

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)
)
Danny Eugene Glover)
and Maureen Kelly Glover,) Case No. 08-10505C-7G
)
Debtors.)
)

OPINION AND ORDER

This case came before the court on September 8, 2010, for hearing on the motion by the Debtors to Reopen the Case for the purpose of filing a motion to avoid a judicial lien. David R. Huffman appeared on behalf of the Debtors, Danny and Maureen Glover. Having considered the Motion, the record before the court and the arguments of counsel, the court has concluded that the Motion should be denied as provided by this order.

The Debtors filed a petition under Chapter 7 of the Bankruptcy Code on April 2, 2008. At the time of filing, Debtors owned real property at 6329 Preacher Roberson Road, Snow Camp, North Carolina ("Snow Camp Property") as tenants by the entirety. Prior to filing, on January 7, 2008, Rosewood Village Shopping Center, LLC ("Rosewood") obtained a judgment against the male Debtor individually. A discharge was granted in the case on July 8, 2008, and the case thereafter closed on July 16, 2008. The debt owed to Rosewood was among those discharged. Subsequently, the Debtors separated and then obtained a divorce. These facts are undisputed on the record. The male Debtor recently entered refinancing

negotiations with the holder of the deed of trust on the Snow Camp Property, and the apparent existence of Rosewood's judgment lien against the male Debtor's real property came to light.¹ The Debtors brought this motion to reopen the case with the stated intention to thereafter file a motion to avoid the purported Rosewood judgment lien.

Under North Carolina law, the individual creditors of 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. W.D.N.C. 1982); In re Woolard, 13 B.R. 105, 107 (Bankr. E.D.N.C. 1981); 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 Mill. & Mfg. Co. v.

¹No allegation has been made that Rosewood has in any way acted to enforce this purported lien post-discharge.

Faw, 404 S.E.2d 508, 509 (N.C. Ct. App. 1991). Accordingly, the Rosewood judgment did not constitute a judicial lien against the Snow Camp Property at the time of the petition, since the property was owned as a tenancy by the entirety and the judgment was against the male Debtor alone.

The issue raised in this motion, however, is whether the event of divorce and severance of the tenancy by the entirety creates a new opportunity for a judicial lien to attach to the property, notwithstanding the discharge of the underlying indebtedness. Debtors' concern is prompted by the general rule that upon divorce, a tenancy in common replaces a tenancy by the entirety, and judgments against any one spouse then attach as judgment liens to that spouse's undivided one-half interest. See Union Grove Mill. & Mfg. Co. v. Faw, 404 S.E.2d at 509.

In this case, severance of the tenancy occurred subsequent to the entry of a discharge under section 727. As to one effect of such discharge, Section 524(a)(1) provides that it:

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.

Accordingly, once the Debtors' discharge was granted on July 8, 2008, the Rosewood judgment immediately became void as to the personal liability of the male debtor. Once the judgment had been voided under section 524, it could not thereafter

attach as a lien to real property that came into the possession of the male Debtor. See, e.g., In re Rourke, 288 B.R. 50, 52 (Bankr. E.D.N.Y. 2003) ("As a result of the Debtor's discharge, the Real Property purchased by the Debtor thereafter was not encumbered by the Judgments, which are deemed void."); 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 post-discharge); 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); see also, In re Birney, 200 F.3d 225, 228 (4th Cir. 1999) (Where the property was held as tenants by the entirety until wife's death, an individual judgment "could not ripen into a lien following Birney's discharge because the discharge extinguished his liability for the underlying debt."). While severance of the tenancy by the entirety resulted in exposing the male debtor's interest to his individual creditors, such a creditor's judgment cannot encumber that interest with a lien when the judgment itself has been voided by bankruptcy discharge.

The male debtor's prior interest as a tenant by the entirety does not change the result that for a judgment lien

to attach, the judgment must be valid at the point he acquired an individually attachable interest. In the general case of newly acquired property, a judgment lien does not attach to the property until title passes to the judgment debtor. See, e.g., State v. Marion, 408 S.E.2d 189, 190 (N.C. Ct. App. 1991) ("Ordinarily, a docketed judgment creates a lien on after-acquired lands in the same county the moment title vests in the judgment debtor"). Similarly, it is not until the event dissolving the tenancy by the entirety that an individual judgment lien attaches. See Martin v. Roberts, 628 S.E.2d 812, 817 (N.C. Ct. App. 2006) ("[U]pon the divorce . . . plaintiff's judgment lien could, and did, attach. . . ."); Union Grove Mill. & Mfg. Co. v. Faw, 404 S.E.2d at 509 ("[A] lien of judgment effective against only one spouse does not attach to the property until the property is converted into another form of estate.") (emphasis added). Both means of gaining an individual interest in property have analogous results with respect to the judgment attaching. See Johnson v. Leavitt, 125 S.E. 490, 492 (N.C. 1924) ("[T]he acquisition by the judgment debtor of the title to [entireties] property by right of survivorship would place the estate [in land] upon the same footing with relation to said judgments as after-acquired property.").

As the Rosewood judgment became void upon discharge, no

lien upon the male Debtor's later created tenancy in common interest in the Snow Camp Property ever came into existence. Accordingly, no lien exists for which the male Debtor can seek to avoid by further motion. As Debtors have articulated no reason for reopening this case other than the avoidance motion, it follows that such reopening would accomplish no purpose and is unnecessary.

It is, therefore, ORDERED that the Debtors' motion to reopen this case is hereby DENIED.

This 14th day of September, 2010.



WILLIAM L. STOCKS
United States Bankruptcy Judge

PARTIES IN INTEREST

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