

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: JOHN RAES MONTIEL and
OLGA DE LOPEZ MONTIEL,

No. 24-10561-j7

Debtors.

**MEMORANDUM OPINION AND ORDER DENYING MOTION
FOR SUMMARY JUDGMENT WITHOUT PREJUDICE**

The matter before the Court is the Debtors' Motion for Summary Judgment ("MSJ" – [Doc. 37](#)). Debtors request the Court to grant summary judgment in their favor on their Motion to Avoid Judicial Lien held by Maya Hinojos ("Motion to Avoid Lien" – [Doc. 19](#)). For the reasons explained below, the Court will deny the MSJ, without prejudice.

SUMMARY JUDGMENT STANDARD¹

Summary judgment will be granted when, taking the evidence in the light most favorable to the non-moving party, the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.² The moving party bears the initial burden to show the absence of a genuine dispute as to any material fact and that it is entitled to judgment as a matter of law,³ even if the nonmovant fails to respond to the motion.⁴

¹ This recitation of the summary judgment standard is set forth in *In re Woods*, [660 B.R. 905](#) (10th Cir. BAP 2024), authored by the judge authoring this order.

² [Fed. R. Civ. P. 56\(a\)](#), made applicable to this contested matter by [Fed. R. Bankr. P. 9014](#) and [Fed. R. Bankr. P. 7056](#).

³ *Celotex Corp. v. Catrett*, [477 U.S. 317, 323](#) (1986) (The "party seeking summary judgment always bears the initial responsibility of informing the . . . court of the basis for its motion, and . . . demonstrat[ing] the absence of a genuine issue of material fact."); *Bacchus Indus., Inc. v. Arvin Indus., Inc.*, [939 F.2d 887, 891](#) (10th Cir. 1991) ("The moving party has the initial burden to show 'that there is an absence of evidence to support the nonmoving party's case.'") (quoting *Celotex Corp.*, [477 U.S. at 325](#))).

⁴ [Fed. R. Civ. P. 56\(a\)](#), made applicable to this contested matter by [Fed. R. Bankr. P. 9014](#) and [Fed. R. Bankr. P. 7056](#); *Perez v. El Tequila, LLC*, [847 F.3d 1247, 1254](#) (10th Cir. 2017).

As part of its initial burden, the moving party must identify the material facts with respect to which it asserts no genuine dispute exists, properly supported by evidence, admissions, and other materials in the record.⁵ Although the Court must review the materials submitted by the parties in support of or in opposition to summary judgment that are adequately brought to its attention, the Court may, but is not required, to consider other materials in the record.⁶ If the moving party fails to properly support a material fact it asserts is not in genuine dispute or a nonmoving party fails to address the movant’s assertion of a fact as required by Rule 56(c), the court may:

- (1) give [the movant or nonmovant] an opportunity to properly support or address the fact;
- (2) consider the fact [the nonmovant fails to address] undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (4) issue any other appropriate order.⁷

When determining whether summary judgment should be granted, the Court must “examine the factual record and reasonable inferences therefrom in the light most favorable to the party opposing summary judgment.”⁸ Under this standard, summary judgment is appropriate “if the evidence points only one way and no reasonable inferences could support the non-moving

⁵ [Fed. R. Civ. P. 56\(c\)\(1\)](#), made applicable to this contested matter by [Fed. R. Bankr. P. 9014](#) and [Fed. R. Bankr. P. 7056](#).

⁶ See *Lazy S Ranch Props., LLC v. Valero Terminaling & Distrib. Co.*, [92 F. 4th 1189, 1198](#) (10th Cir. 2024) (the court need only review the materials adequately brought to its attention); *Torry v. City of Chicago*, [932 F. 3d 579, 584](#) (7th Cir. 2019) (citing [Fed. R. Civ. P. 56\(c\)\(3\)](#)); *Spencer v. Abbott*, [731 F. App’x 731, 738](#) (10th Cir. 2017) (same).

⁷ [Fed. R. Civ. P. 56\(e\)](#), made applicable by [Fed. R. Bankr. P. 9014](#) and [Fed. R. Bankr. P. 7056](#).

⁸ *Wolf v. Prudential Ins. Co. of Am.*, [50 F.3d 793, 796](#) (10th Cir. 1995) (quoting *Applied Genetics Int’l, Inc. v. First Affiliated Sec., Inc.*, [912 F.2d 1238, 1241](#) (10th Cir. 1990)); see also *Genberg v. Porter*, [882 F.3d 1249, 1253](#) (10th Cir. 2018) (same).

party's position.”⁹ In other words, no genuine dispute of material fact exists if “the record taken as a whole could not lead a rational trier of fact to find for the non-moving party.”¹⁰

DISCUSSION

A. Debtors' Motion to Avoid Lien and MSJ; the Responses; and Debtors' Reply

By the Motion to Avoid Lien, Debtors seek to avoid a judicial lien held by Maya Hinojos against Debtors' residence located at 1866-A Loma Vista, described as “[a] Part of Lots 3 and 4 of the LOMA VISTA SUBDIVISION”¹¹ in Portales, New Mexico (land and a mobile home) (the “Property”) created by the recordation of a Transcript of Judgment on the ground that it impairs Debtors' homestead exemption, and, therefore, is avoidable. Ms. Hinojos' response to the Motion to Avoid Lien points out that a state court granted Ms. Hinojos an equitable lien as to John Montiel with respect to Lot 3 separate and apart from the lien created by the recordation of the Transcript of Judgment.¹²

In their MSJ, Debtors argue that the lien created by recordation of the Transcript of Judgment and the equitable lien imposed by the state court are both judicial liens subject to avoidance under 11 U.S.C. § 522(f).¹³ Debtors assert that the facts not subject to genuine dispute establish that these two judicial liens are avoidable in their entirety under § 522(f) because they impair the Debtors' homestead exemption in the Property.

⁹ *Genberg*, 882 F.3d at 1253.

¹⁰ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

¹¹ MSJ, ¶ 2.

¹² See Response to “Motion to Avoid Judicial Lien held by Maya Hinojos” (“Response” – Doc. 27), p. 3. Ms. Hinojos also cites to 11 U.S.C. § 523(a)(2)(A), which provides that a debt “for money, property, [or] services, . . . to the extent obtained by false pretenses, a false representation, or actual fraud,” is non-dischargeable. See Response, ¶ 6.

¹³ Future references to “section” or “§” refer to sections of Title 11 of the United States Code.

Debtors' Statement of Undisputed Facts (sometimes "SUF")¹⁴ set forth in the MSJ

consists of the following:

1. Ms. Hinojos sued Debtor John Montiel on various theories that are listed in SUF #1.¹⁵
2. Mr. Montiel filed a counterclaim on theories summarized in SUF #2.¹⁶
3. After conducting a trial, the District Court of Roosevelt County, NM (the "State Court") made findings of fact and conclusions of law (the "Findings and Conclusions") and entered a corrected judgment and order, in which the State Court denied the Debtors' counterclaims, granted Ms. Hinojos a money judgment based on unjust enrichment, and imposed an equitable lien against Debtors' residence (a mobile home and land) to secure payment of the judgment.¹⁷
4. Ms. Hinojos recorded a Transcript of Judgment.¹⁸
5. A summary replat of Lots 3 and 4 on Tract B of the Loma Vista Subdivision, occupied by the Debtors as their homestead, shows the location of mobile homes, fences, and other buildings and improvements.¹⁹
6. Debtors valued their residence on Tract B as having a value of \$90,000, subject to a mortgage lien in the amount of \$69,787.99 in favor of Shellpoint Mortgaging Services.²⁰
7. Debtors claimed the equity in their residence as exempt under New Mexico law.²¹

The documents Debtors submitted in support of the Statement of Undisputed Facts consist of the State Court complaint, answer, and counterclaims; the State Court's corrected final judgment and its Findings and Conclusions; the Transcript of Judgment; and an affidavit

¹⁴ Rule 56 refers to facts not in genuine dispute, not undisputed facts. The Court construes the Debtors' Statement of Undisputed Facts as a Statement of Facts Not in Genuine Dispute.

¹⁵ See SUF #1.

¹⁶ See SUF #2.

¹⁷ See SUF #3.

¹⁸ See SUF #4.

¹⁹ See SUF #5.

²⁰ See SUF #6.

²¹ *Id.*

of a licensed surveyor who re-platted Lots 3 and 4 with an attached Summary Replat.²² As part of their MSJ, Debtors argue that the Findings and Conclusions are entitled to issue preclusive effect establishing that Debtors did not commit fraud.²³

In her response to the MSJ, Ms. Hinojos agrees with the Debtors that the Findings and Conclusions have preclusive effect, but contends that the preclusive effect prevents Debtors from seeking to avoid her judicial liens. Ms. Hinojos makes three arguments. First, she argues that the preclusive effect of the Findings and Conclusions establish that under the rule set forth in *Coppler & Mannick, P.C. v. Wakeland*, 2005-NMSC-022, [138 N.M. 108](#), [117 P.3d 914](#), Mr. Montiel's reckless and malicious conduct, false pretenses, and actual fraud deprive Debtors of the protection of a homestead exemption as a shield against the amount of the State Court judgment. Second, she argues that the preclusive effect the State Court judgment means the debt is non-dischargeable under § 523(a)(6), possibly suggesting that her lien therefore is not avoidable. Finally, Ms. Hinojos argues that the preclusive effect the Findings and Conclusions establishes that the Debtors have no interest in the Property for which they claim a homestead exemption, such that they cannot avoid the fixing of a lien against that Property.

Ms. Hinojos admits SUF Nos. 1, 2, and 4, and details areas of dispute with respect to SUF Nos. 3, 5, and 6. An affidavit of Mr. Hinojos is attached as an exhibit to her response to Debtors' MSJ.

In their reply, Debtors argue that the State Court's imposition of an equitable lien against Lot 3 does not vest ownership of Lot 3 in Ms. Hinojos, and that lien avoidance under § 522(f) is not dependent on whether Debtors are granted a discharge.

²² See MSJ, Exhibits A, B, C, D, E, and F.

²³ See MSJ, p. 4.

B. A material fact issue in genuine dispute precludes summary judgment.

The Motion to Avoid Lien seeks to avoid the Transcript of Judgment under § 522(f) as a judicial lien that impairs Debtors' homestead exemption in the Property. Section 522(f) provides in relevant part:

Notwithstanding any waiver of exemptions but subject to paragraph (3), the 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

§ 522(f)(1)(A).

Impairment is determined based on the following statutory formula:

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.

§ 522(f)(2)(A).

Among the requirements to avoid a judicial lien under § 522(f) is that the lien “is on an interest of the debtor in property.” § 522(f)(1). The Property in which Debtors claim a homestead exemption is comprised of Lots 3 and 4 and the Debtors' mobile home situated on those lots. Ms. Hinojos has raised a genuine issue of material fact regarding whether Debtors have an interest in Lots 3 and 4. The State Court found that J.P. Stone Community Bank (“J.P. Stone”) foreclosed its mortgage lien against Lots 3, 4, 5, 6, and 7 of the Loma Vista

Subdivision, and, as a result of the foreclosure, owned and took possession of that property.²⁴ The Findings and Conclusions were filed in the State Court case on October 26, 2023,²⁵ about seven months before Debtors commenced their Chapter 7 case. Debtors' Statement of Undisputed Facts do not address how, if J.P. Stone foreclosed its mortgage lien against and became the owner of Lots 3 and 4, Debtors now own those lots.

C. Procedural defects also preclude summary judgment

The MSJ is procedurally defective in a few respects. First, the Motion to Avoid Lien only identifies and seeks to avoid the lien created by the recordation of the Transcript of Judgment; it does not identify or seek to avoid the equitable lien imposed by the State Court. An order granting summary judgment on the Motion to Avoid Lien cannot avoid a lien not put at issue by the motion.

Second, the Statement of Undisputed Facts does not quote the Findings and Conclusions that the Debtors contend have preclusive effect. When ruling on the MSJ, the Court must determine (a) whether there is a genuine dispute about the facts included in the SUF and any additional material facts identified in the response to the MSJ; and (b) whether Debtors are entitled to judgment as a matter of law based on the facts included in the SUF and the response that the Court determines are not in genuine dispute. The Court considers exhibits attached to the MSJ and the response only to determine what facts included in the SUF and response are not in genuine dispute. Thus, facts contained in the Findings and Conclusions but not included in the SUF or response do not constitute facts the Court considers in deciding whether Debtors are entitled to judgment as a matter of law.

²⁴ See Findings and Conclusions, ¶¶ 27-31 (MSJ, Exhibit D).

²⁵ *Id.*

Finally, SUF #6 states that the Debtors “valued their residence . . . as having a value of \$90,000, subject to a mortgage lien in favor of Shellpoint Mortgaging Services of \$20,212.”²⁶ The way this fact is phrased, if the fact is not in genuine dispute it only establishes what the Debtors’ estimate the Property is worth; it does not establish the actual value of the Property. Debtors’ opinion of value can be the basis of Debtors’ asserted value, but the SUF must be phrased in a way that establishes value, *e.g.*, “the value of the Property is \$90,000.”

D. Procedural defects in Ms. Hinojos’ response

Ms. Hinojos’ response to the MSJ is also procedurally defective. As part of her response to defend against the MSJ, Ms. Hinojos may include her own statement of facts she contends are not in genuine dispute presented in numbered paragraphs, with citations to materials submitted in support of the response.²⁷ Ms. Hinojos argues that the Court should give preclusive effect to the State Court’s findings, among others, that Mr. Montiel’s conduct was reckless and malicious when he took payments from Ms. Hinojos following commencement of the foreclosure action. But she does not present her own numbered statement of material facts in the response that she contends are not in genuine dispute, quoting from the Findings and Conclusions that Ms. Hinojos contends have preclusive effect.

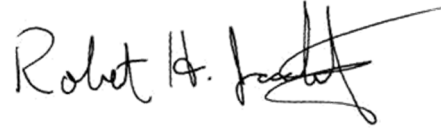
CONCLUSION

Because there is a genuine issue of material fact regarding whether Debtors have an interest in Lots 3 and 4, and because Debtors seek summary judgment avoiding the equitable lien imposed by the State Court, which exceeds the scope of relief requested in the Motion to Avoid Lien, the Court will deny the MSJ without prejudice to Debtors filing another motion for summary judgment (and an amended motion to avoid lien if they wish).

²⁶ SUF #6.

²⁷ See NM LBR 7056-1(b).

WHEREFORE, IT IS HEREBY ORDERED that the Motion for Summary Judgment is DENIED, without prejudice.



ROBERT H. JACOBVITZ
United States Bankruptcy Judge

Date entered on docket: August 27, 2024

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