

LEGAL TOPICS

Abstracts of Judgment by John F. K. McGill

When a party to a lawsuit is awarded a money judgment against another party, the winning party does not yet have a lien on the losing party's property. A money judgment is secured by a judgment lien only when an abstract of judgment is issued and recorded in accordance with Chapter 52 of the Property Code. The abstract is issued by the court which rendered the judgment and is then recorded by the judgment creditor in the real estate records of any county in which the judgment creditor believes the judgment debtor has property. The contents of the abstract are specified in the Property Code.

An abstract of judgment only creates a lien if there is a valid, unsatisfied judgment which is not dormant. A judgment which is void or voidable, such as a judgment obtained in violation of the automatic stay in the debtor's bankruptcy, will not support a judgment lien.

A judgment becomes dormant if a writ of execution is not issued within 10 years after rendition of the judgment or within 10 years of the issuance of the last writ of execution issued in connection with the judgment. A writ of execution must not only be issued, it must be returned by a service processor. If a judgment becomes dormant it may be revived by the judgment creditor bringing an action to collect the debt, such as a foreclosure action, within two years of the date the judgment became dormant. If a judgment becomes dormant, a recorded abstract of judgment based on that judgment ceases to be effective. Dormancy of a judgment may be evidenced by a certificate of dormancy issued by a clerk of the court which issued the judgment.

A judgment lien continues for 10 years after the date of recording and indexing of the abstract unless the judgment becomes dormant in that period. At the end of the 10 year period the judgment lien expires even if the judgment remains valid. Section 52.001 of the Property Code refers to subsequent abstracts of judgment and it is generally believed that filing a subsequent abstract of judgment before the expiration of the first abstract of judgment will extend the term of the judgment lien to 10 years after the date of the recording of the subsequent abstract.

A judgment lien attaches to real property of the judgment creditor located in counties in which the abstract of judgment has been recorded. An abstract of judgment does not attach to real property which is exempt from seizure under Section 41.001 of the Property Code – i.e., homestead property. The judgment lien will attach to any non-exempt real property acquired by the judgment debtor in counties where the abstract is recorded during the effective life of the abstract. If the judgment lien has attached to property which later becomes the judgment debtor's homestead, the judgment lien is not affected by the homestead claim. If property ceases to be homestead and is still owned by the judgment debtor, a valid abstract of judgment will attach as of the date the property ceases to be homestead.

Although a judgment lien does not attach to homestead property, it does create a cloud on the title of the homestead property. Title companies will generally ask that some action be taken to deal with judgment liens even when property is the owner's homestead. In *Tarrant Bank vs. Miller*, a judgment creditor who refused to release a judgment lien on the judgment debtor's homestead when the judgment debtor was trying to sell the homestead was assessed damages of \$21,000 for refusing to execute a release. In a situation where a judgment debtor is trying to sell homestead property when a valid abstract of judgment is recorded, the judgment debtor should seek a partial release of the judgment lien as to the homestead property with provisions requiring the closing of an arms length sale and reviving the judgment as to the property should the judgment debtor reacquire title. In light of the *Tarrant Bank* case, a prudent judgment creditor would probably agree to give such a release.

Section 51.0012 of the Property Code creates a process whereby a judgment debtor may file a homestead affidavit to serve as a release of judgment liens created after September 1, 2007. The form of the affidavit is set out in the statute. The affidavit is effective as a release only if it is accompanied by evidence that the judgment debtor sent a letter and copy of the affidavit before it was signed by certified mail to the judgment creditor at the creditor's last known address, to the address for the creditor shown in the court records, to the judgment creditor's last known attorney at the address shown in the court file and in the State Bar records. These letters must be sent 30 days before the affidavit is filed. The judgment creditor may file a contradicting affidavit stating that the judgment debtor's affidavit is false or that the judgment lien attaches to the property for some reason. If a contradicting affidavit is filed before title to the homestead property is transferred by the judgment debtor, the debtor's affidavit will not serve as a release.

In the case of an abstract of judgment filed after September 1, 1993, the judgment lien is cancelled if it is against property owned by the judgment debtor before the judgment debtor files bankruptcy and the judgment is discharged in the bankruptcy.

When dealing with abstracts of judgment against prior owners of a property, statutes of limitation or adverse possession arguments may be useful. A purchaser of property who receives and records a deed, and maintains possession of the property for three years before the judgment creditor of a prior owner files suit to enforce the judgment lien, may successfully defend against the lawsuit on the basis of limitations. This argument may sometimes serve to convince a title company to remove an exception to a judgment lien against a prior owner.

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