

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

BRENDAN LINEHAN SHANNON
JUDGE



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WILMINGTON, DELAWARE
(302) 252-2915

February 1, 2023

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Re: In re: Stephanie Larkin
Case No. 22-10867(BLS)(Chapter 7)

Dear Counsel:

This letter follows upon a hearing held in the above matter on January 5, 2023. The matter before the Court is the Debtor's Motion to Avoid Lien on Real Estate (the "Avoidance Motion")¹. For the reasons that follow, the Avoidance Motion will be denied.

The relevant facts are not in material dispute. The Debtor is the owner of a condominium unit located at 3241 Fairway Drive, Wilmington, Delaware (the "Unit"). The Unit is part of Linden Green Condominium Association.² Beginning in September of 2016, the Debtor stopped paying her annual condominium fees and special assessments common to all unit owners.

Linden Green filed suit for non-payment in the Superior Court for the State of Delaware, and the Debtor filed an answer and counterclaim for damages to the foundation of the Unit.³ As a result of the subsequent trial, on or about March 31, 2022, the Superior Court awarded Linden Green attorney's fees, costs, and post-judgment interest in the combined amount of \$36,974.95.⁴ Also, on March 31, 2022, the Superior Court recorded a lien (the "Lien") against the Unit. Prior to the judgment being paid or satisfied, the

¹ Docket No. 12.

² The Debtor's deed to the property states that her ownership is subject to the following provision: "The Grantee...by acceptance of this Deed, covenants and agrees to pay such charges for the maintenance of, repairs to, replacement of an expenses in connection with the common elements as may be assessed from time to time...".

³ See *Linden Green Condo Assoc. v. Larkin*, 2020 WL 5890585 (Del. Super. Ct. Oct. 5, 2020). Linden Green was awarded \$13,774.75 in past due assessments and late fees which were paid by the Debtor in full. The Superior Court then granted Linden Green leave to submit claims for attorney's fees, costs, and finance charges.

⁴ See *Linden Green Condo Assoc. v. Larkin*, 2022 WL 247529 (Del. Super. Ct. Jan. 27, 2022). The Superior Court also entered a judgment awarding the Debtor a total of \$19,452.38 on her counterclaim, plus post judgment interest from January 27, 2022.

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Debtor filed her voluntary petition for relief under Chapter 7 of the Bankruptcy Code. On her Schedules, the Debtor listed the Unit as exempt property⁵ and filed the Avoidance Motion on September 12, 2022, to permit her to avoid the Lien pursuant to Bankruptcy Code § 522(f)(1). Linden Green timely objected to the Avoidance Motion, and arguments were heard on January 5, 2023. The matter is ripe for disposition.

Section 522(f) permits a debtor to avoid a judicial lien “to the extent that such lien impairs an exemption to which the debtor would have been entitled”⁶ Notably, § 522(f) does not apply to statutory or consensual liens. “What specific legislative history exists suggests that 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.”⁷ The Debtor seeks to take full advantage of these protections and contends that the Lien obtained by Linden Green is a judgment lien. Linden Green, however, responds that the Lien should be characterized as either a statutory or consensual lien.

The Delaware legislature has enacted certain protections for condominium associations. Specifically, Section 81-316(a) of the Delaware Code states:

The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 81-302(a)(10), (11), and (12) of this title, and any other sums due the association under the declaration, this chapter or as a result of an administrative or judicial decision, together with court costs and reasonable attorneys' fees incurred in attempting collection of the same, are enforceable in the same manner as unpaid assessments under this section.⁸

Furthermore, Section 81-316(g) states that “A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.”⁹

The Court finds this statutory language to be dispositive. Whether a lien is judicial or statutory is determined by how the lien arises.¹⁰ Section 81-316(a) explicitly creates a statutory lien for any assessment fees not paid by the homeowner. The statute further states that any costs or fees arising out of the collection of assessment fees are to be enforced in the same manner as the unpaid assessments. The Court interprets this language to mean that a statutory lien arises not just from the unpaid assessment fees, but also for fees and costs incurred through collection and enforcement. Therefore, because the Lien originally arose via Section 81-316(a), it is a statutory lien.¹¹

⁵ The value of the property is a contested issue to be addressed by the parties at a later date.

⁶ 11 U.S.C. § 522(f)(1).

⁷ *Farrey v. Sanderfoot*, 500 U.S. 291, 292, 111 S. Ct. 1825, 1827 (1991).

⁸ 25 Del. C. § 81-316(a)

⁹ 25 Del. C. § 81-316(g)

¹⁰ *Young v. 1200 Buena Vista Condos.*, 477 B.R. 594, 602 (W.D. Pa. 2012) quoting *In re King*, 208 B.R. 376, 379 (Bankr. D. Md. 1997).

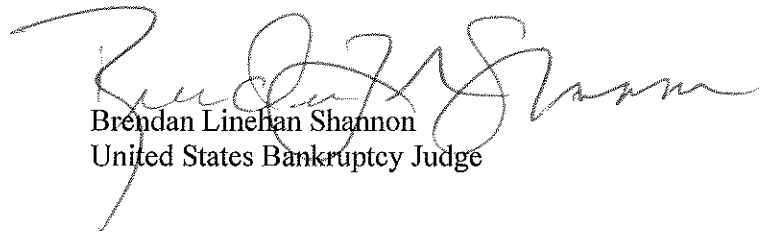
¹¹ Courts in other jurisdictions consider liens for assessment fees to be statutory. See *In re Smiley*, 569 B.R. 377 (Bankr. D.N.J. 2017); *In re Young*, 477 B.R. at 602; (“While subsequent events may have given the lien the appearance of a

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Debtor contends that because Linden Green was required to commence litigation to obtain and fix the amount of the Lien, it is a judicial lien. This argument is unavailing: irrespective of the need for court proceedings, applicable law clearly provides that the lien arises from a Delaware statute.¹²

Linden Green's statutory lien impairs the Debtor's exemption as it relates to the Home. The Debtor's Avoidance Motion will be denied.¹³ An appropriate order will issue.

Very truly yours,



Brendan Linehan Shannon
United States Bankruptcy Judge

BLS/jmw

cc: David W. Carickhoff, Esquire
Chapter 7 Trustee

security interest and/or judicial lien, the nature of the lien did not change from a statutory lien, because the classification of a lien depends on how it first arose.”); *In re Lynch*, 630 B.R. 745, 754 (Bankr. D.N.J. 2021).

¹² *Accord, Young v. 1200 Buena Vista Condos.*, 477 B.R. at 602.

¹³ The Court acknowledges Linden Green's arguments suggesting that the Lien may also be consensual by virtue of the parties' contractual commitments to each other, but bases its decision today on the statutory designation only.