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IT IS SO ORDERED.



Mina Nami Khorrami
United States Bankruptcy Judge

Dated: December 18, 2024

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:

:

: Case No. 24-50458

Jeff L. Dulaney,

:

Chapter 7

:

Judge Nami Khorrami

Debtor.

:

**OPINION AND ORDER GRANTING MOTION OF DEBTOR
TO AVOID JUDICIAL LIEN OF S&T BANK ON REAL PROPERTY
PURSUANT TO 11 U.S.C. § 522(f)(1)(A) (DOC. 28)**

Before the Court is the *Motion of Debtor to Avoid Judicial Lien of S&T Bank on Real Property Pursuant to 11 U.S.C. § 522(f)(1)(A)* (Doc. 28) (the “Motion to Avoid”), the *Objection to Debtor’s Motion to Avoid Lien Judicial Lien of S&T Bank on Real Property Pursuant to 11*

*U.S.C. § 522(f)(1)(A) (Doc. No. 28) (Doc. 35) (the “S&T Objection”), filed by S&T Bank, and the Reply in Support of Motion of Debtor to Avoid Judicial Lien of S&T Bank on Real Property Pursuant to 11 U.S.C. § 522(f)(1)(A) (Related Docs. 28 & 35) (Doc. 41) (the “Debtor’s Reply”).*¹

The Court scheduled a pretrial conference on the Motion to Avoid, the S&T Objection, and the Debtor’s Reply on July 24, 2024. *Amended Notice of Pretrial Conference* (Doc. 49). In the *Agreed Order Following Pretrial Conference on Motion of Debtor to Avoid Judicial Lien of S&T Bank on Real Property Pursuant to 11 U.S.C. § 522(f)(1)(A) (Related Docs. 28, 35, 41, 49)* (Doc. 55) (the “Scheduling Order”), the Court ordered the Parties to file stipulations of fact by August 30, 2024, and set September 10, 2024, as a deadline for filing any supplemental briefings. Scheduling Order ¶¶ B, C, ECF No. 55. The Parties filed *Joint Stipulations of Fact (Related Doc. Nos. 28, 35, 41 & 55)* (Doc. 58) (the “Joint Stipulations”), however, no supplemental briefs were filed. The Court has reviewed the Joint Stipulations and has determined that no hearing or evidentiary submissions are necessary, and the matter is ripe for decision.

For the reasons that follow, the Motion is GRANTED.

I. Jurisdiction and Venue

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. A proceeding to avoid a judicial lien under 11 U.S.C. § 522(f) is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B), (K) and (O) and 28 U.S.C. § 1334(b). Venue properly lies in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtor and S&T are collectively referred to as the “Parties.”

II. Findings of Fact²

Jeff L. Dulaney (the “Debtor”)³ filed a voluntary petition for relief under chapter 7 on February 9, 2024 (the “Petition Date”). Joint Stip. ¶ 13, ECF No. 58. Prior to the Petition Date, the Debtor delivered to S&T Bank (“S&T”) several commercial guarantees (the “Debtor’s Guarantees”) whereby the Debtor guaranteed the obligations of LSP Technologies, Inc. (hereinafter “LSPT”) to S&T. Joint Stip. ¶ 1, ECF No. 58.⁴ At no time did the Debtor execute and deliver to S&T any document evidencing or creating a security interest, lien, mortgage, or other form of transfer of an interest in property of the Debtor to secure the Debtor’s obligations under these guarantees. Joint Stip. ¶ 2, ECF No. 58.

On May 19, 2023, S&T sued LSPT, the Debtor, and others in the Summit County, Ohio, Court of Common Pleas (the “State Court”), bearing Case No. 2023 CV 05-1664 (the “State Court Lawsuit”). Joint Stip. ¶ 3, ECF No. 58. On August 4, 2023, the State Court entered an agreed judgment entry in favor of S&T against the Defendants therein, including the Debtor (the “Judgment”). Joint Stip. ¶ 4, ECF No. 58. The Judgment “contained a monetary award against LSPT and the Debtor totaling in excess of \$9 million, foreclosed the equity of redemption, determined the relative priorities of liens, and ordered the sale of certain property.” Joint Stip. ¶ 4,

² The Court’s findings of fact are drawn either from the Joint Stipulations or the exhibits attached to and incorporated therein. Although other documents were attached to the Motion to Avoid, the S&T Objection, and the Debtor’s Reply, many of those documents were not incorporated into the Joint Stipulations, nor were they authenticated by affidavit, declaration, or otherwise. Accordingly, in reaching this decision, the Court has considered only those exhibits attached to and incorporated into the Joint Stipulations.

³ For the sake of consistency, except as otherwise indicated, the Court uses the definitions used in the Joint Stipulations.

