

1
2
3 **UNITED STATES BANKRUPTCY COURT**
4 **IN AND FOR THE DISTRICT OF ARIZONA**
5

6 **In Re**) **Chapter 13 Proceedings**
7 **JAMES J. HERTE,**) **Case No. BR-04-07151-ECF-CGC**
8 **Debtor.**) **UNDER ADVISEMENT DECISION RE:**
9) **VALIDITY OF JUDGMENT AND**
) **IMPAIRMENT OF HOMESTEAD**

10 The issue before the Court is whether Archie C. And Jane Alfano Rasor (“Rasors”) have a
11 valid claim against Debtor in this bankruptcy case by way of their state court judgment against
12 Debtor. Debtor contends they do not because the Rasors failed to timely renew their judgment.
13 Alternatively, if they do have a valid claim, Debtor argues it is not secured, as any claimed lien
14 would impair Debtor’s homestead.

15 The facts are for the most part undisputed. On August 18, 1995, a Maricopa County
16 Superior Court judge entered judgment in favor of the Rasors and against Debtor in the amount of
17 \$25,851.28. The Rasors recorded the judgment with the Maricopa County Records Office on
18 December 21, 1995. The judgment became a lien on Debtor’s Mesa home as a matter of state law.
19 The Rasors renewed the judgment on October 18, 2000. The Rasors contend that the amount now
20 owed exceeds \$49,500.

21 Debtor filed for bankruptcy on April 26, 2004, and filed his Chapter 13 Plan on July 2, 2004.
22 Debtor’s Plan classifies the Rasor’s claim as a nonpriority, unsecured claim. To this the Rasors
23 objected and, as a result, the issue has come before the Court for resolution.

24 For the following reasons, the Court finds in favor of the Rasors and concludes that they
25 correctly and timely renewed their judgment. There is no dispute that the judgment was entered at
26 the time the judgment was filed with the court clerk on August 18, 1995, as provided by Rule 58(a)
27 of the Arizona Rules of Civil Procedure. It is also undisputed that the Rasors properly and timely
28 recorded the judgment on December 21, 1995, with the Maricopa County Records Office. It is
further agreed that under Arizona Revised Statute (“A.R.S.”) section 12-1611, “a judgment may be

1 renewed by action thereon at any time within five years after the date of the judgment.”

2 Section 12-1611 is the dispositive statute here. The Rasors were required to renew their
3 judgment by taking the necessary action within five years of the date of the judgment. In this case,
4 they had to act within five years of August 18, 1995. The deadline, therefore, was August 18, 2000.
5 Debtor’s argument to the contrary is simply incorrect and unsupported by any case law or a
6 reasonable reading of the statutes. The fact that A.R.S. section 12-1612, which sets forth the
7 procedure to actually execute a renewal, contains language that “[t]he judgment creditor may within
8 ninety days preceding the expiration of five years from the date of entry of such judgment, make and
9 file an affidavit, known as a renewal affidavit,” does not reduce the five year period by one day. The
10 word “preceding” simply indicates that this must be done before the five year period expires, and
11 not an indication that it cannot be renewed on the last day of the fifth year. Section 12-1612 does
12 not set forth the time limitation on renewal, only the procedure that must be followed. The case law
13 supports the Rasors’ position. *See In re Smith*, 293 B.R. 220 (9th Cir. 2003); *Coggins v. Wright*, 22
14 Ariz. App. 217, 526 P.2d 741 (1974). There simply is no requirement in the statute that the
15 judgment must be renewed a day prior to the last day within the fifth year.

16 This conclusion is also not changed by Debtor’s analysis of A.R.S. section 1-243(A), which
17 both parties agree applies to exclude from calculating a statutory time period the first day from
18 within which an act is required to be done. The cases upon which Debtor relies to explain why he
19 believes Section 1-243(A) does not apply here all involve statutes that speak of an act having to be
20 done “prior to” a certain date. That is not the case here. The statutes discussing renewing a
21 judgment are not crafted with any such language and the time periods are not calculated by counting
22 backwards from the expiration date.

23 Debtor next contends that the Rasors claim impairs his homestead exemption. To resolve
24 this issue, the Court must be presented with a fair market value of the property to determine whether
25 the lien exceeds the value of Debtor’s exemption. Debtor has presented no evidence as to the
26 property’s value, simply listing the value on his Schedules at \$160,000. The Rasors, on the other
27 hand, have employed a realtor to perform a comparative analysis of the property. In so doing, the
28 realtor has valued the property at \$295,920. At this amount, and based on the debts Debtor shows

1 owing on the property, it appears the Rasors' lien does not impair his homestead exemption.


2 In response, however, Debtor challenges the admissibility of the appraisal, contending the
3 realtor is not a broker or a licensed appraiser. He further contends that, although the property may
4 have increased in value since the filing of his case, it is not comparable to other homes on the market
5 due to its condition and the need for "serious repairs."

6 The Court finds that a fact issue remains as to the actual value of this property and whether
7 the lien impairs Debtor's homestead. While the Court acknowledges that Debtor has done nothing
8 to establish his valuation of the property, and the Rasors have, the Court will give Debtor the
9 opportunity to present his case.

10 Debtor is granted until April 27, 2006, to obtain and present evidence of value which is to
11 be filed with this Court and served on interested parties. If no evidence of value is filed with the
12 Court, finding no impairment, this order will become a final order. In the event evidence of value
13 is filed with the Court, a Rule 16(b) hearing will be held on the 10th day of May, 2006
14 at 11:00 a.m. If no evidence of value is timely filed, this hearing will be vacated.

15 So ordered.

16 DATED: March 29, 2006

17 
18 CHARLES G. CASE II
19 United States Bankruptcy Judge

20 **COPY** of the foregoing mailed and/or via facsimile
this 29th day of March, 2006, to:

21 Carolyn J. Johnsen
22 Danelle G. Kelling
23 Jennings, Strouss & Salmon, PLC
201 E. Washington Street, 11th Floor
24 Phoenix, Arizona 85004-2385
Attorneys for the creditors

25 David Guzman
26 Guzman PLC
P.O. Box 1384
27 Higley, Arizona 85236-1384
Attorney for Debtor

28 Edward J. Maney
P.O. Box 10434

1 Phoenix, Arizona 85064-0434
Chapter 13 Trustee
2
U.S. Trustee
3 230 N. First Avenue, Suite 204
Phoenix, Arizona 85003
4
5 By: Shirley Dunbar, Judicial Assistant
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28