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**NOT FOR PUBLICATION**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re Case No. 10-15473-A-7  
ISAIAS HERBERT RASCON, JR. DC NO. SL-2  
AND SANDY LYNNE RASCON

Debtor.

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW  
REGARDING DEBTORS' MOTION TO AVOID LIEN  
OF GRYPHON SOLUTIONS, LLC**

A hearing was held March 2, 2011, on the motion of the debtors, Isaias Herbert Rascon, Jr. and Sandy Lynne Rascon, to avoid the judicial lien of Gryphon Solutions, LLC ("Gryphon Solutions"). Following the hearing, the parties requested post-trial briefing, and the matter was deemed submitted as of March 30, 2011. This memorandum contains findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (O).

The facts are not disputed. Mr. and Mrs. Rascon filed their chapter 7 case on May 18, 2010. When they filed their case, they listed on Schedule C a homestead exemption in the amount of \$75,000 on their real property located at 1369 Boyer Drive, Tulare, California, and stated that the fair market value of the property as of the petition date was \$130,000.

1       On March 1, 2011, they filed an amended Schedule C, stating  
2 that the current value of the real property was \$130,000, and  
3 that the amount of their claimed exemption under California Code  
4 of Civil Procedure § 704.730 was \$100,000.

5       Prior to the time the Rascons filed their case, Gryphon  
6 Solutions had recorded a judgment lien in Tulare County,  
7 California. The judgment lien was recorded May 14, 2003.

8       At the time the judgment lien was recorded, California CCP  
9 § 704.730 provided for a \$75,000 homestead exemption for married  
10 couples. In 2009, the California legislature amended § 704.730  
11 so that the amount of the homestead exemption for a married  
12 couple was changed to \$100,000.

13       The parties agree that as of the date the bankruptcy case  
14 was filed, the amount owed on the first deed of trust to Midland  
15 Mortgage was \$71,184. The debtors obtained an appraisal of the  
16 real property showing a value of \$145,000 as of January 2011.  
17 Gryphon Solutions obtained an appraisal showing a value of  
18 \$162,000. The effective date of Gryphon Solutions' appraisal was  
19 May 2010, the date the petition was filed. Neither party called  
20 their appraiser as a witness.

21       Gryphon Solutions maintains that the debtors are only  
22 entitled to claim a homestead exemption of \$75,000 because this  
23 is the amount of the exemption California allowed at the time the  
24 judgment lien was recorded. The debtors argue that they are  
25 entitled to claim the amount of \$100,000 as a homestead exemption  
26 because this is the amount of exemption available as of the date  
27 they filed their bankruptcy case. If the debtors are allowed to  
28 claim an exemption of \$100,000, then the entire amount of the

1 property is fully exempt because the sum of the exemption and the  
2 amount owing on the senior deed of trust exceed the value that  
3 Gryphon Solutions asserts was the fair market value of the  
4 property as of the date the bankruptcy petition was filed. On  
5 the other hand, if the debtors are allowed to claim a \$75,000  
6 exemption, then the total of the senior lien and the \$75,000  
7 exemption is \$146,184. This is more than the debtors now believe  
8 to be the value of the property on the petition date, but less  
9 than the amount the creditor asserts is the value of the  
10 property. Under this scenario, if the court accepted Gryphon's  
11 argument that the homestead exemption is limited to \$75,000 and  
12 also accepted Gryphon Solutions' appraisal, then the judgment  
13 lien would still, in part, attach to the debtors' property.

14 Are the debtors entitled to claim a homestead exemption in  
15 the amount of \$100,000, the amount allowed by California law when  
16 they filed their bankruptcy case?

17 This is an interesting question. Older case law would seem  
18 to indicate that they are not allowed to claim the larger  
19 exemption. In re Bassin, 637 F.2d 668 (9<sup>th</sup> Cir. 1980). In that  
20 case, the debtor filed bankruptcy in April 1977. Prior to  
21 January 1, 1977, the allowed homestead exemption under California  
22 law had been \$20,000. The law was changed effective January 1,  
23 1977, to allow for a homestead exemption of \$30,000. Bassin had  
24 numerous creditors whose claims had arisen prior to the January  
25 1, 1977 date for amendment of the homestead exemption. The  
26 trustee objected to the \$30,000 homestead exemption. This case  
27 was decided under the Bankruptcy Act, not under the Bankruptcy  
28 Code. The court concluded that creditors were entitled to rely

1 on the amount of the exemption in effect at the time they  
2 extended credit and "that a retroactive application of the  
3 statutory increase would be an unconstitutional impairment of  
4 pre-existing contract obligations."