⁴ The Joint Stipulations do not explain the relationship between the Debtor and LSPT or why the Debtor guaranteed its obligations, although the Forbearance Agreement indicates that the Debtor signed as LSPT’s chief executive officer. Those matters are not relevant to the issues presently before the Court.

ECF No. 58; Joint Stip. Ex. A 8, ECF No. 58. The only relief sought or ordered against the Debtor was the money judgment. Joint Stip. ¶ 3, ECF No. 58.

On August 10, 2024, S&T and the Debtor, among others, entered into an amended forbearance agreement (the “Forbearance Agreement”). Joint Stip. ¶ 5, ECF No. 58; Joint Stip. Ex. B 13, ECF No. 58. Section 3.2 of the Forbearance Agreement provides as follows:

3.2 Notwithstanding anything which may be construed to the contrary herein, so long as there exists no Event of Default and the Obligors approve the Sale Order and cooperate with the Receiver to close the Sale of the Collateral as contemplated under the Sale Order attached hereto as Exhibit A (the “Sale Order”) and subject to the Conditions of Forbearance set forth below, Lender shall forbear until the later of (i) 60 days following the Receivership Closing Date, as defined below or (ii) November 30, 2023 (“Forbearance Period”) from exercising any of its rights or remedies available at law, in equity or under the Loan Documents or executing on the Judgment against Guarantor; provided, however, Lender shall not be prohibited from recording its certificate of Judgment Lien in any county in Ohio and performing or demanding that the Obligors perform any of the Conditions set forth in paragraph 4 below and filing any pleadings in the Court Case to accomplish or enforce these conditions.

Joint Stip. ¶¶ 6-7, ECF No. 58; Joint Stip. Ex. B § 3.2, ECF No. 58. On August 10, 2023⁵, when the Forbearance Agreement was entered into, no certificate of judgment had issued, and no judgment lien existed related to the Judgment. Joint Stip. ¶¶ 5, 8, ECF No. 58.

On August 22, 2023, S&T requested that the Clerk of Courts of Summit County, Ohio (the “Clerk of Courts”) issue a certificate of judgment lien. Joint Stip. ¶ 9, ECF No. 58; Joint Stip. Ex. C 27, ECF No. 58. On August 23, 2023, the Clerk of Courts issued a certificate of judgment (the “Certificate of Judgment”). Joint Stip. ¶ 10, ECF No. 58; Joint Stip. Ex. D 29, ECF No. 58.

On November 14, 2023, S&T opened a case in the Franklin County, Ohio, Court of Common Pleas bearing case number 23 JG 088651 (the “Franklin County Case”) by filing a

⁵ The Forbearance Agreement contains the effective date of August 10, 2023, but the Joint Stipulations indicate August 10, 2024, which appears to be an inadvertent mistake.

praceipe requesting that the Franklin County Clerk of Courts (“Franklin County Clerk”) file the Certificate of Judgment. Joint Stip. ¶ 11, ECF No. 58; Joint Stip. Ex. E 31, ECF No. 58. The same day, the Certificate of Judgment was filed with the Franklin County Clerk (the “S&T Judgment Lien”). Joint Stip. ¶ 12, ECF No. 58; Joint Stip. Ex. F 32, ECF No. 58

As of November 14, 2023, when the S&T Judgment Lien was filed with the Franklin County Clerk, the Debtor was and continues to be the owner of an undivided one-half interest in real property located within Franklin County, Ohio, commonly known as 7019 Ballantrae Loop, Dublin, Ohio 43016 (the “Real Property”). Joint Stip. ¶ 14, ECF No. 58. The co-owner of the Real Property is Suzanne K. Dulaney, who is the Debtor’s spouse and is not a debtor herein. Joint Stip. ¶ 15, ECF No. 58. S&T does not hold any claim against Ms. Dulaney. Joint Stip. ¶ 16, ECF No. 58. At all relevant times, the Debtor has used the Real Property as his residence and continues to do so. Joint Stip. ¶ 17-18, ECF No. 58. The value of the Real Property is \$908,200.00. Joint Stip. ¶ 19, ECF No. 58.

As of the Petition Date, the Debtor’s undivided one-half interest in the Real Property was subject to three liens of record: First, there is a mortgage dated July 24, 2020, held by Pennymac Financial Services (“Pennymac”), and recorded in Franklin County, Ohio, as Instrument No. 202007310111098 (the “First Mortgage”). Joint Stip. ¶ 20.a., ECF No. 58. As of the Petition Date, the balance secured by the First Mortgage was \$471,657.96. Joint Stip. ¶ 20.a., ECF No. 58. Second, there is a mortgage dated July 15, 2022, in favor of PNC Bank, National Association, (the “Second Mortgage”). Joint Stip. ¶ 20.b., ECF No. 58. The Second Mortgage remains of record but the underlying debt has been paid and the line of credit closed. Joint Stip. ¶ 20.b., ECF No. 58. Third is the S&T Judgment Lien. Joint Stip. ¶ 20.c., ECF No. 58. “The Debtor claims a

\$161,375.00 homestead exemption in [his interest in] the Real Property.” Joint Stip. ¶ 21, ECF No. 58.

