IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

DO NOT PUBLISH

IN RE: Robert C. Beckham, Debtor	)	Chapter 13 Case Number 03-10499 **FILED** **2004 SEP 15 P 1:28**
Robert C. Beckham Movant vs. A & W Oil and Tire Company, Inc., Creditor and Barnee C. Baxter, Chapter 13 Trustee Respondents	)	

ORDER

The Debtor, Robert C. Beckham ("Debtor" or "Mr. Beckham"), has filed an objection to the claim of A & W Oil and Tire Company, Inc. ("A & W Oil"), a creditor in this Chapter 13 case. The court has jurisdiction to hear this matter under 28 U.S.C. §157(b)(2)(B).

On February 17, 1995, a Summary Judgment Order was issued in the Superior Court of Columbia County, Georgia in the case of A & W Oil and Tire Company, Inc. v. Robert C. Beckham, Civil Action File No. CV 93-183 ("Judgment"). This Judgment awarded the sum of $41,537.25 together with costs to A & W Oil against Mr. Beckham. The Judgment was filed in the office of the Clerk of Superior Court of Columbia County, Georgia on March 20, 1995. The Clerk of Court

issued a writ of fieri facias that was recorded with the Judgment on the General Execution Docket of Columbia County, Georgia on March 21, 1995.

Mr. Beckham filed for bankruptcy on February 5, 2003. A & W Oil filed a proof of claim in this bankruptcy based on the Judgment. On June 30, 2003, A & W Oil filed an amendment, seeking secured treatment of its claim. The Debtor objected to A & W Oil's amended proof of claim.

A proof of claim establishes prima facie evidence of a valid debt for purposes of distribution from estate assets. Whitney v. Dresser, 200 U.S. 532 (1906); 11 U.S.C. §502(a); Bankruptcy Rule 3001(f). To overcome the claim's presumptive validity, the objecting party bears the initial burden of introducing evidence sufficient to defeat the allegations contained therein. 3 Collier on Bankruptcy ¶502.02, pp. 502-18 -- 502-19 (15th ed. 1993). The objecting party satisfies its burden by offering evidence equal to the probative value of the proof of claim itself. Id.

Although the burden shifts to the objecting party, the ultimate burden of proof always remains on the claimant. Id. Once the objector tenders evidence of equally probative value, the claimant must then demonstrate the validity of its claim by a preponderance of the evidence. Id. See also In re Williams, Chapter 13 Case No. 92-50546 at pp. 2-3 (Bankr. S.D.Ga. Savannah Division, March 30, 1994) (J. Walker).

Under Georgia law, a judgment may become "dormant" or temporarily unenforceable after seven years elapse from its initial

entry on the general execution docket. O.C.G.A. § 9-12-60. To prevent dormancy, the holder of the judgement must either re-enter it on the general execution docket or make a "bona fide public effort ... to enforce the execution in the courts" at least once within that seven-year period. O.C.G.A. § 9-12-60(a)(2),(3) & (b); In re Greenberg, 288 B.R. 612, 614 (Bankr. S.D. Ga. 2002). If the judgment holder does neither, then the judgment becomes dormant or temporarily unenforceable after seven years. O.C.G.A. § 9-12-60(a). Once dormant, the holder has three years to renew or revive the judgment "by an action or by scire facias." O.C.G.A. § 9-12-61. Otherwise, the judgment becomes permanently unenforceable. Id.; Brown v. Brown, 269 Ga. 724, 726 (1998); Howard v. Pate, 108 Ga.App. 50, 51 (1963); In re Greenberg, 288 B.R. at 614.

A scire facias to revive a dormant judgment is not an original action, but rather a continuation of the suit in which the judgment was obtained. O.C.G.A. § 9-12-62 As such, a scire facias "must be brought in the superior court of the county in which the original judgment was obtained." Oxford v. Generator Exchange, Inc., 99 Ga.App. 290, 294 (1959); O.C.G.A. § 9-12-66. However, a lien revived by scire facias only attaches as of the date of the revival. Mitchell v. Chastain Finance Co., 141 Ga.App. 512, 515 (1977); see also Foster v. Reid, 57 Ga. 609 (1876) (where plaintiff in a dormant judgment over seven years old revives it by scire facias, plaintiff has a lien on defendant's property from the date

of revival only).

Here, A & W Oil acquired secured creditor status as of March 21, 1995 when it perfected its lien in Mr. Beckham's real and personal property by causing the Judgment to be recorded on the appropriate general execution docket. O.C.G.A. § 9-12-81. However, A & W Oil admits that over seven years elapsed since the Judgment was recorded and that the Judgment was dormant when the Debtor filed this bankruptcy. By stipulation of the parties, the Judgment became dormant on or about March 21, 2002, nearly one full year before the Debtor sought bankruptcy relief on February 5, 2003. Because the Debtor filed his bankruptcy petition after the seven-year period established by O.C.G.A. §9-12-60 expired, A & W Oil's lien was invalid and unenforceable on the filing date. In re Greenberg, 288 B.R. at 614.

> [U]nder O.C.G.A. § 9-12-60, existence of a valid judgment lien creates a right to *enforce* that judgment, whereas the lapse of that lien deprives the creditor of the right to enforce the judgment. Any act taken to renew the judgment, a pre-requisite to enforcement, constitutes a continuation of the civil action against the debtor or the debtor's property....

Id. at 615 (emphasis in original). Clearly, the automatic stay bars A & W Oil from renewing or reviving its lien post-petition. See 11 U.S.C. §§ 362(a)(1),(2),(5), and (6). However, relief from the stay would not resurrect A & W Oil's secured status here, because "the law is clear that the lien as revived attache[s] only as of the date of the revival." Mitchell, 141 Ga.App. at 515.

A & W Oil failed to introduce any evidence to suggest it renewed its Judgment prior to the Debtor's bankruptcy filing. Thus, the Judgement was dormant on that date and A & W Oil has no enforceable judgment lien.

The Debtor's objection to A & W Oil's amended proof of claim is hereby ORDERED sustained. A & W Oil's claim is allowed as general UNSECURED.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia

this 15th Day of September, 2004.