

Tolling of North Carolina 10-Year Statute of Limitation for a Judgment Lien While Debtor is in Bankruptcy

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Ordinarily judgment liens expire upon the lapse of time according to the applicable statute of limitations. However, judgment liens, which attach to real property owned by a debtor prior to filing a petition in the U.S. Bankruptcy Court pose a peculiar problem.

Unless specifically avoided judgment liens continue to encumber pre-petition real property despite a general discharge of the debtor. The debtor is free to purchase new property without attachment of the liens, but the subject property is still tethered to the liens. Under North Carolina law judgment liens expire ten years from entry of the judgement. The bankruptcy, however, can extend the statute of limitations in favor of the pre-petition lien holder in certain circumstances.

North Carolina has two statutes that deal with tolling of the statute of limitations. There is one applicable provision in Federal Law. The North Carolina statutes read as follows:

N.C.G.S. § 1-234 Where and how docketed; lien

Upon filing a judgment roll upon a judgment affecting the title of real property, or directing in whole or in part the payment of money, it shall be docketed on the judgment docket of the court of the county where the judgment roll was filed, and may be docketed on the judgment of the court of any other county upon the filing with the clerk thereof of a transcript of the original docket, and is a lien on the real property in the county where the same is docketed of every person against whom any such judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for 10 years from the date of the rendition of the judgment. **But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the 10 years aforesaid.**

N.C.G.S. § 1-23. Time of stay by injunction or prohibition

When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

Title 11, U.S.C.A. Chapter 1, §108(a) reads:

1. **Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—**

1. **the end of such period, including any suspension of such period occurring on or after the commencement of the case; or**
2. **30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.**

In the recent case Person Earth Movers, Inc. v. Buckland, 525 S.E. 2d 239 (2000) which construes the federal statute, the Court of Appeals stated: "The statute of limitation for a state law claim therefore expires at the end of the limitations period described by the appropriate state law and is extended only by that amount of time the debtor is in bankruptcy." In First Citizens Bank & Trust Company v. Martin, 44 N.C. App. 261, 264, 261 S.E.2d 145, 148 (1979), the court stated "(t)he effect of this Federal injunction was to toll the statute of limitations for plaintiff's action against both defendants for the 203 days the injunction was in effect. G.S.1-23."

These cases deal with a right to bring an action and not enforcement of an existing pre-petition judgment lien. It should follow that what would toll a civil action would also toll a civil judgment lien, even if it is a pre-bankruptcy lien.

This right to enforce a judgment is a property right owned by the creditor. The NC law clearly gives the creditor a 10 year period to enforce his lien and the statutes, N.C.G.S. § 1-234, and § 1-23 appear to extend the time period when execution is restrained.

The Federal Courts when faced with these issues look to the state laws to determine "property" rights arising out of stayed judgment liens. In Thomasson v. Thomasson 66 B.R. 503 (1986) the court held that the automatic stay suspended the running of the time during which a judgment creditor could continue or revive a judgment lien under Missouri law. The court states: ". . . it dislikes the possible effects of such a holding. Obviously, it creates a situation where in a potential creditor in searching the recorder's or clerk's office for the title to real estate or the UCC officer's records for liens on real property may be misled to its detriment . . . Nevertheless, the Court finds no way it can rule in any other fashion or interpret Section 108 c of the Code and Section 362 of the Code any differently. See also Guertler v. Barlow Woods, Inc., 230 Ill.App.3d 933, 596 N.E.2d 24 (1992). The court states that the real property judgment lien is not enlarged by revival and that the resulting extension under state law merely allows lien holder to maintain status quo.

North Carolina law also allows for tolling under the two aforementioned North Carolina statutes. Thus it would appear that the statute of limitations for a judgment lien is extended during the time period the judgment lien could not be enforced in bankruptcy.

First-Citizen Bank & Trust Co. v. Parker et al., 232 N.C. 512, 61 S.E.2d 441 (1950), appears to stand for the proposition that the statute of limitations for a judgment lien is tolled during bankruptcy. In this case, First Citizens was a judgment holder under a defalcation by the debtor. This debt was not discharged in bankruptcy. Phyllis Parker was the highest bidder at the execution sale of that judgment. She assigned her bid to Daniel Parker, and they brought an interpleader claiming the funds under the execution sale were

theirs because they were the assignees of a (superior in time) judgment. The court writes: "While it would seem that the period during which the judgment debtor was in bankruptcy court and his property in custodia legis should be deducted from the ten-year period as provided in G.S. § 1-234, and the statute of limitation pleaded by the plaintiff would not bar the interveners' claim . . ." The court, however, does not answer that issue because it ultimately holds that the interveners' debt was discharged in Bankruptcy.

This tolling would not have the disastrous affect that the federal court in the Missouri case was worried about. NCGS § 1-234 states:

. . . But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the 10 years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person **who is not a purchaser, creditor or mortgagee in good faith.**

Since the North Carolina statute specifically exempts a purchaser, creditor or a mortgagee in good faith from the effects of the tolling, arguably a post petition purchaser or mortgagee should be protected. Nevertheless, the closing attorney should be cognizant of the potential problem and disclose it to his client and title insurer.