The Parties have stipulated that the statutory formula for impairment set forth in 11 U.S.C. § 522(f)(2)(A) should be calculated as follows:

a. S&T Lien	\$9,265,622.10	
b. Other Liens		
First Mortgage	+ \$ 471,657.96	
Second Mortgage	+ \$ 0	
c. <u>Debtor’s Exemption</u>	+ \$ 161,375.00	
d. Total of All Liens & Exemption:	\$ 9,898,655.06	(lines a + b + c)
e. <u>Minus value of Debtor’s ½ interest in the Real Property</u>	– \$ 454,100.00	
f. <u>Exemption Impairment:</u>	\$ 9,444,555.06	(line d – line e)
g. Amount of lien that remains:	(\$ 178,932.96)	(line a – line f)

Joint Stip. ¶ 22, ECF No. 58.

Based on the statutory formula, no equity exists in the Real Property to secure the Judgment Lien. See Joint Stip. ¶ 22, ECF No. 58. As such, the Parties agree that the only issue left for the Court to decide is whether the S&T Judgment Lien is a judicial lien subject to avoidance pursuant to 11 U.S.C. § 522(f)(1). Joint Stip. ¶ 23, ECF No. 58.

III. Positions of the Parties

The Debtor argues that the lien is a judicial lien because it was created by the Judgment and S&T’s subsequent filing of the Certificate of Judgment with the Franklin County Clerk. Mot. to Avoid 3-4, ECF No. 28; Reply 4-10, ECF No. 41. S&T argues that the lien is a consensual security interest and not a judicial lien because (1) the Debtor’s Guarantees and other loan documents created a security interest, (2) the Debtor consented to the Judgment and (3) the Debtor

agreed in the Forbearance Agreement that S&T was not prohibited by the forbearance granted therein from filing certificates of judgment. S&T Obj. 5-6, ECF No. 35.

IV. Analysis

A. Purpose of 11 U.S.C. § 522(f)

“The principal purpose of the Bankruptcy Code is to grant a ‘fresh start’ to the ‘honest but unfortunate debtor.’” *Marrama v. Citizens Bank*, 549 U.S. 365, 367, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 286, 111 S. Ct. 654, 112 L. Ed. 2d 755 (1991)). Indeed, this purpose predates the current Bankruptcy Code. *See Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S. Ct. 695, 78 L. Ed. 1230 (1934) (applying the same principle to the Bankruptcy Act of 1898). One way that the Bankruptcy Code implements the fresh start is by allowing debtors to claim property as exempt. 11 U.S.C. § 522. Exemptions allow a debtor to exempt certain property from becoming property of the bankruptcy estate under 11 U.S.C. § 541 and being liquidated by the trustee to pay creditors. *Menninger v. Schramm (In re Schramm)*, 431 B.R. 397, 400 (B.A.P. 6th Cir. 2010). Exemptions further the fresh start “by allowing a debtor to protect property which is necessary for the survival of both the debtor and the debtor's family. As such exemptions are to be construed liberally in favor of the debtor.” *Id.*

To further promote the fresh start and to ensure that exemptions are not impaired by judicial liens, Congress adopted 11 U.S.C. § 522(f), which grants debtors the power to avoid judicial liens that impair an exemption. “One of the more significant changes in the bankruptcy laws brought by the Bankruptcy Reform Act of 1978 was the grant of avoiding powers to debtors to provide additional protection for their exempt property.” COLLIER ON BANKRUPTCY ¶ 322.11[1] (Richard Levin & Henry J. Sommer eds., 16th ed.). The purpose of § 522(f)(1) is to provide relief for an overburdened debtor. *Farrey v. Sanderfoot*, 500 U.S. 291, 297-98, 111 S. Ct. 1825, 144 L. Ed. 2d

337 (1991). A “principal reason Congress singled out judicial liens was because they are a device commonly used by creditors to defeat the protection bankruptcy law accords exempt property against debts.” *Farrey*, 500 U.S. at 297-98. “Congress' purpose and objective in providing this lien avoidance remedy is to give debtors a fresh start, free from the chains and shackles of preexisting debt.” *In re Gokay*, 535 B.R. 758, 769 (Bankr. S.D. Ohio 2015).

