

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

In re Jefferson PRESSLEY and Laretta Pressley, Debtors

No. 94-20629-BKC-RBR
(Cite as: 242 B.R. 193)

**ORDER GRANTING MOTION TO REOPEN CASE AND TO AVOID LIENS
PURSUANT TO SECTION 522(f) OF THE BANKRUPTCY CODE**

This matter came before the Court for hearing on November 24, 1999 upon the Debtors' Motion to Reopen Case and to Avoid Liens Pursuant to Section 522(f) of the Bankruptcy Code. The Court, having reviewed the Motion and court file, having considered the argument of counsel, and being otherwise duly advised in the premises, finds as follows.

Background

The Debtors filed their Chapter 13 petition on February 16, 1994. On their schedules, the Debtors listed J.T. Atkins Auto Sales Inc. (J.T. Atkins) and Barnett Bank of S. Florida (Barnett Bank) as creditors holding unsecured nonpriority claims. The Debtors' Chapter 13 plan was confirmed by Order dated April 21, 1994, and the Debtors received their discharge on July 24, 1998. The case was then closed on September 3, 1998. At no time did J.T. Atkins or Barnett Bank object to the treatment of their claims under the Debtors' plan.

Subsequent to the closing of their case, the Debtors became aware that both J.T. Atkins and Barnett Recovery Corp., a division of Barnett Bank, held liens upon the Debtors' homestead. On October 19, 1999, the Debtors filed the instant Motion seeking to have the liens avoided pursuant to the 11 U.S.C. s 522(f). Neither creditor appeared before the Court for the scheduled hearing on November 24, 1999, nor did they file any objections to the Motion.

Discussion

The question before the Court is whether Chapter 13 debtors may avoid judicial liens held by listed creditors after the Debtors' have completed their plan payments and received a discharge. The Debtors provided no case law to support their Motion, and Court could find no authority in the Eleventh Circuit. However, in the case of In re Schroff, 94 B.R. 279 (Bankr. E.D.N.Y.1988), the Bankruptcy Court for the Eastern District of New York found that, while a debtor may not avoid liens of creditors who were not listed by the debtor because such creditors did not benefit from the Chapter 13 Plan, the debtor could avoid a judicial lien of a listed creditor unless the creditor would be sufficiently prejudiced. *Id.* at 284.

In this case, neither of the lien creditors have objected to the Debtor's Motion. Finding no evidence of prejudice to the creditors, the Court shall grant the requested relief. Accordingly, it is hereby

ORDERED AND ADJUDGED that the Debtors' Motion to Reopen Case and to Avoid Liens Pursuant to Section 522(f) of the Bankruptcy Code is GRANTED.

The liens of J.T. Atkins Auto Sales, Inc. and Barnett Recovery Corp. are avoided. The case shall be reclosed by the Clerk of Court.

ORDERED in the Southern District of Florida on this 8th day of December, 1999.

RAYMOND B. RAY
United States Bankruptcy Judge