

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 Procedure
5 7052 and 9014. The court has jurisdiction over this matter pursuant to 28
6 U.S.C. § 1334, 11 U.S.C. § 522, and General Order Nos. 182 and 330 of the
7 U.S. District Court for the Eastern District of California. This is a core
8 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 Montemare ("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.²

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").

27 _____
28 ²Weilert 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 be
3 the Debtors' primary residence. It is valued at \$429,000 and is subject to a
4 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.³

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
23

24 ³The 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
19 in the Marion Property in order for § 522(f)(1) to apply. The enforcement
20 of 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:

26 ///

27 ///

28 ///

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
 judgment debtor . . . but does not reach rental
 payments, a leasehold estate with an unexpired lease of
 less than two years, *the interest of a beneficiary under
 a trust*

6 CCP § 697.340 (emphasis added).

7 Indeed, California law has a separate provision for the enforcement
 8 of a judgment against the *res* of a trust. That process requires a separate
 9 application and is subject to the supervision of a court with jurisdiction over
 10 the trust.

11 § 709.010. Trust defined; enforcement of money
 12 judgment against interest in trust

13 . . .

14 (b) the judgment debtor’s interest as a beneficiary of a
 15 trust is subject to enforcement of a money judgment
 16 *only upon petition under this section by a judgment
 17 creditor to a court having jurisdiction over
 18 administration of the trust as prescribed in Part 5
 19 (commencing with Section 17000) of Division 9 of the
 20 Probate Code. The judgment debtor’s interest in the
 trust may be applied to the satisfaction of the money
 judgment by such means as the court, in its discretion,
 determines are proper, including but not limited to
 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.*

21 CCP § 709.010 (emphasis added).

22 California Code of Civil Procedure 709.010 “provides the exclusive
 23 means for a judgment creditor to levy against a trust interest, and gives the
 24 court discretion to satisfy the judgment from the judgment debtor’s interest
 25 in the trust. . . .” *Nordin v. Fleming*, 2003 WL 22205629 (Cal.App. 6 Dist.
 26 2003).

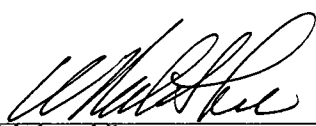
27 Based on the statutory scheme, it is clear that the recording of an
 28 abstract of judgment does not automatically “fix a lien” against the *res* of a

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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14 W. Richard Lee
United States Bankruptcy Judge

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Instructions to Clerk of Court
Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked , via the U.S. mail.

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