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3 UNITED STATES BANKRUPTCY COURT  
4 EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

5 In re ) Case No. 13-16155-B-7  
6 Michael Weilert and )  
Genevieve M. de Montremare, ) DC No. WW-5  
7 Debtors. )  
8 \_\_\_\_\_ )  
9 In re )  
10 M&G Weilert Family, L.P., ) Substantively Consolidated Case:  
11 ) Case No. 13-16156-B-7  
12 \_\_\_\_\_ )

13 MEMORANDUM DECISION REGARDING MOTION  
14 TO AVOID JUDICIAL LIEN

15 Michael J. Fletcher, Esq., of Walter & Wilhelm Law Group, appeared on  
behalf of the debtors, Michael Weilert and Genevieve M. de Montremare.

16 Cheryl A. Skigin, Esq., appeared on behalf of the respondents, Brian L.  
17 Gwartz and Cheryl A. Skigin, Co-Trustees of the Pendragon Trust.

18 Before the court is a motion to avoid a judicial lien pursuant to the  
19 authority of 11 U.S.C. § 522(f)(1)(A)<sup>1</sup> (the “Motion”) filed by the debtors,  
20 Michael Weilert and Genevieve M. de Montremare (the “Debtors”). The  
21 property which the Debtors seek to protect is their residence located on  
22 Marion Lane in Clovis (Fresno County), California (the “Marion Property”  
23 or the “Property”). However, the Debtors do not hold title to the Marion  
24 Property, it is held in a revocable trust. For the reasons set forth below, the  
25 lien avoiding power of § 522(f)(1)(A) is not applicable to the Marion  
26 \_\_\_\_\_

27 <sup>1</sup>Unless otherwise indicated, all chapter, section, and rule references are to  
28 the Bankruptcy Code, 11 U.S.C. §§ 101–1532, and to the Federal Rules of  
Bankruptcy Procedure, Rules 1001–9036, as enacted and promulgated *after*  
October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and  
Consumer Protection Act (BAPCPA) of 2005, Pub. L. No. 109-8, 119 Stat. 23.

1 Property and the Motion will be denied.

2 This memorandum decision contains the court's findings of fact and  
3 conclusions of law required by Federal Rule of Civil Procedure 52(a), made  
4 applicable to this contested matter by Federal Rule of Bankruptcy  
5 Procedure 7052 and 9014. The court has jurisdiction over this matter  
6 pursuant to 28 U.S.C. § 1334, 11 U.S.C. § 522, and General Order Nos. 182  
7 and 330 of the U.S. District Court for the Eastern District of California.  
8 This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A) and (O).

9 **BACKGROUND AND FINDINGS OF FACT.**

10 At the commencement of the case, co-debtor Genevieve M. de  
11 Montremare ("Genevieve") held a beneficial interest in a revocable trust  
12 known as the Madonna Della Pieta Trust, (the "Madonna Trust"). The  
13 Madonna Trust was created by Genevieve in February 2009. Genevieve is  
14 the sole beneficiary of the Madonna Trust, and if it is not revoked, upon  
15 Genevieve's death the Madonna Trust will continue for the benefit of the  
16 Debtors' daughter. On the same day that the Trust was created, the Debtor,  
17 Michael Weilert ("Weilert"), executed a grant deed conveying the Marion  
18 Property to the Madonna Trust.<sup>2</sup>

19 In October 2012, the Fresno County Superior Court entered a \$1.55  
20 million money judgment against the Debtors in favor of the respondents,  
21 Brian L. Gwartz and Cheryl A. Skigin as co-trustees of the Pendragon Trust  
22 ("Pendragon"). Subsequently, in January 2013, Pendragon recorded an  
23 abstract of judgment in the Fresno County property records. The recording  
24 of that document created a lien against all of the Debtors' real property in  
25 Fresno County (California Code of Civil Procedure ("CCP") 697.310(a);  
26 the "Pendragon Lien" or the "Lien").

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27  
28 <sup>2</sup>Weilert acquired the Marion Property in 2008 and held title as his "sole  
and separate property."

