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L.A.B.
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED

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CLERK OF COURT
DISTRICT OF SOUTH CAROLINA

IN RE:

Joseph Randell Elledge and Marie Chris
Elledge,

Debtors.

Joseph Randell Elledge and Marie Chris
Elledge,

Plaintiffs,

v.

The Travelers,

Defendant.

C/A No. 94-71280-W

Adv. Pro. No. 98-80059-W

JUDGMENT

Chapter 7

Based upon the Stipulations of Fact and Conclusions of Law as recited in the attached Order of the Court, the Travelers' worker's compensation lien under S.C. Code § 42-1-560 is a statutory lien and is therefore not avoidable pursuant to 11 U.S.C. § 522(f). Judgment shall be entered in favor of the Defendant.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
August 4, 1998.

CERTIFICATE OF MAILING

The undersigned clerk (or deputy clerk) of the United States Bankruptcy Court for this district hereby certifies that a copy of the document on which this stamp appears was mailed on 8-6-98, to:

Allen
Baghdady
3 to chambers
RFA

HCB
Deputy Clerk

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C/A No. 94-71280-W

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ORDER

Chapter 7

THIS MATTER comes before the Court upon the complaint¹ of the Debtors, Joseph Randell Elledge and Marie Chris Elledge ("Ms. Elledge")², seeking to avoid a worker's compensation lien against an award arising from a personal injury lawsuit pursuant to 11 U.S.C. § 522(f).³ At the pre-trial conference, the parties stipulated that there are no facts in dispute which

¹ Rule 4003(d) of the Federal Rules of Bankruptcy Procedure specifically states that a proceeding to avoid a lien under § 522(f) shall be by motion, however, despite this procedural defect of filing this matter as an adversary proceeding, the Court will address the substantive issues.

² It appears that Joseph Randell Elledge was mistakenly made a party plaintiff. Joseph Randell Elledge received an award based upon a loss of consortium cause of action in the state court personal injury lawsuit; however, based upon the Stipulation of Facts, the subject worker's compensation lien only attached to Ms. Elledge's award.

³ Further references to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, shall be by section number only.

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are material to this consideration and that the matter could be decided upon the filing of Stipulations of Facts and memoranda in the form of proposed orders.⁴ Based upon the stipulation of counsel for the respective parties, the Court adopts the following Stipulations of Facts and makes the following Conclusions of Law.

STIPULATIONS OF FACT

1. Plaintiffs, Joseph Randall Elledge and Marie Chris Elledge ("Ms. Elledge"), filed a Petition, numbered 94-71280 under Chapter 7 in the United States Bankruptcy Court in the District of South Carolina, reopened by Order of the Honorable John Waites entered April 3, 1998.

2. This is a core proceeding and Debtors consent to the entry of final orders or judgment by a Bankruptcy Judge.

3. At the time of the filing of the petition for relief, the Debtor, Ms. Elledge, was the owner of a claim listed on Schedule B as "Personal injury action against the Sheraton, Inc.", arising out of injuries incurred by Ms. Elledge in 1993 in the course and scope of her employment. The same claim was listed as property claimed exempt on Schedule C, pursuant to S.C. Code § 15-41-30 (11b), and also claimed as exempt on Debtors' claim for property exemption, and the

⁴ The parties stipulate that this is a justiciable controversy for this Court; however, the Court is not as certain. In 1994, when this Chapter 7 case was pending, the Debtors listed an interest in a personal injury action as exempt property. The Trustee allowed the exemption, the Debtors received their discharge, and the case was closed on July 12, 1994. Almost two (2) years later after the closing of the case, the Defendant put Mr. Baghdady, counsel for the Plaintiffs, on notice of it worker's compensation lien. The purpose of § 522(f) is to allow debtors to avoid judicial liens that impair their statutory exemptions. At the time the Debtors claimed their exemption, it was not impaired by a lien and § 522(f) was not applicable. However, based upon the stipulation of the parties, the Court will address the substantive issue of whether this is the type of lien that can be avoided pursuant to § 522(f).



claim was abandoned by the Trustee.

4. The lien claimed by Travelers Insurance was not disclosed in the Debtors' schedules.

5. Debtors were discharged July 12, 1994. Suit was filed in 1996, and reduced to judgment and paid in 1997. The amount of the judgment in favor of Ms. Elledge was \$21,000.00.

6. A lien claim pursuant to S.C. Code Section 42-1-560 has been raised by Travelers Insurance against that judgment in the sum of \$12,541.87, of which 1/3 both and/or either parties are obligated to pay to Rolf M. Baghdady, Esquire and Dana Krajack, Esquire as attorney's fees by written agreement, should this Court find for the Defendant, and to the extent provided by S.C. Code Section 42-1-560.⁵

7. Rolf M. Baghdady, Esquire is holding in escrow the funds which total \$8,361.24.

CONCLUSIONS OF LAW

Following a motion to reopen this Chapter 7 case, the within adversary proceeding was filed by Ms. Elledge and her husband, Joseph Randell Elledge to avoid a judicial lien pursuant to § 522(f). Pursuant to the 1994 Amendments to the Bankruptcy Code, the Court must apply a mathematical formula in order to determine if the lien can be avoided pursuant to § 522(f).