Because § 522(f) was enacted to promote and enhance a debtor’s fresh start, when a question arises regarding the meaning of a specific phrase in § 522(f), it should be answered in the manner most consistent with the advancement of the fresh start. *In re Hart*, 282 B.R. 70, 77 (B.A.P. 1st Cir. 2002) (citations omitted). The Debtor, as the moving party, bears the burden of proof. *In re Pace*, 569 B.R. 264, 269 (B.A.P. 6th Cir. 2017) (internal quotation omitted).

B. Lien Avoidance Under § 522(f)

11 U.S.C. § 522(f)(1) states: “[T]he 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 . . .”

Under § 522(f), “a debtor may avoid the fixing of a lien if three requirements are met: (1) there was a fixing of a lien on an interest of the debtor in property; (2) the lien impairs an exemption to which the debtor would have been entitled; and (3) the lien is a judicial lien.” *In re Wilding*, 475 F.3d 428, 431 (1st Cir. 2007) (citing *In re Chiu*, 304 F.3d 905, 908 (9th Cir. 2002)); *see also In re Jarew*, 415 B.R. 303, 306 (Bankr. N.D. Ohio 2009). Here, the Parties agree that the S&T Judgment Lien has fixed upon the Debtor’s interest in the Real Property and that the S&T Judgment Lien impairs the Debtor’s homestead exemption. Joint Stip. ¶¶ 14, 22, ECF No. 58. They further concede that “the sole remaining issue for this Court to resolve as it relates to the Motion to Avoid

is whether the S&T Judgment Lien constitutes a judicial lien as contemplated by 11 U.S.C. § 522(f).” Joint Stip. ¶ 23, ECF No. 58.

The Bankruptcy Code supplies three definitions that are relevant to this analysis. First, “the term ‘lien’ means charge against or interest in property to secure payment of a debt or performance of an obligation.” 11 U.S.C. § 101(37). Second, “the term ‘judicial lien’ means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.” 11 U.S.C. § 101(36). Finally, “the term ‘security interest’ means lien created by an agreement.” 11 U.S.C. § 101(51).⁶

To resolve the issues of statutory construction presented here, the Court follows and applies well-established principles. “The Supreme Court has made clear that in bankruptcy cases, we are to adhere closely to the text of the statute. . .” *In re Burns*, 322 F.3d 421, 429 (6th Cir. 2003) (citing *Toibb v. Radloff*, 501 U.S. 157, 162, 111 S. Ct. 2197, 115 L. Ed. 2d 145 (1991)). “We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992) (citations omitted); *Reinhardt v. Vanderbilt Mortg. & Fin., Inc. (In re Reinhardt)*, 563 F.3d 558, 562-63 (6th Cir. 2009). Where the Bankruptcy Code itself defines the relevant terms, bankruptcy courts apply the definitions provided by Congress. *In re Harkins*, 491 B.R. 518, 525 (Bankr. S.D. Ohio 2013) (“[b]ecause § 101(10A)

⁶ The Bankruptcy Code also recognizes a third type of lien. “The term ‘statutory lien’ means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.” 11 U.S.C. § 101(53). No party has asserted that this category of lien has any relevance here, and this Court agrees.

defines current monthly income, the Court begins with that section. . .”). Where terms are not defined, bankruptcy courts look to their ordinary meaning. 491 B.R. at 527.

Furthermore, in interpreting the Bankruptcy Code, the Court must give effect to every word wherever possible. *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 70, 131 S. Ct. 716, 178 L. Ed. 2d 603 (2011) (quoting *Leocal v. Ashcroft*, 543 U.S. 1, 12, 125 S. Ct. 377, 160 L. Ed. 2d 271 (2004)). At the same time, “courts have a duty to refrain from reading a phrase into a statute when Congress has left it out.” *Hoge v. Honda of Am. Mfg.*, 384 F.3d 238, 246 (6th Cir. 2004) (citing *Keene Corp. v. United States*, 508 U.S. 200, 208, 124 L. Ed. 2d 118, 113 S. Ct. 2035 (1993)). “Congress expresses its purpose by words. It is for us to ascertain -- neither to add nor to subtract, neither to delete nor to distort.” *62 Cases of Jam v. United States*, 340 U.S. 593, 596, 71 S. Ct. 515, 95 L. Ed. 566 (1951)).

In deciding whether a lien is a judicial lien under § 101(36) or a security interest under § 101(51), the Court must focus on the events that gave rise to the creation of the lien. “Classification of a lien depends on the events, if any, that must occur before the lien attaches.” *Matter of Mance*, 31 F.4th 1014, 1018 (7th Cir. 2022) (citing *In re Schick*, 418 F.3d 321, 324 (3rd Cir. 2005)); *Bank of Cushing v. Vaughan (In re Vaughan)*, 311 B.R. 573, 584 (B.A.P. 10th Cir. 2004). “Obtained by” in § 101(36) contains an element of causation. *Mance*, 31 F.4th at 1018 (citing *Field v. Mans*, 516 U.S. 59, 66, 116 S. Ct. 437, 133 L. Ed. 2d 351 (1995)).

