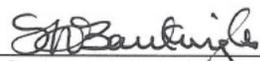




**SO ORDERED.**  
**SIGNED this 26th day of January, 2015**

**THIS ORDER HAS BEEN ENTERED ON THE DOCKET.**  
**PLEASE SEE DOCKET FOR ENTRY DATE.**

  
Suzanne H. Bauknight  
UNITED STATES BANKRUPTCY JUDGE

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**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 12-30098

MARVIN LEWIS HOUSER, JR.  
CHRISTI LYNNE HOUSER

Debtors

**AMENDED  
MEMORANDUM AND ORDER ON MOTIONS TO  
AVOID LIEN PURSUANT TO 11 U.S.C. § 522(f)(1)(A)**

Before the court are two Motions to Avoid Lien Pursuant to 11 U.S.C. § 522(f)(1)(A) (collectively, Motions) filed by Debtors on December 2, 2014, seeking to avoid, as impairments to Debtors' homestead exemption, certain judicial liens pursuant to 11 U.S.C. § 522(f)(1)(A). The motion filed as docket number 32 seeks to avoid the judgment lien of Capital One Bank (USA), N.A. (Capital One) in the amount of \$21,592.22,<sup>1</sup> and the motion filed as docket number 33 seeks to avoid the judgment lien of Discover Bank in the amount of \$7,006.95. Neither Capital One nor Discover Bank filed a response or opposition, and the court accepts as undisputed Debtors' averments in the Motions that their residence, located at 3532 Pilgrim Lane,

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<sup>1</sup> The amount of the Capital One judgment lien was corrected by the Motion by Debtors to Reconsider Order on Motion to Avoid Lien Pursuant to 11 U.S.C. § 522(f)(1)(A) filed on January 21, 2015.

Mascot, Tennessee (Pilgrim Lane Property), has a fair market value of \$130,000.00. The Pilgrim Lane Property is subject to a first mortgage lien in the amount of \$62,795.00 held by Chase Mortgage and a second mortgage lien held by Greentree in the amount of \$57,307.00. Debtors have also claimed, pursuant to Tennessee Code Annotated § 26-2-301, a \$7,500.00 homestead exemption in the Pilgrim Lane Property. Capital One recorded instrument #200907080002342 with the Knox County Register of Deeds, creating a judicial lien on the Pilgrim Lane Property in the amount of \$21,592.22 plus 10% post-judgment interest. Discover Bank later recorded instrument #201109120013650 with the Knox County Register of Deeds, likewise creating a judicial lien on the Pilgrim Lane Property in the amount of \$7,006.95.

Section 522(f)(1) provides that a debtor may “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 under subsection (b) of this section, if such lien is – (A) a judicial lien . . . .” 11 U.S.C. § 522(f)(1)(A). Impairment is calculated by the statutory formula set forth in subsection (f)(2)(A):

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of —

- (i) the lien;
- (ii) all other liens on the property; and
- (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor’s interest in the property would have in the absence of any liens.

11 U.S.C. § 522(f)(2)(A). Additionally, “[i]n the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.” 11 U.S.C. § 522(f)(2)(B).

This formula is “a relatively simple calculation of value minus the sum of other liens, the exemption, and the judicial lien to be avoided. In the event this formula produces a negative number, the judicial lien must be avoided in that amount since this is the extent to which the exemption is impaired.” *In re Northern*, 294 B.R. 821, 827 (Bankr. E.D. Tenn. 2003) (citation omitted). When a property is subject to more than one avoidable lien, “the judicial lien that is to be considered first in the multiple lien avoidance process is the judicial lien that is positioned at the lowest priority among the judicial liens[,]” and once it is avoided, it is not considered in making the calculation with respect to the other lien. *In re Jochum*, 309 B.R. 327, 330 (Bankr. E.D. Mo. 2004); *see also In re Morrow*, 2009 WL 1607582, at \*5 (Bankr. N.D. Ohio Feb. 12, 2009) (“A junior judgment lien can survive only to the extent that there are assets remaining after the more senior lien holders have been fully repaid.”). Debtors must prove, by a preponderance of the evidence, that the liens may be avoided under § 522(f). *In re Young*, 471 B.R. 715, 719 (Bankr. E.D. Tenn. 2012).