5 If this were still the state of the law, Gryphon Solutions  
6 would have the better argument. However, in the court's view,  
7 this is not still the state of the law. In 1996, the Ninth  
8 Circuit Court of Appeals decided In re Seltzer. 104 F.3d 234  
9 (9<sup>th</sup> Cir. 1996). That case concerned an exemption for funds in  
10 an individual retirement account under Nevada law. The Seltzers  
11 filed their bankruptcy case in December 1992 and sought to exempt  
12 their Individual Retirement Account valued at \$28,300. Under the  
13 Nevada statute in question, effective October 1, 1991, debtors  
14 could exempt money in an individual retirement account in an  
15 amount not to exceed \$100,000. The chapter 7 trustee objected to  
16 the Seltzers' claim of exemption based on the theory that the  
17 statute enacted after the debts were incurred violated the  
18 contracts clause. The bankruptcy court agreed that the state law  
19 impaired the contract rights of creditors but held that the  
20 trustee had not shown the state law was unnecessary or  
21 unreasonable. Both the District Court and the Ninth Circuit  
22 Court of Appeals affirmed.

23 The Ninth Circuit decision in Seltzer described the correct  
24 analysis to determine whether a state law violates the contracts  
25 clause. The court determined first that the chapter 7 trustee as  
26 the party objecting to the claim of exemption had the burden of  
27 proof.

28 The court further determined that the decision of the United

1 States Supreme Court in Energy Reserves Group, Inc. v. Kansas  
2 Power & Light Co., 459 U.S. 400 (1983) changed the landscape so  
3 that Bassin no longer was applicable. The Energy Reserves case  
4 mandated that courts apply a sequential analysis to determine  
5 whether a state law in question violates the contract clause.  
6 Undertaking the analysis in the case of the Nevada exemption  
7 statute, all three courts, the Bankruptcy Court, the District  
8 Court, and the Ninth Circuit Court of Appeals, concluded that  
9 "retroactive application of the Nevada statute serves a valid  
10 public purpose and is and is a reasonable exercise of the state's  
11 power." Id. at 237. Thus, the retroactive application of the  
12 IRA exemption statute of Nevada did not violate the contracts  
13 clause of the Constitution of the United States.

14 Under Seltzer and Energy Reserves Group, a three part  
15 inquiry is required. First, is there a contractual relationship;  
16 second, does a change in the law impair that contractual  
17 relationship; and third, is the impairment substantial. Id. at  
18 236. In this case, there is no evidence about whether the  
19 judgment arises from a contractual relationship or for damages  
20 not based in contract. If there were a contractual relationship  
21 that gave rise to the judgment lien, the change in state law  
22 would, under the decisions described above, impair that  
23 contractual relationship. Again, following those decisions, the  
24 impairment is substantial.

25 The next question is whether the impairment is both  
26 reasonable and necessary to fulfill an important public purpose.  
27 The California exemption scheme found in the California Code of  
28 Civil Procedure fulfills an important public purpose. Further,

1 the California legislature has made the following finding  
2 codified at California Code of Civil Procedure § 703.060(a).

3 "The Legislature finds and declares that generally persons  
4 who enter into contracts do not do so in reliance on an  
5 assumption that the exemptions in effect at the time of the  
6 contract will govern enforcement of any judgment based on  
the contract, that liens imposed on property are imposed not  
as a matter of right but as a matter of privilege granted by  
statute . . . ."

7 For the foregoing reasons, the applicable amount of the  
8 exemption is the amount available on the date the bankruptcy  
9 petition was filed, that is \$100,000.

10 May the debtors amend their bankruptcy schedules to increase  
11 the amount of the homestead exemption?

12 Federal Rule of Bankruptcy Procedure 1009(a) provides that a  
13 bankruptcy schedule may be amended by the debtor as a matter of  
14 course at any time before the case is closed. Court approval is  
15 not required for an amendment. The right of debtors to amend  
16 their schedules is liberally allowed. See, In re Michael, 163  
17 F.3d 526, 529 (9<sup>th</sup> Cir. 1998).

18 The court concludes that the debtors are entitled to the  
19 amount of homestead exemption available under California law at  
20 the time they filed their bankruptcy case. The court reaches  
21 this conclusion for the same reasons described by the Ninth  
22 Circuit Court of Appeals in In re Seltzer. Further, the debtors  
23 are allowed to amend the amount of their homestead exemption at  
24 any time. The debtors have amended the amount of their homestead  
25 exemption to claim an exemption of \$100,000.

26 Because the debtors are entitled to a homestead exemption in  
27 the amount of \$100,000, there is no equity in the property to  
28 support the judgment lien of Gryphon Solutions, LLC, even if the

1 property has the value which Gryphon's appraisal shows.

2 For the above reasons, the debtors' motion to avoid judgment  
3 lien will be granted. Debtors shall submit a form of order  
4 consistent herewith.

5 DATED: April 19, 2011

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8 WHITNEY RIMEL, Judge  
9 United States Bankruptcy Court  
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