There are several ways a dispute could make its way into a court and result in a money judgment. But before the lien can arise at all, a court must enter judgment for the winning creditor. That party then records it as a lien on the losing party's property. Because the lien is “obtained by” a court proceeding, it is considered judicial.

Mance, 31 F.4th at 1019.

Given that the resolution of the Motion to Avoid thus turns upon the manner in which the S&T Judgment Lien was created, the Court will consider Ohio law regarding the creation and perfection of judgment liens.⁷

C. Creation of Judgment Liens Under Ohio Law

Under Ohio law, judgment liens are exclusively creatures of statute. *Dressler v. Bowling*, 492 N.E.2d 446, 448 (Ohio 1986) (“from its earliest decisions, this court has recognized that the creation, existence and validity of judgment liens are strictly dependent upon statutory provisions.”) (citations omitted). In Ohio, a state court judgment does not, by its mere existence, create a lien on any property of the judgment debtor. *Andrews v. Andrews*, 207 N.E.3d 85, 99-100 (Ohio Ct. App. 2023); *In re Hellgrath*, 569 B.R. 709, 713 (Bankr. S.D. Ohio 2017) (“[u]nder Ohio law, a judgment, standing alone, does not give rise to a lien or security interest.”). Unless and until the statutory process for obtaining a judgment lien is followed, the judgment creditor holds only an unsecured judgment. *Axner v. Gaydash*, 2013 U.S. Dist. LEXIS 27108, at *10 (N.D. Ohio Feb. 26, 2013).

The procedure for obtaining a judgment lien under Ohio law is set forth in Ohio Rev. Code § 2329.02. That section provides that after a money judgment has been entered, the judgment creditor may request the issuance of a certificate of judgment from the clerk of courts in the county where the money judgment was entered, which may be filed with the clerk of courts for any county within the state. *Id.* When a certificate of judgment is filed, a lien is immediately created and is effective from that date upon all real estate owned by the judgment debtor in the county of filing.

⁷ Ohio law regarding the manner in which the liens of Ohio judgments are created is relevant here because property interests are created and defined by state law even if their ultimate treatment in a bankruptcy case is a question of federal law. *Buettner v. United States*, 440 U.S. 48, 99 S. Ct. 914, 59 L. Ed. 2d 136 (1979). This is particularly true here because the critical issue in classifying a lien under § 101(36) and § 101(51) is how the lien was created – and here that is a question of Ohio law.

Id.; see *Feinstein v. Rogers*, 440 N.E.2d 1207, 1209-10 (Ohio Ct. App. 1981); see also *Verba v. Ohio Cas. Ins. Co.*, 851 F.2d 811, 814 (6th Cir. 1988). The lien, however, does not arise until the certificate of judgment is filed: “No such judgment or decree shall be a lien upon any lands . . . until a certificate under the hand and official seal of the clerk of the court in which the same is entered or of record. . .” *Id.* The lien is considered a “specific lien” so that it may be foreclosed upon in the same manner as a mortgage. *Feinstein*, 440 N.E.2d at 1209-10. As a result, the filing of a certificate of judgment with the clerk of courts for the county where a parcel of real property is located both creates and perfects the judgment lien. See *French v. State Farm Mut. Auto. Ins. Co. (In re LaRotonda)*, 436 B.R. 491, 496-97 (Bankr. N.D. Ohio 2010).

Here, the Real Property is located in Franklin County, Ohio. Joint Stip. ¶ 14, ECF No. 58. Therefore, the S&T Judgment Lien was created on November 14, 2023 – the date that the Certificate of Judgment was filed with the Franklin County Clerk of Courts. Joint Stip. ¶ 12, ECF No. 58.

D. The S&T Judgment Lien Is A Judicial Lien

Judgment liens created pursuant to Ohio Rev. Code § 2329.02 clearly fit within the definition of judicial lien found in 11 U.S.C. § 101(36). Liens under Section 2329.02 arise from judgments and are the result of a legal process. Applying the Seventh Circuit’s causation test, the S&T Judgment Lien here was obtained through a court proceeding, and therefore it is a judicial lien. *Mance*, 31 F.4th at 1019. Consequently, like any judgment lien in Ohio, the S&T Judgment Lien satisfies § 101(36) because it was obtained by “judgment. . .or other legal or equitable process or proceeding.”