1 The Debtors commenced this bankruptcy under chapter 7 on  
2 September 13, 2013. The Marion Property is reported in the schedules to  
3 be the Debtors' primary residence. It is valued at \$429,000 and is subject to  
4 a mortgage in favor of M&T Bank in the amount of \$289,000. The Debtors  
5 claimed a homestead exemption for the Marion Property in the amount of  
6 \$175,000 (the "Homestead Exemption"). The mortgage and the Homestead  
7 Exemption together exceed the stated value of the Marion Property and on  
8 April 2, 2015, this court entered an order granting the Debtors' motion  
9 compelling abandonment of "the bankruptcy estate's interest" in the Marion  
10 Property.<sup>3</sup>

11 **ISSUES PRESENTED.**

12 The parties have raised numerous issues in the pleadings regarding,  
13 *inter alia*, the validity and calculation of the Homestead Exemption. *See* fn.  
14 3 above. However, the threshold issue, which the court will address here, is  
15 whether the Debtors have a right under § 522(f)(1) to avoid the Pendragon  
16 Lien as an encumbrance against the Marion Property. If § 522(f)(1) is not  
17 applicable to the Marion Property, then Pendragon's objections to the  
18 Homestead Exemption are irrelevant to a resolution of this Motion.

19 **ANALYSIS AND CONCLUSIONS OF LAW.**

20 The Debtors seek an order which essentially expunges the Pendragon  
21 Lien from the Marion Property on the grounds that the Lien impairs their  
22 \$175,000 Homestead Exemption. The authority for that relief is found in  
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24 <sup>3</sup>The chapter 7 trustee had previously stipulated to abandon the Marion  
25 Property and did not oppose the Debtors' motion. The court did not make any  
26 findings regarding the validity or amount of the Homestead Exemption.  
27 Pendragon has a pending objection to the Homestead Exemption (Doc. No. 214),  
28 which the court has continued pending this ruling. The bankruptcy estate no  
longer has any interest in the Marion Property and, in light of the court's ruling  
below, it is not clear that the bankruptcy court still has jurisdiction to decide  
Pendragon's objection.

1 § 522(f)(1)(A) which provides, in pertinent part:

2 (f)(1) Notwithstanding any waiver of exemptions . . .  
3 debtor may avoid the *fixing of a lien on an interest of*  
4 *the debtor in property* to the extent that such lien  
5 impairs an exemption to which the debtor would have  
6 been entitled under subsection (b) of this section, if  
7 such lien is—

8 (A) a judicial lien . . . .

9 § 522(f)(1)(A) (emphasis added).

10 Here, there is no dispute that the recording of Pendragon’s abstract  
11 of judgment created a “judicial lien” within the meaning of § 522(f)(1)(A).  
12 However, in a 1991 landmark decision, the U.S. Supreme Court narrowed  
13 the application of § 522(f)(1) by ruling that the avoiding power in  
14 § 522(f)(1) only applies if the debtor “possessed an interest to which a lien  
15 attached, before it attached . . . .” *Farrey v. Sanderfoot*, 500 U.S. 291, 301,  
16 111 S.Ct. 1825, 114 L.Ed. 2d. 337 (1991).

17 The issue before the court therefore is, did the Debtors possess an  
18 interest in the Marion Property to which the Pendragon Lien would have  
19 attached in January 2013, when the Lien was recorded in the County  
20 records? In this case, there are two parts to that question, both of which  
21 must be answered in the affirmative for the Debtors to prevail. At the time  
22 the Pendragon Lien was recorded, did the Debtors *have an interest* in the  
23 Marion Property and, if so, did the Lien *attach* to that interest?

24 Addressing first the “Debtors’ interest” issue, it is undisputed that  
25 legal title to the Marion Property is, and at all relevant times has been,  
26 vested in the Madonna Trust. Weilert’s interest in the Marion Property  
27 terminated in 2008 when he conveyed the Property to the Madonna Trust.  
28 Genevieve’s interest in the Marion Property is that of a trust beneficiary.