Based upon the instrument numbers of the recorded judgment liens, the court easily deduces that the judicial lien recorded by Discover is the more junior lien, having been recorded in 2011 when the Capital One lien was recorded in 2009. Accordingly, using the undisputed figures offered by Debtors, the § 522(f)(2)(A) formula is applied as follows with respect to the Discover judicial lien:

(i)	Chase Mortgage	\$ 62,795.00
(ii)	Greentree	\$ 57,307.00

(iii) Capital One	\$ 21,592.22
(iv) homestead exemption	<u>\$ 7,500.00</u>
Total of mortgages, liens, and exemption	\$149,194.22

Because the \$130,000.00 value of the Pilgrim Lane Property is less than the other liens against the property in the amount of \$149,194.22, the Discover lien impairs Debtors' homestead exemption and is avoided in its entirety.

With respect to the Capital One lien, the § 522(f)(2)(A) formula reflects the following:

(i) Chase Mortgage	\$ 62,795.00
(ii) Greentree	\$ 57,307.00
(iii) homestead exemption	<u>\$ 7,500.00</u>
Total of mortgages and exemption	\$127,602.00

To determine the extent to which the Capital One lien impairs the Pilgrim Lane Property, the following calculations are necessary:

Value of Pilgrim Lane Property	\$130,000.00
Less total mortgages and exemption	<u>\$127,602.00</u>
Excess value	\$ 2,398.00
Amount of Capital One lien	\$ 21,592.22
Less excess value	<u>\$ 2,398.00</u>
Amount of impairment	\$ 19,194.22

Accordingly, Debtors' exemption is impaired by Capital One's judicial lien to the extent of \$19,194.22 plus any post-judgment interest, and the judicial lien will be avoided in the amount of \$19,194.22 plus any post-judgment interest that has accrued or may accrue in the future. The judicial lien of Capital One is not avoided to the extent of the remaining \$2,398.00. *See e.g., Brinley v. LPP Mortg., Ltd. (In re Brinley)*, 403 F.3d 415, 421 (6th Cir. 2005) (holding that the statute "authorizes avoidance of judicial liens only *to the extent that* those liens impair an exemption").

For the foregoing reasons, the court directs the following:

1. The Motion to Avoid Lien Pursuant to 11 U.S.C. § 522(f)(1)(A), filed by Debtors on December 2, 2014, as docket entry 33, is GRANTED. The judicial lien of Discover Bank encumbering Debtors' residential real property located at 3532 Pilgrim Lane, Mascot, Knox County, Tennessee, is AVOIDED in its entirety pursuant to 11 U.S.C. § 522(f)(1)(A).

2. Discover Bank shall, within 14 days, release the lien of its judgment of record in the Office of the Register of Deeds for Knox County, Tennessee.

3. The Motion to Avoid Lien Pursuant to 11 U.S.C. § 522(f)(1)(A), filed by Debtors on December 2, 2014, as docket entry 32, is GRANTED in part and DENIED in part. Pursuant to 11 U.S.C. § 522(f)(1)(A), the judicial lien of Capital One Bank (USA), N.A. encumbering Debtors' residential real property located at 3532 Pilgrim Lane, Mascot, Knox County, Tennessee, is AVOIDED to the extent of \$19,194.22 plus any post-judgment interest that may have accrued or may accrue but remains a lien upon said property in the amount of \$2,398.00.

4. Capital One (USA), N.A. shall, within 14 days, record a release of the lien of its judgment of record in the Office of the Register of Deeds for Knox County, Tennessee, in the amount of \$19,194.22.

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