Indeed, courts regularly apply 11 U.S.C. § 522(f) to avoid judgment liens created pursuant to Ohio Rev. Code § 2329.02 as judicial liens: and most often there is no dispute that a judgment

lien arising under Ohio Rev. Code § 2329.02 is a judicial lien. *See, e.g., In re Davis*, 539 B.R. 334 (Bankr. S.D. Ohio 2015); *In re Jerew*, 415 B.R. 303, 306 (Bankr. N.D. Ohio 2009). Courts have reached the same conclusion when the issue is litigated. *Axner v. Gaydash*, 2013 U.S. Dist. LEXIS 27108, at *9 (N.D. Ohio Feb. 26, 2013) (holding that judgment liens under Ohio Rev. Code § 2329.02 are judicial liens).

In addition, Courts have uniformly held that a lien arising out of a judgment is a judicial lien even if the underlying judgment was created by stipulation, confession, or consent. *Axner*, 2013 U.S. Dist. LEXIS 27108 at *7-8; *Bank of Cushing v. Vaughan (In re Vaughan)*, 311 B.R. 573, 583-84 (B.A.P. 10th Cir. 2004); *Bank of Stockton v. Applebaum (In re Applebaum)*, 162 B.R. 548, 550 (Bankr. E.D. Cal. 1993); *In re Higgins*, 270 B.R. 147, 154 (Bankr. S.D.N.Y. 2001); *In re Matrone*, 183 B.R. 41 (Bankr. N.D.N.Y. 1995). It is only where the underlying settlement agreement itself creates a lien that courts reach a different result. *In re Inman*, 131 B.R. 789 (Bankr. N.D. Tex. 1991) (finding that a judicial lien arising out of a consent judgment was avoidable under § 522(f) but that a separate grant of a consensual lien given as part of the settlement was not).

Some courts that have confronted arguments such as those advanced by S&T stop at this point. They conclude that a lien that fits the definition of judicial lien means that the lien is avoidable under § 522(f):

Erickson argues that the confession of judgment created a voluntary or consensual lien and, therefore, that avoidance should not be permitted under Section 522(f)(1)(A). It is true that a confession of judgment is voluntary and consensual. But. . . nothing in Section 522(f)(1)(A) discriminates between a judicial lien that is voluntary and one that is not voluntary. On its face, this Section applies to any judicial lien, whether voluntary or not, and it is not for the Court to exclude consensual or voluntary judicial liens from Section 522(f)(1)(A) when Congress did not do so.

Higgins, 270 B.R. at 154. Here, however, the Court will also consider whether the S&T Judgment Lien satisfies the definition of “security interest.”⁸

E. The S&T Judgment Lien Is Not A Security Interest

S&T argues that what appears to be a judicial lien should instead be viewed as a security agreement because it arises out of an agreement. S&T offers multiple arguments in this regard. First, S&T asserts that the Debtor’s Guarantees, along with the other loan documents, “granted S&T a charge and interest in the property of both LSPT and the Debtor, thereby granting S&T lien in both LSPT’s and Debtor’s property.” S&T Obj. 6, ECF No. 35. This assertion, however, is contradicted by paragraph two of the Joint Stipulations, whereby S&T conceded that “at no time did the Debtor execute and deliver to S&T any document evidencing or creating a security interest, lien, mortgage, or other form of transfer of an interest in property of the Debtor to secure his obligations under the Debtor’s Guarantees.” Joint Stip. ¶ 2, ECF No. 58. Moreover, none of the Debtor’s Guarantees or other loan documents were authenticated in the Joint Stipulations so they are not properly before the Court.⁹ Neither the Judgment nor the Forbearance Agreement create a lien upon the Debtor’s property. The Judgment simply provides that the Debtor, among others, consented to the entry of judgment against him. Joint Stip. Ex. A § 2, ECF No. 58. The Forbearance Agreement does reference security interests and collateral, but the security interests were granted by LSPT on property owned by LSPT. Joint Stip. Ex. B ¶ 3, ECF No. 58. Given the lack of any document creating a lien in the record before the Court, and the Parties’ concession

⁸ Most courts hold that a lien cannot be both a security interest and a judicial lien. *See, e.g. In re Ramsey*, 89 B.R. 860, 861 (Bankr. S.D. Ohio 1988) (holding that the categories of liens set forth in the Code are mutually exclusive). Before it confronts whether this case might present an exception to that rule and any complexities that would result from such a conclusion, the Court will first consider whether the S&T Judgment Lien is a security interest.

⁹ These documents were attached to the S&T Objection but have not been authenticated and the Court cannot consider them.

that no such document exists in the Joint Stipulations, the Court rejects S&T's first argument that the loan documents themselves establish a security interest.