Section 522(f)(2) sets forth the formula by which the court is to determine whether a lien impairs an exemption to which the debtor would be entitled. If the sum of the debtor's exemption, all other liens on the property and the judicial lien exceed the value of the

⁵ Attached to the Stipulations of Facts was a letter to Mr. Baghdady from the Defendant which indicated that the Defendant's worker's compensation lien had attached to the personal injury action based upon their payment of the worker's compensation claim and that there were no further steps to be taken by the Defendant to perfect or enforce its lien. Therefore, from the Stipulations submitted, it appears that no other judicial proceeding which culminated in a court order was undertaken to perfect or enforce the Defendant's lien.



debtor's interest in the property, the judicial lien is considered to impair the exemption to which the debtor would be entitled.

In re Raines, 98-01463 (Bkrcty.D.S.C. 4/22/98) citing In re Huss, 96-74510-B slip op. at (Bkrcty.D.S.C. 1/21/97) and Butler, Bankruptcy Handbook, ¶ 21.7 at p. 12-6 (1996).⁶ Before the Court can apply this mathematical formula, the Court must first determine whether this worker's compensation lien is a judicial lien that can be avoided or a statutory lien that cannot be avoided pursuant to § 522(f). The Bankruptcy Code defines a statutory lien as follows:

“Statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute[.]

11 U.S.C. § 101(53). By definition, a lien is either “statutory” or “judicial”; it cannot be both. A judicial lien is a “lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.” 11 U.S.C. § 101(36).

The legislative history of these definitions provides insight into the distinction between statutory and judicial liens:

The definition [of a statutory lien] excludes judicial liens and security interests, whether or not they are provided for or are dependent on a statute...A statutory lien is only one that arises automatically and is not based on an agreement to give a lien or on judicial action. Mechanic's, materialmen's, and warehousemen's liens are examples. Tax liens are also included in the definition of statutory lien.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 314 (1977); S. Rep. No. 989, 95th Cong., 1st Sess. 27 (1978). (emphasis added).

⁶ In this case, the Stipulations of Facts do not address all of these factors or how the formula should be applied but instead focuses on whether the lien is a judicial or statutory lien. However, for the reasons stated within, the Court finds that this is a statutory lien that can not be avoided pursuant to § 522(f) and therefore need not address these additional factors.



In re Plumlee, 84-00981-D (Bkrtcy.D.S.C. 1989). A lien is considered judicial, even if it is created by statute, if it requires action by the judiciary to become effective. In re Barbe, 24 B.R. 739 (Bkrtcy. M.D. Pa. 1982) (lien for overpayment of unemployment compensation found to be judicial lien; the lien was merely inchoate until resort to judicial process, which was necessary under state law to perfect lien).

The essence of the definition [of statutory lien] in section 101(53) is the need or lack of it, for an agreement or judgment to create the lien. If the lien arises by force of statute, without any prior consent between the parties or judicial action, it will be deemed a statutory lien.

* * *

The judicial lien is a creature of statute and is not dependent upon an agreement between the parties. More significantly, however, a judicial lien arises only by virtue of judicial proceedings in the absence of which there would not be such a lien. The statutory lien by definition arises without any judicial proceeding.

2 Collier on Bankruptcy ¶101.53 (1998). Also see In re King, 208 B.R. 376 (Bkrtcy.D.Md. 1997). “Ultimately, whether a lien arises solely by force of a statute is determined by state law or by federal non-bankruptcy law.” 5 Collier on Bankruptcy ¶545.01[2] (1998). To classify the lien as statutory or judicial, then, it is essential to establish the nature of the lien under state law, and how it was created. The South Carolina worker’s compensation lien statute provides that

The injured employee . . . shall be entitled to receive the compensation and other benefits provided by the Title and to enforce by appropriate proceedings his or her rights against the third party . . . In such case the carrier shall have a lien on the proceeds of any recovery from the third party whether by judgement, settlement or otherwise, to the extent of the total amount of compensation.

S.C. Code § 42-1-560(b) (emphasis added).

Under state law, the lien automatically attaches to proceeds, regardless of the source.

There is no requirement of judicial intervention to create or perfect the lien. It is not necessary

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that there be an award, a judgment, or even a lawsuit. The lien is created when the injured party receives any type of compensation from the third party, regardless of the source. Since no judicial action of any type needs to occur for the lien to attach to the proceeds from the third party, the lien meets the Code's definition of a statutory lien. Graffen v. City of Philadelphia (In re Graffen), 984 F.2d 91, 96-97 (3d Cir. 1992) (a statutory lien does not become a judicial lien just because the lien statute permits or requires some administrative action such as the filing of a lien). For all of these reasons, it is the finding of the Court that the worker's compensation lien of the Defendant is a statutory lien that can not be avoided pursuant to § 522(f). It is therefore,

ORDERED, that the Travelers' worker's compensation lien under S.C. Code § 42-1-560 is statutory and is therefore not avoidable pursuant to 11 U.S.C. § 522(f).

AND IT IS SO ORDERED.

Columbia, South Carolina,
August 4, 1998.


UNITED STATES BANKRUPTCY JUDGE



CERTIFICATE OF MAILING

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