One bankruptcy court addressed this issue, on similar facts, in *In re*  
*Bogetti*, 349 B.R. 14 (Bankr. E.D. Cal. 1996). In *Bogetti*, the debtors tried

1 to avoid a judicial lien against their residence using the power of  
2 § 522(f)(1)(A). However, title to the property was held in a self-settled  
3 revocable trust. The court first noted that the debtors held only a beneficial  
4 interest in the trust. Legal title to the trust *res* was vested in the trust. *In re*  
5 *Bogetti*, 349 B.R. at 18. After much discussion about creditor rights and  
6 revocation of the trust, the court ruled against the debtors:

7           This motion [under § 522(f)(1)(A)] is necessary only  
8           insofar as it is possible to avoid the fixing of the  
9           judicial lien on the real property. Because the debtors  
10          did not own that property when the petition was filed,  
            this is not possible. *The debtors may not utilize section*  
            *522(f)(1)(A) to avoid a judicial lien that encumbers*  
            *property owned by another.*

11 *Id.* (emphasis added).

12           The court finds the analysis in *Bogetti* to be persuasive and  
13 consistent with applicable law. Thus, the fact that the Madonna Trust, and  
14 neither of the Debtors, owned the Marion Property means that § 522(f)(1)  
15 has no application here.

16           Turning now to the “fixing of the lien” issue, based on the plain  
17 language of § 522(f)(1) and applicable law, the court would have to find  
18 that there was a “fixing of the [judicial] lien” against Genevieve’s interest in  
19 the Marion Property in order for § 522(f)(1) to apply. The enforcement of  
20 judgments is governed by state law. It is generally recognized that a  
21 judgment debtor’s “interest in a trust” may be subject to the enforcement of  
22 a money judgment “to the extent provided by law.” CCP § 695.030(b)(1).  
23 The applicable law here is CCP § 697.340(c) and it specifically excludes  
24 Genevieve’s beneficial interest in the Madonna Trust from the normal lien  
25 attachment process:

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1 (a) A judgment lien on real property attaches to all  
2 interests in real property in the county where the lien is  
3 created (whether present or future, vested or  
4 contingent, legal or equitable) that are subject to  
5 enforcement of the money judgment against the  
6 judgment debtor . . . but does not reach rental  
7 payments, a leasehold estate with an unexpired lease of  
8 less than two years, *the interest of a beneficiary under*  
9 *a trust . . . .*

10 CCP § 697.340 (emphasis added).

11 Indeed, California law has a separate provision for the enforcement  
12 of a judgment against the *res* of a trust. That process requires a separate  
13 application and is subject to the supervision of a court with jurisdiction over  
14 the trust.

15 § 709.010. Trust defined; enforcement of money  
16 judgment against interest in trust

17 . . .

18 (b) the judgment debtor's interest as a beneficiary of a  
19 trust is subject to enforcement of a money judgment  
20 *only upon petition under this section by a judgment*  
21 *creditor to a court having jurisdiction over*  
22 *administration of the trust as prescribed in Part 5*  
23 *(commencing with Section 17000) of Division 9 of the*  
24 *Probate Code. The judgment debtor's interest in the*  
25 *trust may be applied to the satisfaction of the money*  
26 *judgment by such means as the court, in its discretion,*  
27 *determines are proper, including but not limited to*  
28 *imposition of a lien on or sale of the judgment debtor's*  
*interest, collection of trust income, and liquidation and*  
*transfer of trust property by the trustee.*

CCP § 709.010 (emphasis added).

California Code of Civil Procedure 709.010 “provides the exclusive  
means for a judgment creditor to levy against a trust interest, and gives the  
court discretion to satisfy the judgment from the judgment debtor's interest  
in the trust. . . .” *Nordin v. Fleming*, 2003 WL 22205629 (Cal.App. 6 Dist.  
2003).

Based on the statutory scheme, it is clear that the recording of an  
abstract of judgment does not automatically “fix a lien” against the *res* of a

1 trust or the judgment debtor's beneficial interest in the trust, even though  
2 that interest may be ultimately liquidated to satisfy the judgment.  
3 Pendragon can get a lien against the Marion Property, and seek to enforce  
4 its money judgment against the Property, only if and when a court of proper  
5 jurisdiction exercises its discretion to order such relief.

6 **CONCLUSION.**

7 Based on the foregoing, the court finds and concludes that the right  
8 to avoid the Pendragon Lien under § 522(f)(1)(A) does not apply to the  
9 Marion Property. Accordingly, the Motion will be denied.

10 Dated: April 16, 2015

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12  
13 /s/ W. Richard Lee  
14 W. Richard Lee  
United States Bankruptcy Judge  
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