S&T next argues that S&T Judgment Lien should be treated as a security interest not subject to avoidance under § 522(f) because the Judgment was entered by consent rather than by litigation. S&T Obj. 5-6, ECF No. 35. S&T argues that this means that the S&T Judgment Lien was created by an agreement. *Id.* The narrow definition of security interest (“lien created by an agreement”) set forth in § 101(51) indicates that the lien must be created by the agreement itself. The use of the term “created by” rather than a broader term such as “relating to” or “arising out of” an agreement indicates an intent to narrowly define security interests. In order to find a security interest, there must therefore be an agreement containing language from which the Court could reasonably conclude that the Debtor “expressly and voluntarily agreed to a lien” on his property. *Axner*, 2013 U.S. Dist. LEXIS 27108, at *9; *see also Vaughan*, 311 B.R. at 584 (finding no security agreement where the parties’ written stipulation contained no language granting a lien); *In re McCaw*, 2013 Bankr. LEXIS 1588, at *5 (Bankr. M.D. Ala. Apr. 12, 2013). (“A grant of a security interest must be in writing and sufficiently definite to give rise to a security interest. There is a total failure of proof here. All Henderson has shown is that he was granted a money judgment, by consent.”). Here, the Parties stipulated that there is no such agreement. Joint Stip. ¶ 2, ECF No. 58.

The Court notes that the material facts in *Axner* are analogous to the facts of this case. It involved a state court case that was settled by a stipulated judgment entry granting judgment against a debtor in an Ohio state court. The entry provided for a stipulated judgment but also provided that the creditor would forbear from collection activities so long as the debtor made payments on a specified schedule, though it also provided that the creditor could file a certificate

of judgment if it wished. 2013 U.S. Dist. LEXIS 27108, at *2. The bankruptcy court held that these facts gave rise to an avoidable judicial lien, and the district court affirmed.

The district court reasoned that the judgment lien was a judicial lien because it came into existence only as a result of a state court judgment and the creditor's subsequent compliance with Ohio Rev. Code § 2329.02. 2013 U.S. Dist. LEXIS 27108, at *9. The court rejected the creditor's contention that the lien was a security interest because there was no evidence of any agreement to create a lien. *Id.* Further, *Axner* holds that consent to a judgment, without more, does not create a security interest. Rather, given that the agreement in that case only provided consent to the judgment, the court noted that the debtor "never expressly and voluntarily agreed to a lien on her residence." 2013 U.S. Dist. LEXIS 27108, at *9. Finally, the court noted that the creditor's "lien interest did not arise until he elected to file a certificate of judgment . . . Absent the recordation and operation of § 2329.02, [the creditor] would hold an unsecured judgment debt only, and have no lien." 2013 U.S. Dist. LEXIS 27108, at *9-10. Based upon all those considerations, the court affirmed the bankruptcy court's ruling that the lien was an avoidable judicial lien. *Id.*

Other cases are in accord. *Bank of Stockton v. Applebaum (In re Applebaum)*, 162 B.R. 548, 550-51 (Bankr. E.D. Cal. 1993) (holding that the debtor's consent to a judgment did not create a security interest absent some indication that the debtor intended to create a lien); *see also Bank of Cushing v. Vaughan (In re Vaughan)*, 311 B.R. 573, 584 (B.A.P. 10th Cir. 2004) (rejecting the argument that a consent judgment should be viewed as a security agreement because the stipulated judgment in question "contained no language granting a lien.").

The parties stipulated that there is no "document evidencing or creating a security interest, lien, mortgage, or other form of transfer of an interest in property of the Debtor to secure his obligations" under the Debtor's Guarantees. Joint Stip. ¶ 2, ECF No. 58. The parties certainly

could have made such an agreement as part of their resolution of the issues in the State Court. *See Inman*, 131 B.R. 789, 792-93 (Bankr. N.D. Tex. 1991) (finding that the lien of a consent judgment was avoidable under § 522(f) but an associated consensual lien was not); *see also In re Webb*, 2002 Bankr. LEXIS 1921, at *7 (Bankr. D. Idaho Dec. 30, 2002) (noting that a creditor that wishes to obtain protection against avoidance under § 522(f) must negotiate for a consensual lien rather than relying upon a judgment lien.); *In re Kadoch*, 528 B.R. 626, 638 (Bankr. D. Vt. 2015) (holding that judgment lien arising out of a consent judgment was a judicial lien and not a security interest); *Action Motors, Inc. v. Milliner (In re Milliner)*, 554 B.R. 525, 531 (Bankr. M.D. Ga. 2016) (same).

