



Analysis of Enforcement of Money Judgments in Arizona Against a Judgment Debtor's Residence / "Homestead" Property

By Larry O. Folks

Relevant Background Facts

Judgment Creditor obtained a money judgment ("Judgment") against Judgment Debtor. The Judgment was recorded with the Maricopa County Recorder ("County Recorder") prior to the Judgment Debtor having filed for bankruptcy protection and while Judgment Debtor resided in and owned a residence located in Maricopa County ("Residence").

Judgment Debtor filed a voluntary petition for bankruptcy relief ("Bankruptcy Proceeding") after the Judgment was recorded with the County Recorder. Judgment Creditor filed an unsecured Proof of Claim based upon the Judgment in the Bankruptcy Proceeding. Judgment Debtor received a Chapter 7 bankruptcy discharge.

Legal Analysis

APPLICABLE ARIZONA LAW

The Arizona Court of Appeals' 2018 decision in *Pacific Western Bank v. Castleton*¹ includes a comprehensive analysis of a judgment creditor's rights with respect to collecting upon a recorded money judgment against a judgment debtor's "homestead property" (residence) under Arizona law. Following are the important bullet point concepts:

- The general rule is that a recorded money judgment creates a statutory judgment lien on all real property owned by a judgment debtor in the county where the judgment is recorded.
- An exception to the general rule is that a "homestead property" is completely exempt from the statutory judgment lien. The recorded judgment simply is not a lien on the homestead property at all.
- Even though the judgment creditor does not have a lien on the "homestead property," the judgment creditor is given the legal remedy to force a Sheriff's execution sale of the "homestead property" if there is equity in the property above all consensual liens on the property and the \$150,000 homestead exemption amount available to the judgment debtor.

¹ 434 P.3d 1187, 246 Ariz. 108 (AZ App. 2018)

APPLICABLE BANKRUPTCY LAW

The Arizona Bankruptcy Court has considered the issue and determined that “a recorded judgment shall not become a lien upon any homestead property” regardless of the value of the property.² Therefore, when the Judgment Debtor filed for bankruptcy protection, Judgment Creditor did not hold a judgment lien upon Judgment Debtor’s Residence. In addition, Judgment Creditor properly filed an unsecured Proof of Claim in Judgment Debtor’s Bankruptcy Proceeding.

The Bankruptcy Court, in *In re Rand*, describes that, when a Chapter 7 bankruptcy is filed, it is the Chapter 7 trustee’s obligation to sell the “homestead property” and distribute any equity above the consensual liens and \$150,000 “homestead exemption” amount and make a general distribution to all creditors. Furthermore, the Arizona Court of Appeals, in *Grand Real Estate, Inc. v. Sirignano*,³ explained that, when a judgment creditor with a recorded judgment against a “homestead property” has no lien and was not a secured creditor, the debtor’s Chapter 7 discharge released the judgment debtor from personal liability and further enforcement of the judgment is barred.

My analysis of the bankruptcy law is that Judgment Creditor was an unsecured creditor when the bankruptcy was filed, its judgment was discharged, and it lost its state law right to force a Sheriff’s sale of the “homestead property” if it has equity after the date of the discharge.

Conclusion

Unfortunately, Judgment Creditor does not have a lien on the Judgment Debtor’s Residence, and it cannot force a Sheriff’s sale of the Residence due the bankruptcy discharge.

- Larry Folks
Folks Hess, PLLC
1850 N. Central Ave., Suite 1140
Phoenix, Arizona 85004
- 602-256-5906 *Direct Line*
- folks@folkshess.com

² *In re Laurine*, 2017 WL 2458354 (Bankr. D. Ariz. 2017) citing *In re Rand*, 400 B.R. 749 (Bankr. D. Ariz. 2008).

³ 139 Ariz. 8, 13, 676 P.2d 642,647 (AZ App. 1983)