

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 7
RUDOLPH J. MORAVEC,)
) No. BK 87-50424
Debtor(s).)

MEMORANDUM AND ORDER

Wilma Mason (creditor) obtained a judgment against Rudolph J. Moravec (debtor) on June 24, 1981, in the Circuit Court of Madison County, Illinois. Creditor duly recorded a memorandum of judgment with the Recorder of Deeds Office in Madison County on July 6, 1981. The act of recording the memorandum of judgment created a lien on the debtor's real estate in Madison County.¹

On August 11, 1987, debtor filed a petition under chapter 7 of the Bankruptcy Code. At the time the petition was filed, the creditor had a foreclosure sale pending. On June 15, 1989, the creditor filed a motion to require sale of real estate. Thereafter, the trustee filed an application to sell the same real property which rendered the creditor's motion to require sale moot. The trustee alleged in his application that the creditor had a judgment lien against the property and that an offer to purchase the property, sufficient to pay the judgment lien, had been made.

Debtor opposed the sale alleging that the creditor did not have a valid judgment lien because the judgment was more than seven years old and had not been revived. Creditor agreed under Illinois law a

¹Ill.Rev.Stat., ch. 110, §12-101 (1984).

judgment, not revived, expired after seven years. However, creditor further argued that her judgment remained valid because the automatic stay provision of the Bankruptcy Code restrained her from enforcing her judgment, and under Illinois law, the time a party is restrained is not considered part of the seven years. The issue before the Court is whether the judgment entered June 24, 1981, remains a valid judgment.

The issue to be resolved is wholly statutory, and the outcome is governed by Illinois statutes on enforcement of judgments. Limitation on enforcement of Illinois judgments is provided at Ill.Rev.Stat., ch. 110, §12-108(a). Section 12-108(a) provides in pertinent part:

(a) Except as herein provided, no judgment shall be enforced after the expiration of 7 years from the time the same is rendered, except upon the revival of the same by a proceeding provided by Section 2-1601 of this Act; but real estate, levied upon within the 7 years, may be sold to enforce the judgment at any time within one year after the expiration of the 7 years.

Ill. Rev.Stat., ch. 110, §12-108(a)(1984)(emphasis added).

Furthermore, section 12-101(d) provides:

A judgment is not a lien on real estate for longer than 7 years from the time it is entered or revived.

Ill.Rev.Stat., ch. 110, §12-101(d)(1989 supplement).

Sections 12-108(a) and 12-101(d) must be read in conjunction with section 12-104 which provides a tolling mechanism by which a any period of time a party is restrained from enforcing a judgment does not count as part of the seven year period. Section 12-104 provides:

When the party in whose favor a judgment is

entered is restrained, by injunction, or by stay on appeal, or by the order of a court, or is delayed, on account of the death of the defendant from enforcement of the judgment, the time he or she is so restrained or delayed shall not be considered as any part of the time mentioned in Sections 12-101 or 12-108 of this Act.

Ill.Rev.Stat., ch. 110, §12-104(1984). Under Illinois law it is clear that a judgment may not be enforced or remain a lien on real estate, absent revival of the judgment, beyond seven years. However, if the judgment creditor is restrained during that seven year period from collecting his judgment, then the judgment remains enforceable after seven years for a period equal to the period of restraint.

A petition filed under Chapter 7 of the Bankruptcy Code operates as an automatic stay of proceedings against the debtor. 11 U.S.C. §362(a). The legislative history to section 362 discusses the function of the automatic stay.

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. pp.340-344 (1977), reprinted in 11 U.S.C. §362 (Bankruptcy Code, Rules & Official Forms, Lawyers Edition 1989)(emphasis added).

Section 362(a) lists the proceedings which are stayed by the bankruptcy petition. Section 362(a)(2), (4) provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title [11 USCS §301, 302, or 303],

or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)) [15 USCS §78eee(a)(3)], operates as a stay, applicable to all entities, of -

(2) the enforcement against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title [11 USCS §§101 et seq.];

(4) any act to create, perfect, ~~enforce~~ any lien against property of the estate;

11 U.S.C. §362(a)(2), (4). Clearly, the automatic stay halted any action that creditor could have taken against the property. Since the stay restrained creditor from enforcing her judgment, the period of time the stay has been in effect does not count as part of the seven year period.

Debtor argues that the creditor is restrained pursuant to 11 U.S.C. §362, unless he: (1) receives relief from the automatic stay; or (2) successfully prosecutes an objection to discharge or a complaint to determine dischargeability. Since both these proceedings must be instituted within 90 days, debtor argues that the longest period of time creditor was restrained was 90 days. Debtor's argument is without merit. The automatic stay of an act against property of the estate continues until such property is no longer property of the estate. 11 U.S.C. §362(c)(1). The real estate in question remains property of the estate, and therefore the stay remains in effect.

The judgment was obtained June 24, 1981. The automatic stay went into effect on August 11, 1987, when the chapter 7 petition was filed. The automatic stay restrained creditor from enforcing her judgment, and

therefore the period of time since August 11, 1987, does not count as part of the seven years. Since creditor has been restrained, the seven year period has not ran and the judgment and lien remain valid.

It is the finding of the Court that Wilma Mason has a valid judgment lien. IT IS SO ORDERED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: August 10, 1989