

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In Re:)	Case No. 92-30399
)	Chapter 13
ROSE MARY GRIFFIN,)	
)	
Debtor.)	
)	

ORDER

THIS MATTER coming before the Court for hearing on May 23, 1995 upon the Debtor's Motion to sell real property, avoid a judgment lien and determine validity of the judgment lien, and upon the Responses of the Trustee and Institution Food House ("IFH") thereto; and after review of the pleadings and hearing arguments of counsel for all parties, the Court hereby finds and concludes as follows:

FINDINGS OF FACT

On August 27, 1990, the Debtor filed a Chapter 13 petition with this Court (the "first Chapter 13 case"), and under 11 U.S.C. § 362, an "automatic stay" went into effect restraining acts to collect against the Debtor or her property and prohibiting the creation of liens against that property.

The next day, August 28, 1990, the Mecklenburg County District Court, not being aware of the bankruptcy, entered judgment against the Debtor and in favor of IFH in the amount of \$5,125.70, plus costs of \$818.75. On October 9, 1990, IFH had this judgment transcribed to and recorded in Union County, in what was either a technical, or alternatively, a wilful violation of the stay provisions of the Code.

IFH filed an unsecured claim with this court in the first Chapter 13 case, but failed to take the necessary steps to rescind the offending state court judgment. The Debtor, for her part, did not seek to avoid the lien or to sanction the creditor for its failure to do so.

The Debtor's first Chapter 13 case was dismissed on or about September 3, 1991 for nonpayment.

On February 21, 1992, the Debtor filed a second Chapter 13 case ("the second Chapter 13 case"), which is pending. In her Schedules, the Debtor listed IFH as a general unsecured creditor, but again did nothing with regard to the IFH judgment. For its part in the second Chapter 13 case, IFH again filed an unsecured claim, but did nothing to remove the earlier judgment/lien which remained of record in Mecklenburg and Union Counties.

On April 19, 1995, the Debtor moved the Court for authority to sell 10 acres of land which she owned in Union County and to determine the validity of IFH's judgment lien which appeared to encumber the same. This sparked responses by the Chapter 13 Trustee and IFH, which now contends that it holds a secured claim by virtue of its judgment lien against the subject real property.

By Order dated May 10, 1995, this Court ordered the real property sold, and the net proceeds escrowed pending further hearing on the lien issue. That matter was argued on May 23, 1995, and from that hearing this ruling stems. The issue to be decided today is simply, What is the legal effect of a judgment entered in violation of the automatic stay when the underlying bankruptcy case is dismissed?

IFH argues that when the first Chapter 13 case was dismissed and the automatic stay dissolved, its state court judgment lien sprang to life and attached to any existing real estate owned by the Debtor--therefore, to this real property. As such, IFH contends its lien is valid and unavoidable in the second Chapter 13 case.

The Debtor on the other hand contends that since the judgment was both granted and transcribed in violation of the automatic stay in the first Chapter 13 case, that lien was void and beyond resuscitation even after the first Chapter 13 case was dismissed.

CONCLUSIONS OF LAW

It is widely agreed that any act that violates the automatic stay of 11 U.S.C. § 362(a) is void ab initio. In re Knightsbridge Development Co., Inc., 884 F.2d 145, 148 (4th Cir. 1989); see also Ellis v. Consolidated Diesel Elec. Corp., 894 F.2d 371, 372 (10th Cir. 1990); In re Shamblin, 890 F.2d 123, 125 (9th Cir. 1989); In re Smith, 876 F.2d 524, 526 (6th Cir. 1989); In re 48th Street Steakhouse, Inc., 835 F.2d 427, 431 (2nd Cir. 1987), cert. denied, 485 U.S. 1035, 108 S.Ct. 1596, 99 L.Ed.2d 910 (1988); In re Ward, 837 F.2d 124, 126 (3rd Cir. 1988).

It is also beyond dispute that the postpetition entry of a judgment, and the transcription of such a judgment to another county in North Carolina so as to create a lien on real property owned by the Debtor in that county, are acts stayed by § 362(a). Section 362 precludes:

- (1) the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under [Title 11], or to recover a claim against the debtor that arose before the commencement of the case under [Title 11];...

(4) any act to create, perfect, or enforce any lien against property of the estate;..., and

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under [Title 11].

As acts in violation of the stay in the first Chapter 13 case, the entry and transcription of the IFH judgment were void and without legal effect against the Debtor or her property. Being void, the subsequent dismissal of the Debtor's first Chapter 13 case did not resuscitate these acts. See, e.g., Richard v. City of Chicago, 80 Bankr. 451, 454 (N.D.Ill. 1987) (Dismissal of the case does not validate an act that was void for having violated the automatic stay). In re Lampkin, 116 Bankr. 450, 453 (Bankr. D.Md. 1990); Huddleston v. Texas Commerce Bank-Dallas, N.A., 756 S.W.2d 343 (Tex.Ct. App. 1988)

This interpretation is consistent with other provisions of the Code. First, 11 U.S.C. § 349(b)(1)(B), upon dismissal, serves to reinstate certain transfers which were avoided due to bankruptcy. These are "voidable" transfers such as preferences and fraudulent conveyances. Conspicuous in its absence however, are transfers in violation of the automatic stay under § 362. Had Congress intended such transfers to revive upon dismissal, it is reasonable to assume it would have provided so here.

In fact, a contrary intention is evident. Bankruptcy Code § 349(b)(3) states that dismissal "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under [Title 11]." At the filing date of the first Chapter 13 case, the Debtor's property was unencumbered. To recognize a lien acquired postpetition on this property would negate this provision as the Debtor would be revested with less than all of the property rights that she possessed at the filing date.

Finally, public policy dictates that an act in violation of the stay should not be rewarded, particularly where that act could be prejudicial to other creditors who obey the stay provisions. Let us assume that a second lien creditor exists who, like IFH, was in the process of obtaining and transcribing a judgment against the Debtor at the filing date of the first Chapter 13 case. Assume that the second creditor, unlike IFH, obeys the stay, and ceases transcription efforts when that case is filed. North Carolina is a race state for recording purposes. Upon dismissal, the second creditor would have to obtain a judgment and transcribe it to create his lien. Under IFH's theory, the second creditor's lien would be second in time of filing to that of IFH and entirely subordinate, simply because the second creditor complied with the law whereas IFH did not. The unfairness of such an interpretation is obvious.

The earlier judgment, being void, did not on its own arise and attach to the Debtor's property upon dismissal. Therefore, when the second Chapter 13 case was filed, IFH had only an unsecured claim, which appears to be exactly what IFH originally thought. In each of the Debtor's Chapter 13 cases, it filed a general unsecured claim. That is all that it holds in this case.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

1. The putative judgment lien obtained by IFH against the Debtor herein is void ab initio and should be stricken from the public records of Mecklenburg and Union Counties;

2. The monies currently held by the Trustee, after payment of the Debtor's \$3,500 "wild card" exemption, should be applied to the Chapter 13 Plan.

DATED this the ____ day of June, 1995.

J. Craig Whitley
United States Bankruptcy Judge