

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:)	
)	JUDGE RICHARD L. SPEER
Harold Eric Jones)	
)	Case No. 01-3055
Debtor(s))	
)	(Related Case: 01-30255)
Margaret Jones)	
)	
Plaintiff(s))	
)	
v.)	
)	
Harold Eric Jones)	
)	
Defendant(s))	

ORDER

This cause comes before the Court upon the Defendant/Debtor's Motion for Summary Judgment, and the Plaintiff's Memorandum in Opposition thereto. The Defendant's Motion is filed in response to the Plaintiff's Complaint to determine the dischargeability of a marital debt pursuant to §§ 523(a)(5) and (a)(15) of the Bankruptcy Code. The sole matter raised in the Defendant's Motion concerns whether the Defendant is liable for a judgment lien placed on a certain parcel of real property that the Defendant quit-claimed to the Plaintiff.

The standard for summary judgment is set forth in Fed.R.Civ.P. 56, which is made applicable to this proceeding by Bankruptcy Rule 7056, and provides for in pertinent part: A movant will prevail on a motion for summary judgment if, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Celotex Corp. v.*

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Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Inferences drawn from the underlying facts must be viewed in a light most favorable to the party opposing the motion. *Matsushita v. Zenith Radio Corp.*, 475 U.S. 574, 586-88, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538 (1986). Similarly, the party opposing a motion for summary judgment is to be given the benefit of all reasonable doubts in determining whether a genuine issue exists that justifies proceeding to trial. *Boston Old Colony Insurance Co. v. Tiner Associates Inc.*, 288 F.3d 222, 227 (5th Cir. 2002).

In support of his position that he is not liable for a judgment lien placed against the Plaintiff's property, the Defendant raises what are, in essence, two different arguments. First, the Defendant argues that the doctrine of lis pendens is applicable so as to render the judgment lien at issue null and void. Second, the Defendant argues that principles of equity require that he not be legally obligated to pay the indebtedness secured by the judgment lien. The Court now turns to address each of these arguments in order.

The doctrine of lis pendens protects a plaintiff's interest in property that is the subject of pending litigation. *Martin, Rochford & Durr v. Lawyer's Title Ins. Corp.*, 86 Ohio App.3d 20, 22, 619 N.E.2d 1130. (1993). It does this by subordinating, to the plaintiff's interest, any interest acquired by a third-party in the subject property during the pendency of a lawsuit suit. Although it is a common law doctrine, it is now statutorily provided for under § 2703.26 of the Ohio Revised Code which provides:

When summons has been served or publication made, the action is pending so as to charge third person with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title.

Case law has clearly established that the doctrine of lis pendens has an "appropriate and special application in an action for divorce and alimony . . ." *Cook v. Mozer*, 108 Ohio St. 30, 35, 140 N.E. 590 (1923), *paragraph 2 of syllabus*. It is also clear that for lis pendens to be applicable in a divorce

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proceeding, the property involved must be specifically described in the pleadings. *Id.* As set forth in *Bowles v Middletown Collateral Loan Co.*:

The applicable law construing [O.R.C. § 2703.26] in divorce and alimony cases, as we understand it from a careful study of the authorities and the able arguments and briefs of the parties, requires that there be contained in the pleadings a ‘sufficient’ and ‘specific’ description of the property concerning which relief is sought before the protection of the statute can attach.

* * *

the protection of the lis pendens statute will extend to property which, as here, has been sufficiently described and expressly submitted for action by the court at some point in the body of pleadings considered as a whole.

71 O Ops 2nd 10, 328 N.E.2nd 821, 822 (Ohio Ct.App. 1974).

In the instant case, however, the Court does not have before it any of the pleadings involved in the Parties’ underlying divorce. As a consequence, the Court is unable to make a determination as to the sufficiency of such pleadings as they relate to the lis pendens doctrine. In addition, it is noted that a necessary party – specifically, the lienholder – has not been joined as a party. Consequently, any decision regarding the judgment lien at issue would be deficient. Accordingly, for these reasons, the Court must deny the Defendant’s motion for summary judgment as it relates to the applicability of the lis pendens doctrine.

The second argument the Defendant puts forth in support of his Motion for Summary Judgment is based upon basic principles of equity. In specific terms, it is the Defendant’s contention that his obligation, as set forth in the Parties’ divorce decree, to hold the Plaintiff harmless on the liability secured by the judgment lien, would not have arisen except for the fact that the Plaintiff was dilatory in recording the quit-claim deed he had executed. In making this assertion, it is the Defendant’s position that since he was solely liable for the debt, no judgment lien could have attached to his

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formerly held interest in the property if the Plaintiff had immediately recorded the quit-claim deed he had executed in her favor.

As it relates thereto, the Defendant averred, in his Motion for Summary Judgment, as follows:

On April 8, 1997, at the Trial held on the Parties' divorce, the Defendant executed in the presence of the court a quit-claim deed to the Plaintiff on his interest in the Parties' marital residence.

On November 25, 1997, a judgment lien was filed on the Defendant's interest in the Parties' marital residence in the amount of \$16,005.29. On this same date, the Parties' judgment entry of divorce was journalized.

Sometime following the filing of the judgment lien, the Plaintiff recorded the quit-claim deed executed by the Defendant.

In July of 2001, the Plaintiff refinanced the subject property "and compromised the judgment lien by paying Fifth Third Bank one half ($\frac{1}{2}$) of the judgment lien amount and the lien was removed."

The Plaintiff, however, as it concerns the above assertions, strongly contests two points. First, the Plaintiff asserted that the quit-claim deed at issue was not executed on April 8, 1997, but was instead executed on November 25, 1997. In support thereof, the Plaintiff presented to the Court a copy of a quit-claim deed, signed by the Defendant as the grantor and naming the Plaintiff as the grantee, which clearly shows that it was executed on November 25, 1997. Second, the Plaintiff strongly disputes the assertion that the judgment lien at issue has in anyway been compromised and/or removed.

After considering the above points, there is no doubt that, in looking at the facts of this case in a light most favorable to the Plaintiff, a genuine issue of material fact exists in this case. This is especially true considering that the Plaintiff offered documentary evidence to support her position. Therefore, on the issue of whether equitable relief is appropriate in this case, the Court must deny the Defendant's Motion for Summary Judgment.

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In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

ORDERED that the Motion for Summary Judgment submitted by the Defendant/Debtor, Harold Eric Jones, be, and is hereby, DENIED.

It is ***FURTHER ORDERED*** that this matter be, and is hereby, set for a Trial on Tuesday, January 7, 2003, at 10:00 A.M., in Courtroom No. 1, Room 119, United States Courthouse, 1716 Spielbusch Avenue, Toledo.

It is ***FURTHER ORDERED*** that on, or before Monday, December 30, 2002, the Parties exchange and file with the Court pre-trial memoranda, lists of witnesses, bankruptcy schedules I & J, a list of exhibits, and stipulations.

It is ***FURTHER ORDERED*** that the failure to file any of the above items may result in the Trial being continued, witnesses or exhibits not being introduced into Trial, or sanctions being imposed by the Court.

Dated:

Richard L. Speer
United States
Bankruptcy Judge