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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

MARGARET E. BOND,

No. 03-12296

Debtor(s).

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Memorandum on Motion to Avoid Lien

Debtor Margaret Bond, who is disabled and requires a motorized wheelchair, filed her Chapter 7 petition on September 19, 2003, scheduling her real property in Lucerne, California as exempt in the amount of \$125,000.00 pursuant to California Code of Civil Procedure § 707.730(a)(3). She scheduled the property as having a value of \$210,000.00 and senior encumbrances of \$86,000.00, leaving no equity for judgment lien creditors. Based on these allegations, she has moved for avoidance, pursuant to § 522(f)(1)(A) of the Bankruptcy Code, of a judgment lien held by creditor The CIT Group/Sales Financing, Inc.

Initially, the parties argued over whether the lien, which is the result of a judgment against Bond's husband, validly attached to the Lucerne property. Bond has subsequently conceded that the lien is valid and now only argues that it ought to be avoided. It is the nature of the property itself which is now the focus of legal disagreement.

Bond's property consists of three separate city lots, all purchased by Bonds at the same time. Two of the lots are contiguous, with Bond's home straddling them both. The third lot is separated from

1 the other two by an alley. CIT argues that the separate lot is not exemptible at all and that only the  
2 portion of the two contiguous lots on which the house is located is subject to exemption.

3 Notwithstanding one hoary case decided long before the advent of modern land use law, there is  
4 no support for CIT's position that the court can carve up the contiguous lots into exempt and non-exempt  
5 portions. Except in cases of excess value, division of homestead property is not permitted. 37

6 **Cal.Jur.3d**, Homesteads § 26, citing *Payne v. Cummings* (1905) 146 Cal. 426, 80 P. 620. Modern city  
7 lots are not subject to being carved up as urged by CIT. *Bodden v. Community Nat. Bank* (1969) 271  
8 C.A.2d 432, 435.

9 Bond's home sits on both lots. They are therefore both occupied and used as a homestead and  
10 may be exempted as such. *Speer v. Speer* (1962) 209 Cal.App.2d 233, 241. The mere fact that an old  
11 commercial building sits on one of the lots, or that a portion of the other is unused, does not void  
12 Bond's homestead rights or give a judgment creditor the right to re-draw lot boundaries to create exempt  
13 and non-exempt parcels.

14 The third lot is more problematical. Assuming that it can be separately sold without violating  
15 any land use laws, its inclusion as a part of the homestead depends only on its use. The fact that it is  
16 separated by an alley is irrelevant. 37 **Cal.Jur.3d**, Homesteads § 27.

17 Bond argues that there are no disputed facts in this case, but the court sees several. Bond must  
18 show that on the day of her filing there was no equity over and above her exemption, and that she is  
19 entitled to the \$125,000.00 exemption amount. Either she or CIT- the court declines to decide who has  
20 the burden at this time - must show that the third lot is or is not legally marketable by itself.<sup>1</sup> If it is,  
21 Bond must show that it is necessary for the use and enjoyment of her homestead. Final adjudication is  
22 not appropriate at this time. However, in further proceedings it will be deemed without controversy that  
23 the two contiguous lots at least are subject to Bond's homestead exemption.

24 The court will hold a scheduling conference on January 31, 2005, at 2:00 P.M., for the purpose  
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26 <sup>1</sup>The court will also need to know if the third lot is encumbered along with the others.

1 of setting an evidentiary hearing. The parties may arrange for a conference call for this purpose in lieu  
2 of this hearing by contacting the calendar clerk.

3 Dated: December 10, 2004

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5 Alan Jaroslovsky  
6 U.S. Bankruptcy Judge

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