

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

IN RE:

**CHAPTER 11 CASES
JOINTLY ADMINISTERED**

**BOYD P. EIFLING AND
PAMELA B. EIFLING,**

CASE NO. 03-11935-NPO

MARY VIRGINIA EIFLING,

CASE NO. 03-11932-NPO

EIFLING FARMS SEED COMPANY, INC.,

CASE NO. 03-15472-NPO

DEBTORS.

ALEX B. GATES, TRUSTEE

PLAINTIFF

VS.

ADV. PROC. NO. 06-01221-NPO

LPP MORTGAGE, LTD.

DEFENDANT

**MEMORANDUM OPINION AND ORDER
GRANTING MOTION FOR SUMMARY JUDGMENT**

There came on for consideration the Motion for Summary Judgment (the “Motion”) (Adv. Dk. No. 13) filed by the Plaintiff, Alex B. Gates as chapter 11 trustee (the “Trustee”), in the above-styled adversary proceeding (the “Adversary”).¹ The Defendant, LPP Mortgage, Ltd. (“LPP”), did not file a response to the Motion.² The Court has considered the Motion, the Memorandum of Law in Support of Plaintiff’s Motion for Summary Judgment (Adv. Dk. No. 14), and the Plaintiff’s Statement of Undisputed Facts (the “Trustee’s Statement”) (Adv. Dk. No. 16), together with the

¹ The following constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

² See *infra* p. 5 at ¶¶ 11-13.

pleadings in the Court files. As a result, the Court, finds that no genuine issue of material fact exists, and that the Trustee is entitled to judgment as a matter of law. Accordingly, the Motion should be granted for the reasons set forth below.

Jurisdiction

This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K). Notice of the Motion was proper under the circumstances.

Motion for Summary Judgment Standard

Federal Rule of Civil Procedure 56, made applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056, states that summary judgment is properly granted only when, viewing the evidence in the light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, and admissions, 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. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). An issue is genuine if “there is sufficient evidence favoring the nonmoving party for a fact finder to find for that party,” and material if it would “affect the outcome of the lawsuit under the governing substantive law.” Phillips Oil Co. v. OKC Corp., 812 F.2d 265, 272-73 (5th Cir. 1987). Rule 56(e) further provides, in relevant part:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party’s pleading, but the adverse party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

Fed. R. Civ. P. 56(e).

Thus, the moving party bears the initial responsibility of informing the Court of the basis for its motion, and of identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323, 106 S.Ct. at 2552-53. Once the moving party has made its required showing, the nonmovant must go beyond the pleadings and by its own affidavits or by depositions, answers to interrogatories, and admissions on file designate specific facts showing a genuine issue for trial. Celotex, 477 U.S. at 324, 106 S.Ct. at 2553. In any event, “[t]he movant has the burden of establishing the absence of a genuine issue of material fact and, unless he has done so, the court may not grant the motion, regardless of whether any response was filed.” Hibernia Nat’l Bank v. Administracion Central Sociedad Anonima, 776 F.2d 1277, 1279 (5th Cir. 1985); *see also* Medlock v. Commission for Lawyer Discipline, 24 S.W.3d 865, 870 (C.A. Tex. 2000).

Facts

The following facts are established by the Trustee’s Statement and the Court files.

1. On February 10, 2003, LPP obtained a Default Judgment (the “Judgment”) against Boyd R. Eifling,³ Pamela B. Eifling, and Mary V. Eifling (the “Individual Debtors”), and Eifling Farms Seed Company, Inc. (the “Debtor Farm”), in the Circuit Court of Washington County, Mississippi.
2. On March 25, 2003, the Individual Debtors filed their voluntary petitions for relief

³ Although the Judgment recites the name Boyd R. Eifling rather than Boyd P. Eifling, it is undisputed that the Judgment was obtained against the debtor in the above-styled chapter 11 case.

under chapter 11 of the Bankruptcy Code⁴ (the “Individual Debtors’ Petitions”) (Case No. 03-11935, Dk. No. 1; Case No. 03-11932, Dk. No. 1). The Individual Debtors did not list the Judgment on their bankruptcy schedules.

3. On April 29, 2003, the Judgment was enrolled in Washington County, Mississippi (the “Judgment Lien”).

4. On August 28, 2003, the Debtor Farm filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Debtor Farm’s Petition”) (Case No. 03-15472, Dk. No. 1).

