

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

IN RE: )  
 )  
David B. Cannon, ) Case No. 08-11098C-7G  
 )  
Debtor. )  
 )

ORDER

This case came before the court on August 26, 2008, for hearing upon motions by the Debtor to avoid liens. The motions assert that RBC Centura Bank and MBNA America Bank hold judicial liens which impair Debtor's exemptions and pray that such judicial liens be avoided pursuant to section 522(f)(1)(A) of the Bankruptcy Code.

The record reflects that the real estate which the Debtor exempted as his homestead is owned as a tenancy by the entirety with his wife. However, the judgments referred to in the motions were 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, 156 S.E.2d 835, 837 (N.C. 1967); Winchester-Simmons Co. v. Cutler, 155 S.E. 611, 612-13 (N.C. 1930); Johnson v. Leavitt, 125 S.E. 490, 492 (N.C. 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, 279 S.E.2d 566, 569 (N.C. 1981) ("A lien of judgment . . . effective against only one spouse does not attach to real property held by husband and wife by the entireties."); Grabenhofer v. Garrett, 131 S.E.2d 675, 677 (N.C. 1963); Martin v. Lewis, 122 S.E. 180, 181 (N.C. 1924); Bruce v. Sugg, 13 S.E. 790, 791 (N.C. 1891); Union Grove Milling & Mfg. Co. v. Faw, 404 S.E.2d 508, 509 (N.C. App. 1991). It follows that the judgments referred to in the motions do not constitute judicial liens against Debtor's homestead since such homestead is owned as a tenancy by the entirety and the judgments are against the Debtor alone. Hence, there are no judicial liens against Debtor's homestead to avoid and no grounds for relief under section 522(f)(1)(A) as to the real property exempted by the Debtor. 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.").

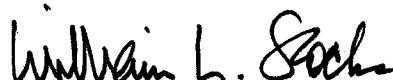
The motions filed by the Debtor also seek relief as to certain personal property that was exempted by the Debtor. Under North Carolina law, a judgment does not constitute a lien against personal property unless and until the sheriff has seized such property pursuant to a writ of execution issued on the judgment. See M & J Finance Corp. v. Hodges, 55 S.E.2d 201, 204 (N.C. 1949). It is undisputed that there has been no seizure by the sheriff in

this case. The judgments referred to in the motions therefore do not constitute liens against Debtor's personal property.

There being no judicial liens to avoid, Debtor's motions pursuant to section 522(f)(1)(A) must be denied.<sup>1</sup>

IT IS SO ORDERED.

This 26th day of August, 2008.



WILLIAM L. STOCKS  
United States Bankruptcy Judge

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<sup>1</sup>Even though the Debtor is not entitled to relief under section 522(f)(1)(A), he does receive relief under section 524(a)(1) which protects him from the judgment in question. Pursuant to section 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 sections 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 debts underlying the judgments thereby are discharged, such discharge will void the judgments. Once the judgments are voided under section 524 they cannot thereafter affix to or become a lien against the homestead upon the termination of the tenancy by the entirety or other real property acquired by the Debtor in the future. See In re Onburn, 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).