Finally, S&T's reliance upon *In re Bland*, 91 B.R. 421, 423 (Bankr. N.D. Ohio 1988), is misplaced. *Bland* involved an agreement granting the creditor, a condominium owners' association, a lien for the debtor's share of unpaid common area assessments. 91 B.R. at 421-22 ("The agreement further provided that all assessments would constitute a lien on the property which could be judicially foreclosed if the amount remained unpaid."). The court stressed that the explicit agreement to grant the lien compelled its conclusion that the lien was a security interest. The court reasoned that because the debtor had agreed that the creditor would have a lien in the event that the debtor failed to pay the fees, the lien had to be considered a security interest, because it was created by an agreement. *Id.* at 423. As a result, *Bland* held that the lien was not avoidable under section 522(f). *Id.*

The absence of any agreement here creating a consensual lien distinguishes this case from *Bland*. The holding in *Bland* resulted from the fact that the agreement in that case expressly created a lien. 91 B.R. At 423. Here, in contrast, the Parties have stipulated that there was no document creating or evidencing a voluntary lien. Joint Stip. ¶ 2, ECF No. 58. Given that stipulation, *Bland* has no relevance to the issue before the Court. *Bland* did not involve a consent judgment or

otherwise address the issue before the Court; in fact, there is nothing in the *Bland* decision explaining why the debtor believed that the lien was judicial in nature. Consequently, *Bland* provides no basis for the Court to depart from the plain meaning of the Bankruptcy Code provisions applicable here.

F. The Forbearance Agreement Does Not Create A Lien

S&T's final argument is that, separate from the Debtor's consent to the Judgment, the Forbearance Agreement must also be viewed as creating a security interest because it contemplated and permitted S&T to file certificates of judgment. S&T Obj. 6-7, ECF No. 35. The Court is not convinced. As relevant here, under Section 3.2 of the Forbearance Agreement, S&T agreed not to execute upon the Judgment against the Debtor for a specified period of time. Joint Stip. ¶ 6, ECF No. 58. However, Section 3.2 went on create an exception: S&T was "not prohibited from recording its certificate of Judgment Lien in any county in Ohio." Joint Stip. ¶¶ 6-7, ECF No. 58. This language does not create a lien. It simply clarifies that S&T's forbearance from collection activity against the Debtor did not prohibit S&T from obtaining judgment liens under Ohio law.

Courts considering provisions similar to the Forbearance Agreement uniformly conclude that such provisions do not themselves create a lien and therefore do not create security interests. For example, in *Axner*, 2013 U.S. Dist. LEXIS 27108, the consent judgment provided that the creditor "may secure this judgment by filing a certificate of judgment lien, but agrees not to foreclose, levy or execute on this judgment," provided that the debtor made payments as set forth in the judgment. *Id.* at *2. The court rejected the creditor's argument that the permission to file a certificate of judgment created a consensual lien: "at the time of the parties' settlement agreement, it was not even clear that [the creditor] would file a lien as the agreement indicated only that he 'may' have done so." *Id.* at *11. As such, the lien was not created by an agreement, so it could

not be a security interest. *Id.*; *see also Applebaum*, 162 B.R. at 549-552 (“the stipulated judgment only provided that the [creditor] ‘may’ file an abstract of judgment. The [creditor’s] lien arose not when the [debtors] signed the agreement, but later when the [creditor] executed on its judgment.”).

The same is true here. The Forbearance Agreement states that S&T “shall not be prohibited from recording its certificate of Judgment Lien in any county in Ohio. . .” Joint Stip. ¶ 6, ECF No. 58. Just as in *Axner* and *Applebaum*, this provision did not itself create a lien, but instead left it to S&T’s sole judgment and discretion whether to take the further actions necessary to create the S&T Judgment Lien. And in fact, S&T did not complete the steps required to create the S&T Judgment Lien until November 14, 2023, over three months after the Forbearance Agreement was executed. Joint Stip. ¶¶ 5, 12, ECF No. 58. 11 U.S.C. § 101(51) is clear – a security interest is “a lien created by an agreement.” There must be proof that the Debtor “expressly and voluntarily agreed to a lien. . .” *Axner*, 2013 U.S. Dist. LEXIS 27108, at *8-9; *In re McCaw*, 2013 Bankr. LEXIS 1588, at *5 (Bankr. M.D. Ala. Apr. 12, 2013). Therefore, the Court must reject S&T’s argument that the Forbearance Agreement created a security interest.

V. Conclusion

For the foregoing reasons, the Court holds that the S&T Judgment Lien constitutes a judicial lien as contemplated by 11 U.S.C. § 522(f)(1). The Joint Stipulations establish the other necessary elements for avoidance of the S&T Judgment Lien under § 522(f)(1). Joint Stip. ¶¶ 14, 22, and 23, ECF No. 58. Accordingly, the Court concludes that the S&T Judgment Lien should be avoided in its entirety as requested by the Debtor. Mot. to Avoid 5, ECF No. 28. Accordingly,

IT IS ORDERED that the Motion to Avoid is GRANTED.

IT IS FURTHER ORDERED that pursuant to L.B.R. 9072-1(f), Counsel for the Debtor shall submit a proposed order consistent with this Opinion and Order.

IT IS SO ORDERED.

Copies to: Default List plus

Christopher J. Niekamp, Esq. (via ECF)