5. On October 24, 2005, the Trustee sold, free and clear of liens, certain jointly-owned, real property of the Individual Debtors’ estates (the “Sale”). The real property was located in Washington County, Mississippi. Notice of the Sale was provided to all creditors listed on the Individual Debtors’ schedules and mailing matrixes. However, LPP did not receive notice of the Sale because LLP was not a listed creditor in the Individual Debtors’ bankruptcy cases.⁵ Pursuant to the Order Confirming Sale (Case No. 03-11935, Dk. No. 353; Case No. 03-11932, Dk. No. 397), “[l]iens if any, will attach to the proceeds of the sale to await further order of this court as to the validity, extent and priority of such liens.” The Sale netted, collectively, One Hundred Seventy-Five Thousand Dollars (\$175,000) to the Individual Debtors’ estates.⁶

6. LPP did not receive notice of the Individual Debtors’ nor the Debtor Farm’s

⁴ Hereinafter, all code sections refer to the United States Bankruptcy Code located at Title 11 of the United States Code unless otherwise noted.

⁵ The Trustee also maintains that the Judgment Lien did not appear in the title work conducted in anticipation of the Sale.

⁶ The Trustee’s Statement discloses that the Sale proceeds are to be allocated 66 2/3% to the Boyd and Pamela Eifling estate and 33 1/3% to the Virginia Eifling estate.

bankruptcy filings until after the Sale on October 24, 2005.

7. On May 5, 2006, LPP filed a proof of claim as an unsecured creditor in each of the Individual Debtors' cases (Case No. 03-11935, Claim #11; Case No. 03-11932, Claim #12), and in the Debtor Farm case (Case No. 03-15472, Claim #7) (collectively, the "Original Proofs of Claims"), and attached a copy of the Judgment to each of them.

8. On November 28, 2006, LPP amended the Original Proofs of Claims to assert the Judgment Lien on the property of the estates of the Individual Debtors and the Debtor Farm.

9. On December 7, 2006, the Trustee initiated this Adversary by filing a Complaint for Declaratory Judgment to Determine the Validity, Priority and Extent of Liens (the "Complaint") (Adv. Dk. No. 1) seeking a determination as to the validity, priority and extent of the Judgment Lien.

10. On January 30, 2007, LPP filed an Answer and Defenses (the "Answer") and a Counterclaim (the "Counterclaim") (Adv. Dk. No. 5) asserting that the Judgment Lien attached to the proceeds of any sale of assets of the Individual Debtors' or the Debtor Farm's estates, and requesting in the Counterclaim that this Court find that the Judgment Lien is properly perfected, has attached to the property of the bankruptcy estates, and is superior to any interest asserted by the Trustee.

11. On April 27, 2007, the parties submitted a scheduling order (the "Scheduling Order") (Adv. Dk. No. 11) pursuant to which the Trustee was to file his Motion by April 30, 2007. The Scheduling Order further provided that LPP would file its response and a cross-motion for summary judgment within thirty (30) days or no later than May 30, 2007.

12. On April 27, 2007, the Trustee timely filed the Motion presently before the Court wherein he asserts that he is entitled to summary judgment on the Complaint.

13. LPP failed to file a response to the Motion or a cross-motion for summary judgment on the Counterclaim in accordance with the Scheduling Order.

Discussion

1. Enrollment of the Judgment

As noted above, LPP obtained the Judgment on February 10, 2003. On March 25, 2003, the Individual Debtors' Petitions were filed. Subsequently, on April 29, 2003, the Judgment was enrolled. Mississippi Code Annotated § 11-7-191 provides that an enrolled judgment creates a judgment lien, as follows:

Enrolled judgment as lien. A judgment so enrolled shall be a lien upon and bind all of the property of the defendant within the county where so enrolled, from the rendition thereof, and shall have priority according to the order of such enrollment, in favor of the judgment creditor, his representatives or assigns, against the judgment debtor and all persons claiming the property under him after the rendition of the judgment. A judgment shall not be a lien on any property of the defendant thereto unless the same be enrolled. . . .

Miss. Code Ann. § 11-7-191. Moreover, pursuant to Mississippi Code Annotated § 11-7-197:

Judgments and decrees . . . shall not be a lien upon or bind the property of the defendant within the county in which such judgments or decrees may be rendered, until an abstract thereof shall be filed in the office of the clerk of the circuit court of the county and enrolled on the judgment roll,

Miss. Code Ann. § 11-7-197. Thus, a judgment does not become a lien on property until the judgment is enrolled. Furthermore, a "judgment shall take effect as to third parties and have priority only from the time of its enrollment." Herrington v. Heidelberg, 244 Miss. 364, 369, 141 So.2d 717, 720 (1962). Based on the foregoing, the Judgment Lien was created against property of the

Individual Debtors' estates, and became effective as to third parties such as the Trustee,⁷ subsequent to the filing of the Individual Debtors' Petitions.⁸

2. Violation of the Automatic Stay

Upon the filing of the Individual Debtors' Petitions, the automatic stay provision of § 362 took effect to prevent any action by LPP to enforce the Judgment or to create a lien against property of the Individual Debtors' estates. Section 362 provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, . . . operates as a stay, applicable to all entitles, of - -

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(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; . . .

⁷ Section § 544(a) provides:

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of . . .

