

FEB 21 1996

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA J. BARON GROSHON

BY: BJS
Deputy Clerk

In Re:

CENTURY STEEL & IRON CO., INC.,

Debtor.

CENTURY STEEL & IRON CO., INC.,

Plaintiff,

v.

GENUINE PARTS COMPANY, d/b/a/
NAPA AUTO PARTS, MYERS SERVICE &
DISTRIBUTING, INC., S. BRUCE WINDLE,
JR., BETHLEHEM STEEL CORPORATION,
QUEENSBORO STEEL CORPORATION, and
GALVAN INDUSTRIES, INC.

Defendants.

Case No. 93-30891
Chapter 11

JUDGEMENT ENTERED ON FEB 21 1996

Adversary Proceeding
No. 93-3404

ORDER GRANTING SUMMARY JUDGMENT
AS TO DEFENDANT QUEENSBORO STEEL CORPORATION

This matter is before the court on plaintiff's Motion for Summary Judgment as to defendant Queensboro Steel Corporation filed January 22, 1996. After hearing held on February 14, 1996, review of the record and applicable statutory and case law, the court finds that the motion for summary judgment should be granted. The court makes the following Findings of Fact and Conclusions of Law and enters its Order:

1. Plaintiff, the debtor, filed its Chapter 11 bankruptcy petition on June 18, 1993.

2. Plaintiff filed an adversary proceeding on August 24, 1993 seeking to avoid as preferences under Bankruptcy Code § 547 certain judgments appearing in the Office of the Clerk of the Superior Court for Mecklenburg County.

3. , All of the named defendants, except Queensboro Steel Corporation, failed to answer the Complaint. Queensboro Steel Corporation filed its answer on September 23, 1993.

4. The court entered default judgments against all defendants, except Queensboro Steel Corporation, on January 10, 1996.

5. The plaintiff filed a Motion for Summary Judgment against the remaining defendant, Queensboro Steel, on January 22, 1996, requesting that the court find that the plaintiff may avoid the judgment lien under Bankruptcy Code § 547 in the amount of \$12,304.10 and recover the balance under Bankruptcy Code § 550.

6. Queensboro Steel filed its response to the motion on February 5, 1996. Accompanying the response was a motion to excuse appearance of counsel for defendant requesting the court to hear this matter based on the record. The court finds sufficient reason to excuse counsel's appearance and relies on the record for this Order.

7. Queensboro argues that because its judgment took effect between the parties more than 90 days prior to the date of the petition and was "perfected" within 10 days after it took effect, the effective date of transfer relates back to the date of judgment. Therefore, the defendant argues, the transfer is outside the preference period and cannot be avoided under § 547.

8. The records show that the judgment against the plaintiff was obtained in New Hanover County on March 13, 1993 -- outside of the ninety day preference period. But, the judgment was transcribed to and docketed in Mecklenburg County, North Carolina, on March 23, 1993 -- within the ninety day preference period. Thus, the crucial issue is whether the transcription and docketing of the judgment relates back pursuant to 11 U.S.C. § 547.

9. The debtor filed its petition in bankruptcy on June 18, 1993. When computing the 90 day preference period of § 547, Bankruptcy Rule 9006 states that the date of transfer is excluded, but the date of the petition is included. Thus, a transfer made on or before March 19, 1993, would be outside the 90 day period, but a transfer after that date would be included within the preference period.

10. Section 547(b) provides

Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property--

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made--

(A) on or within 90 days before the filing of the petition . . .

- (5) that enables such creditor to receive (a preferential effect over that which would be received in a Chapter 7 proceeding)

(emphasis added).

11. Section 547(e)(2) provides

For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made--

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at, or within 10 days after, such time . . .

(emphasis added).

12. A judgment for money damages procured against an owner of real property constitutes a lien on the real property of the judgment debtor. See, e.g., N.C. Gen. Stat. § 1-233. However, in most states, the lien is not effective until the judgment is in some way formalized. Therefore, for purposes of § 547, the crucial date is not when the judgment is obtained, but when that judgment is formalized. Under North Carolina law, the formality required is docketing on the judgment docket by the clerk of the superior court of the proper jurisdiction.

13. In North Carolina, a judgment lien is neither created nor perfected until it is docketed. See N.C.G.S. § 1-234; Southern Dairies v. Banks, 92 F.2d 282 (1937); Wilmington Nursery Co. v. Burkert, 36 Bankr. 813 (E.D.N.C. 1984). Mere rendition or pronouncement of the judgment does not constitute a lien. Id. at 816 (citing Slocumb v. R.R., 165 N.C. 338 (1914)); James A. Webster, Jr., Real Estate Law in North Carolina § 20-3 (1994). See also, In Re Rose, 86 B.R. 193 (Bankr. W.D.Mo. 1988) (judgment lien was preference where judgment docketed within preference period, though judgment obtained outside the period).

14. The court finds that the effective date of transfer is the date of the docketing of the judgment with the Mecklenburg

County Clerk of the Superior Court. Thus, since this day was March 23, 1993, the date of transfer was 87 days before the petition was filed and within the 90 day preference period.

15. Since all of the other elements of § 547(b) have been met, the court finds that the judgment lien may be avoided pursuant to § 547(b). The court further finds that the judgment should be canceled of record and the plaintiff may recover the balance of \$12,304.10 pursuant to § 550.

It is therefore **ORDERED** that:

1. The plaintiff's Motion for Summary Judgment as to defendant Queensboro Steel Corporation is hereby **GRANTED**;

2. The judgment docketed with the Clerk of the Superior Court for Mecklenburg County, North Carolina, Book 420, Page 4, for Queensboro Steel Corporation against the plaintiff is hereby avoided and canceled of record;

3. The defendant's Motion to Excuse Appearance of Counsel for defendant is hereby **GRANTED**.

Dated: February 21, 1996.



George R. Hodges
United States Bankruptcy Judge