

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBER
	:	
TIMOTHY ALLIOUS ROBINSON,	:	02-17467-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
DEBTOR.	:	BANKRUPTCY CODE

ORDER

Before the Court are three Motions to Avoid Lien filed by Timothy Allious Robinson (hereinafter the "Debtor") against Cash Finance, Inc., Beechwood Furniture Outlet, and Autoland, Inc. (collective referred to as the "Respondents"). The Respondents filed opposition to the Debtor's Motions, and the Court held a hearing on August 25, 2006. Following the hearing, the Court took these matters under advisement. The following constitutes the Court's findings of fact and conclusions of law. The issues raised herein are core proceedings over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(K); § 1334.

On March 16, 1998, Cash Finance, Inc. (hereinafter "Cash Finance") obtained a judgment against the Debtor in the Magistrate Court of Troup County, Georgia. Cash Finance recorded its judgment on January 19, 1999. On March 9, 1999, Autoland, Inc. (hereinafter "Autoland") obtained a judgment against the Debtor in the Magistrate Court of Troup County, Georgia. Autoland recorded the judgment on June 22, 1999. On June 24, 1999, Beechwood Furniture Outlet (hereinafter "Beechwood") obtained a judgment against

the Debtor in the Magistrate Court of Troup County, Georgia. Beechwood recorded its judgment on June 30, 1999.

On January 26, 1998, the Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code. That case did not result in a discharge, but was instead dismissed on January 4, 1999. The Debtor filed a second Chapter 13 petition on March 25, 1999, and the resulting case was also dismissed prior to the entry of a discharge on October 12, 1999. The Debtor filed a third voluntary petition under Chapter 7 of the Bankruptcy Code on March 2, 2002. At the time of filing, the Debtor owned a one-half interest in real property commonly referred to as 117 Brittney Lane, LaGrange, Georgia (hereinafter the "Property"). On Schedule A, the Debtor listed the Property with a value of \$90,000. The Debtor also disclosed that the Property was subject to a mortgage with a balance of \$90,000.

The Debtor attended the first meeting of creditors on April 18, 2002. Subsequently, Theo Mann, the Chapter 7 Trustee assigned to the Debtor's case, filed a report of no distribution indicating that no assets existed to be liquidated for the benefit of creditors. The Debtor's discharge was therefore entered on July 4, 2002, and the case was closed on July 9, 2002. During the pendency of that case, the Debtor did not file a motion to avoid the liens now at issue.

On May 26, 2006, the Debtor and the co-owner of the Property sold the Property for \$161,900. Following the closing of the sale, the closing attorney is holding funds sufficient to pay all three liens and to return approximately \$40,000 to the Debtor and the co-owner.

On June 15, 2006, the Debtor filed a motion to reopen the instant bankruptcy case for the purpose of avoiding these liens. No objections to the motion to reopen were filed, and the Court granted the motion on June 28, 2006.

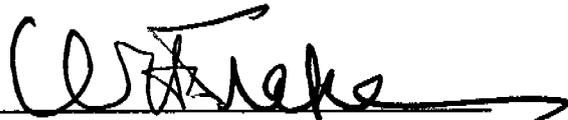
The Debtor now contends that the judicial liens held by Autoland, Beechwood, and Cash Finance are void, or, in the alternative, are avoidable pursuant to section 522(f). The Respondents oppose the motions. The Debtor argues that, because the Respondents' judgments were either obtained or recorded during the pendency of the Debtor's previous Chapter 13 cases, the entry or recording of the liens violated the automatic stay, thus rendering the judgments or the securing of judgment void. The Debtor correctly asserts that, pursuant to section 362, the automatic stay arose upon the filing of the Debtor's Chapter 13 petition and would have stayed the entry of a judgment or the recording of a judgment. *See* 11 U.S.C. § 362(a)(4); (a)(5). This is true even if the creditor acted without knowledge of the bankruptcy filing. *See In re Smith*, 180 B.R. 311 n.17 (Bankr. N.D. Ga. 1995) (Murphy, J.). The Debtor is also correct that, in this circuit, actions taken in violation of the automatic stay are void and have no effect unless the bankruptcy court later annuls the automatic stay to validate the action. *See In re Albany Partners, Ltd.*, 749 F.2d 670, 675 (11th Cir.1984); *In re Ford*, 296 B.R. 537 (Bankr. N.D. Ga. 2003) (Bonapfel, J.). The later dismissal of a the debtor's case does not annul the automatic stay or render it void ab initio.

Therefore, the Debtor must also prevail on his position that the entry of a judgment in favor of Cash Finance on March 16, 1998, during the pendency of the Debtor's first

Chapter 13 case, and the recording of the judgments by Autoland and Beechwood during the pendency of the Debtor's second Chapter 13 case violated the automatic stay and were void. Accordingly, the resulting judgment liens were invalid and unenforceable against the Debtor's exempt property. *See In re Moler*, 152 B.R. 561 (Bankr. S.D. Ill. 1993) (recording of judgment post-petition violated the automatic stay and, therefore, did not result in a lien that was "void and of no effect as a charge upon the debtor's property). Neither Cash Finance, Autoland, nor Beechwood sought to have the automatic stay annulled to validate their actions, and no evidence has been presented to establish that either Autoland or Beechwood re-recorded their judgments after the dismissal of the second Chapter 13 case. Cash Finance held no valid judgment against the Debtor, and Autoland and Beechwood remained unsecured creditors. The Debtor's personal liability for the debts owed to all three Respondents was, therefore, discharged in the present bankruptcy case. Accordingly, none of the Respondents holds any lien to avoid pursuant to section 522(f). For this reason, the Court need not consider the Debtor's alternative argument that the liens are avoidable.

IT IS SO ORDERED.

At Newnan, Georgia, this 12th day of October, 2006.


W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE