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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9) Case No. 05-32494-B-7
10 HASSI SADRI,) Docket Control No. EJS-1
11 Debtor.) Date: September 12, 2006
12) Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued
14 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
"Act"), a copy of the ruling is hereby posted on the court's
17 Internet site, www.caeb.uscourts.gov, in a text-searchable
format, as required by the Act. However, this posting does not
18 constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 Neither the respondent within the time for opposition nor the
21 movant within the time for reply has filed a separate statement
22 identifying each disputed material factual issue relating to the
23 motion. Accordingly, both movant and respondent have consented to the
24 resolution of the motion and all disputed material factual issues
25 pursuant to F.R. Civ. P. 43(e). LBR 9014-1(f)(1)(ii) and (iii).

26 The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A)
27 subject to the provisions of 11 U.S.C. § 349. The judicial lien in
28 favor of NCO Financial Systems, Inc., recorded in the official records

1 of Sacramento County, [Book 20011029, Page 1104], is avoided as
2 against the real property located at 8816 Sawtelle Way #B, Sacramento,
3 CA 95826 (APN 078-0340-032).

4 The debtor's argument that no one timely objected to his claim of
5 exemption is unpersuasive. An exemption "by default" cannot support
6 lien avoidance under section 522(f). In re Mohring, 142 B.R. 389
7 (Bankr. E.D.Cal. 1992), aff'd mem. 153 B.R. 601 (9th Cir. BAP 1993),
8 aff'd mem. 24 F.3d 247 (9th Cir. 1994). However, the court also finds
9 unpersuasive the creditor's argument that the debtor is not entitled
10 to the claimed exemption. The court agrees with the debtor that gifts
11 are not income for purposes of California Code of Civil Procedure
12 Section 704.730(a)(3)(C). See, Shelley v. Kendall (In re Shelley),
13 184 B.R. 356, 358 (9th Cir. BAP 1995), aff'd 109 F.3d 639 (9th Cir.
14 1997); Cal. Rev. & Tax. Code § 17071; 26 U.S.C. §§ 61(b), 102(a).
15 Deducting gifts from the debtor's Schedule I reduces his income to \$0.
16 Debtor therefore qualifies for the \$150,000 exemption pursuant to
17 California Code of Civil Procedure Section 704.730(a)(3)(C).

18 The subject real property has a value of \$245,000 as of the date
19 of the petition. The unavoidable liens total \$115,975. The debtor
20 claimed the property as exempt under California Code of Civil
21 Procedure Section 704.730(a)(3), under which he exempted \$150,000 (and
22 has an available exemption of \$150,000). The respondent holds a
23 judicial lien created by the recordation of an abstract of judgment in
24 the chain of title of the subject real property. After application of
25 the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there
26 is no equity to support the judicial lien. Therefore, the fixing of
27 this judicial lien impairs the debtor's exemption of the real property
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1 and its fixing is avoided.

2 The court will issue a minute order.

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