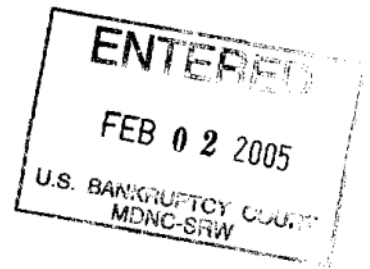


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION



IN RE:)
)
Clinton Locust,) Case No. 04-82424C-7D
)
Debtor.)
)

ORDER

This case came before the court on January 13, 2005, for hearing upon Debtor's motion to avoid lien. The motion asserts that First Select, Inc. holds a judicial lien which impairs Debtor's homestead exemption and prays that such judicial lien be avoided pursuant to § 522(f)(1)(A) of the Bankruptcy Code. According to the motion, the real estate which the Debtor exempted as his homestead is owned as a tenancy by the entirety with his wife. However, the judgment referred to in the motion was entered against the Debtor alone. Under North Carolina law, the individual creditors of either the husband or wife cannot reach entireties property in order to satisfy a judgment against only one of the spouses. See In re Crouch, 33 B.R. 271, 273 (Bankr. E.D.N.C. 1983); In re Banks, 22 B.R. 891, 892 (Bankr. E.D.N.C. 1982); In re Woolard, 13 B.R. 105, 107 (Bankr. E.D.N.C. 1967); North Carolina Nat'l Bank v. Corbett, 271 N.C. 444, 447, 156 S.E.2d 835, 837 (1967); Winchester-Simmons Co. v. Cutler, 199 N.C. 709, 155 S.E. 611, 612-13 (1930); Johnson v. Leavitt, 188 N.C. 682, 125 S.E. 490, 492 (1924). Therefore, a judgment against one spouse is not a lien against property held as tenants by the entirety. See In re

Foreclosure of Deed of Trust, 303 N.C. 514, 519, 279 S.E.2d 566, 569 (1981) ("A lien of judgment . . . effective against only one spouse does not attach to real property held by husband and wife by the entirety."); Grabenhofer v. Garrett, 260 N.C. 118, 120, 131 S.E.2d 675, 677 (1963); Martin v. Lewis, 187 N.C. 473, 122 S.E. 180, 181 (1924); Bruce v. Sugg, 109 N.C. 202, 13 S.E. 790, 791 (1891); Union Grove Milling & Mfg. Co. v. Faw, 103 N.C. App. 166, 168, 404 S.E.2d 508, 509 (1991). It follows that the judgment referred to in the motion does not constitute a judicial lien against Debtor's homestead since such homestead is owned as a tenancy by the entirety and the judgment is against the Debtor alone. Hence, there is no judicial lien to avoid and no grounds for relief under § 522(f)(1)(A). See In re Hamilton, 286 B.R. 291, 293 (Bankr. D.N.J. 2002) ("Where a judgment has not become a lien on any of the debtor's property at the filing of the bankruptcy petition, Section 522(f) cannot apply."). Accordingly, Debtor's motion pursuant to § 522(f)(1)(A) must be denied.¹

¹Even though the Debtor is not entitled to relief under § 522(f)(1)(A), he does receive relief under § 524(a)(1) which protects him from the judgment in question. Pursuant to § 524(a)(1) a discharge "voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived . . ." Thus, assuming that the Debtor receives a discharge in this case and the debt underlying the judgment thereby is discharged, such discharge will void the judgment. Once the judgment is voided under § 524 it cannot thereafter affix to or become a lien against the homestead upon the termination of the tenancy by the entirety or other real property

IT IS SO ORDERED.

This 1st day of February, 2005.

William L. Stocks

WILLIAM L. STOCKS
United States Bankruptcy Judge

acquired by the Debtor in the future. See In re Ogburn, 212 B.R. 984 (Bankr. M.D. Ala. 1995) (holding that under § 524(a)(1), an unattached judgment was voided by the debtors' discharge and thus no lien attached to debtors' after-acquired property); In re Norvell, 198 B.R. 697, 699 (Bankr. W.D. Ky. 1996) (holding that pre-petition judgment against debtor was void pursuant to § 524(a)(1) and observing that no judgment lien would attach to real estate acquired by the debtor after the filing of a Chapter 7 bankruptcy proceeding in which the debtor received a discharge).