankruptcy and received a discharge. Id. The debtors never owned
18 any property in Sutter County prior to the bankruptcy, and the judgment was discharged. Id.
19 Post-bankruptcy, debtors purchased a home in Sutter County. Id. The Thomas court was faced
20 with the question of whether creditor had a valid lien against the proceeds of a sale of the
21 property. The creditor argued that it had a valid lien on debtors' after acquired property which
22 had neither been discharged nor avoided under the bankruptcy code. Id. The creditor argued
23 further that, while it was enjoined by the discharge injunction from enforcing the lien, it was not
24 required to release the debtors from the lien absent an order of the bankruptcy court. Id. at 200-
25 01. The Thomas court rejected creditor's argument, stating that the argument was "based upon
26 the false premise that a 'lien' actually exists." Id. at 201.

27 The California courts have long recognized the maxim that a lien cannot survive
28 (much less be created in the first place) absent the existence of an enforceable

1 underlying obligation. (*Gostin v. State Farm Insurance Co.*, 224 Cal.App.2d 319,
2 325, 36 Cal.Rptr. 596 (citing *East Bay Municipal Utility District v. Garrison*, 191
3 Cal. 680, 692, 218 P. 43; *Pacific Finance Corporation v. Hendley*, 119 Cal.App.
4 697, 704, 7 P.2d 391)). Furthermore, as was noted above, a lien cannot exist in the
5 absence of an underlying attachable “res”.

6 Id. at 201. Based upon its analysis, the court ordered that the lien was void and expunged of the
7 record. Id. at 202. The Thomas court noted that this result is consistent with the definition of
8 "lien" under the California Code of Civil Procedure: "[a] lien is a charge imposed upon specific
9 property, by which it is made security for the performance of an act." C.C.P. § 1180 (emphasis
10 added).

11 The conclusion reached by the Thomas court has been cited favorably in similar
12 situations:

13 The parties do not dispute that IFS owned no real property in Los Angeles County
14 on the date of recordation. IFS still owns no real property. Moreover, under
15 California law a lien cannot exist absent attachable property. . . . Here, IFS did not
16 own any real property in Los Angeles County on the date of recordation or at any
17 time from that date through the petition date. IFS still owns no real property.

18 Thus, DC Media's recordation of the abstract of judgment did not create or perfect
19 a lien, or otherwise affect IFS' property or an interest in IFS' real property—
20 because IFS owned no real property.

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22 In re Imagine Fulfillment Servs., LLC, 489 B.R. 136, 152–53 (Bankr. C.D. Cal. 2013). See In re
23 Baker, 217 B.R. 609, 613 (Bankr. N.D. Cal. 1998) ("This Court views the *Thomas* court's logic
24 as unassailable. . . . For a lien to exist, both the property and the obligation must exist at the same
25 time. A lien may not 'survive' bankruptcy unless it first exists.")

26 A debtor may avoid a lien under 522(f)(1)(A) if: "(1) there was a fixing of a lien on an
27 interest of the debtor in property; (2) such lien impairs an exemption to which the debtor would
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1 have been entitled; and (3) such lien is a judicial lien." In re Pederson, 230 B.R. 158, 160 (B.A.P.
2 9th Cir. 1999).

3 Because there is no valid lien to be avoided, Debtor is not entitled to the protections of
4 522(f). The Court recognizes that Debtor is trying to ensure that no encumbrance results from a
5 pre-petition recorded abstract of judgment; such a result would have the absurd consequence of
6 creating an unenforceable lien on property acquired post-petition, but only in the specific
7 counties which the creditor recorded the abstract of judgment. Addressing a similar dilemma, an
8 Idaho bankruptcy court offered the following:

9 Thus, while the Code provides no mechanism for the Court to preemptively order that no
10 lien for a prepetition debt ever attach to Debtors' after-acquired property, such an order
11 appears unnecessary. In this case, there are no judgment liens because there is no real
12 property; Debtors' personal liability has been discharged, and future efforts to collect on
13 the judgments are prohibited by the discharge injunction. Should a creditor make such
14 collection efforts against after-acquired property, that creditor could be subject to
15 sanctions. *Zilog, Inc. v. Corning (In re Zilog, Inc.)*, 450 F.3d 996, 1007 (9th Cir.2006).

16 In re Davis, No. 07-00622, 2007 WL 2710403, at *3 (Bankr. D. Idaho Sept. 13, 2007).

17 For the foregoing reasons, the Motion is DENIED.

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24 Date: November 16, 2018



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26 Geraldine Mund
27 United States Bankruptcy Judge
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