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained a judicial lien, whether or not such a creditor exists;

⁸ As stated previously, the Sale proceeds are to be divided between the Boyd and Pamela Eifling and the Mary Virginia Eifling estates and, accordingly, are not available for distribution in the Debtor Farm case. Moreover, the Trustee maintains that all of the assets of the Debtor Farm's estate are subject to a lien of the Internal Revenue Service, which was recorded prior to the enrollment of the Judgment obtained by LPP, and in an amount in excess of the assets of that estate, such that no assets of the Debtor Farm are available for distribution to LPP.

....

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

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

11 U.S.C. § 362 (a)(1), (2), (4), (5); *see also* Elbar Investments, Inc. v. Pierce (In re Pierce), 272 B.R. 198, 203 (Bankr. S.D. Tex. 2001) (“When a bankruptcy case is filed, section 362 of the Bankruptcy Code automatically and immediately imposes a statutory stay of the enforcement of any judgment obtained before the commencement of the case and a stay of any act to enforce a lien against property of the estate.”). The stay is effective automatically by operation of law upon the filing of the case and regardless of whether an affected party has notice of the bankruptcy filing. *Id.*; *see also* Jones v. Garcia (In re Jones), 63 F.3d 411, 412 n. 3 (5th Cir. 1995); In re Abusaad, 309 B.R. 895, 898 (Bankr. N.D. Tex. 2004).

The enrollment of the Judgment created the Judgment Lien against the property of the Individual Debtors’ estates. Thus, the Trustee contends, and the Court finds, that the enrollment of the Judgment was a violation of the automatic stay,⁹ which prohibits any act to create a lien against property of the estate. Accordingly, the Judgment Lien obtained by LPP violated the automatic stay provisions of § 362, applicable to the Individual Debtors’ estates.

⁹ For the sake of clarity, the Trustee does not seek avoidance of a transfer of property of the estate pursuant to § 549(a), but asserts only that the enrollment of the Judgment is invalid as a violation of the automatic stay. *See In re Abusaad*, 309 B.R. at 900 (discussing how sections 362 and 549 apply to two completely different types of transactions).

3. Effect of the Violation of the Automatic Stay

In the Fifth Circuit, “an unknowing¹⁰ violation of the automatic stay is voidable, not void.” See Sikes v. Global Marine, Inc., 881 F.2d 176, 179 (5th Cir. 1989). A voidable transaction or occurrence is one “that was invalid or had no legal effect when it occurred, but might be made valid by a subsequent judicial act or ratification.” In re Pierce, 272 B.R. at 208; In re Abusaad, 309 B.R. at 899 (an action taken in violation of the stay is invalid and of no effect unless and until the action is made valid by subsequent judicial action annulling the automatic stay). Simply put, the enrollment of the Judgment in this case was a transaction in violation of the automatic stay which is “specifically prohibited by federal law, section 362 of the Bankruptcy Code.” In re Piercc, 272 B.R. at 205. Such “an action . . . taken in violation of the automatic stay . . . is invalid and of no effect at the time of its occurrence.” In re Abusaad, 309 B.R. at 899.

As noted, an action taken in violation of the automatic stay might be made valid by a subsequent judicial act, and indeed, under § 362(d),¹¹ the “bankruptcy court has the power to annul the automatic stay” Picco v. Global Marine Drilling Co., 900 F.2d 846, 850 (5th Cir. 1990). “Annulment of the stay has the effect of eliminating it (or terminating it retroactively).” In re Pierce, 272 B.R. at 204; see also United States v. Miller, 2003 U.S. Dist. Lexis 24884, * 41 (2003) (“[T]he

¹⁰ As mentioned previously, the Trustec concedes that LPP did not learn of the bankruptcy filings until after the Sale in October, 2005. Therefore, it is undisputed that LPP’s violation of the stay was not willful.

¹¹ Section 362 provides, in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay - -

(1) for cause,

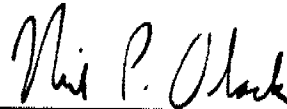
cure by which a violation of the stay may be validated is by means of a retroactive annulment of the stay pursuant to § 362(d).”). LPP, however, has not attempted to annul the automatic stay in order to validate the Judgment Lien. Consequently, the Court finds that the enrollment of the Judgment was a violation of the automatic stay, was invalid when it occurred, and is of no effect.

Based on the foregoing, the Trustee has demonstrated that no genuine issue of material fact exists, and that he is entitled to judgment as a matter of law. Therefore, summary judgment on the Complaint should be granted in favor of the Trustee. A separate final judgment will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

IT IS, THEREFORE, ORDERED that the Motion is granted.

IT IS FURTHER ORDERED that the Counterclaim is denied.

SO ORDERED,



Neil P. Olack
United States Bankruptcy Judge
Dated: June 21, 2007