

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division

In the matter of:	)	
	)	Adversary Proceeding
LEMCO GYPSUM, INC.	)	
(Chapter 7 Case <u>86-40839</u> )	)	Number <u>91-4158</u>
	)	
<i>Debtor</i>	)	
	)	
	)	
JAMES L. DRAKE, JR.,	)	
TRUSTEE	)	
	)	
<i>Plaintiff</i>	)	
	)	
	)	
v.	)	
	)	
HUSSEY, GAY & BELL, INC.	)	
CONSULTING ENGINEERS	)	
	)	
<i>Defendant</i>	)	

**MEMORANDUM AND ORDER**

Plaintiff, the Trustee in the Debtor's Chapter 7 case, filed a complaint on December 26, 1991, to determine the extent, validity and priority of a lien. A pre-trial hearing was held on March 4, 1992. The parties stipulated that the matter could be resolved without an evidentiary hearing since no issues of fact exist. Upon consideration of the

evidence adduced at the pre-trial hearing, the briefs and documentation submitted by the parties, and applicable authorities, I make the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

Debtor filed its Chapter 7 petition on October 3, 1986. Plaintiff, Debtor's Chapter 7 Trustee, filed a complaint to determine the extent, validity, and priority of Defendant's lien.

Defendant obtained a judgment against Debtor in the Chatham County Superior Court on September 9, 1982, for \$27,772.00 principal plus interest of \$1,777.41. A copy of the judgment is attached to Plaintiff's complaint as Exhibit "A". This judgment was recorded on the General Execution Docket on September 14, 1982. The 1982 judgment, which was never collected, has not been renewed in accordance with Georgia law. *See* O.C.G.A. §9-12-61.

Defendant admits that it has not renewed the judgment and that it has not filed a claim in Debtor's Chapter 7 case.

As the Trustee intends to distribute the funds on hand to creditors entitled

to participate in Debtor's bankruptcy case, the amount and priority of Defendant's lien must be determined before the Trustee can make such a distribution.

### CONCLUSIONS OF LAW

Under Georgia law, a judgment may become dormant and unenforceable after a period of seven years. O.C.G.A. Section 9-12-60 provides as follows:

- (a) A judgment shall become dormant and shall not be enforced:
  - (1) When seven years shall elapse after the rendition of the judgment before execution is issued thereon and is entered on the general execution docket of the county in which the judgment was rendered;
  - (2) Unless entry is made on the execution by an officer authorized to levy and return the same and the entry and the date thereof are entered by the clerk on the general execution docket within seven years after issuance of the execution of its record; or
  - (3) Unless a bona fide effort on the part of the plaintiff in execution to enforce the execution in the courts is made and due written notice of such effort specifying the time of the institution of the action or proceedings, the nature thereof, the names of the parties thereto, and the name of the court in which it is pending is filed by the plaintiff in execution or his attorney at law with the clerk and is entered by the clerk on the general execution docket, all at such times and periods that seven years will not elapse between such entries of such notices or between such an entry and a property entry made as

prescribed in paragraph (2) of this subsection.

O.C.G.A. §9-12-60. Defendant admits that seven years have passed since judgment was entered and that the judgment is dormant. Georgia law also provides that a dormant judgment may be revived by a timely action or by *scire facias*. See O.C.G.A. §§9-12-61; 9-12-67. O.C.G.A. Section 9-12-61 provides the following:

When any judgment obtained in any court becomes dormant, the same may be renewed or revived by an action or by *scire facias*, at the option of the holder of the judgment, within three years from the time it becomes dormant.

O.C.G.A. §9-12-61. Defendant argues that it should still have the right to revive its judgment as Debtor filed for bankruptcy before the judgment became dormant.

The judgment in favor of Defendant was entered in 1982. The seven year period in O.C.G.A. Section 9-12-60 expired in 1989. According to Defendant, it has an additional three years in which to revive the judgment under O.C.G.A. Section 9-12-61.

Defendant argues that the automatic stay imposed upon Debtor's filing bankruptcy prohibited any court action or *scire facias* required to revive a judgment under O.C.G.A. Section 9-12-61. Additionally, under the Bankruptcy Code, a creditor with a claim against a debtor and who wishes to commence a civil action against a debtor is granted

additional time to do so. *See* 11 U.S.C. Section 108(c), which allows a creditor to bring such actions up to thirty days after notice of termination of the stay provided that the prescribed time for bringing such an action has not expired at the time debtor files bankruptcy.

I conclude that Defendant's claims have merit. In 1986, at the time Debtor filed bankruptcy, Defendant had a valid judgment lien, which entitled Defendant to secured status. *See* Matter of Lively, 74 B.R. 238 (S.D.Ga. 1987). Defendant need not do anything else to perfect its status during Debtor's bankruptcy case.

In 1989, Defendant's lien would have become dormant. However, the automatic stay prohibited Defendant from enforcing its judgment. Even after the seven year period under O.C.G.A. Section 9-12-60 expired in 1989, the Georgia Code provides an additional three years under O.C.G.A. Section 9-12-61 to revive the judgment. The three year period under O.C.G.A. Section 9-12-61 will expire in 1992, ten years after the original judgment on approximately September 9, 1982.

I conclude that Defendant's judgment lien secured status is not prejudiced by Debtor's intervening bankruptcy. Absent lifting of the stay the time to revive the judgment is extended; and even if the stay were now lifted, the three year limit on revival of judgments has yet to expire. Defendant's lien is hereby determined to be valid for purposes of distribution in this case. Although no claim has been filed by Defendant that is not fatal to its position. *See* Bankruptcy Rule 3002(a).

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law,  
IT IS THE ORDER OF THIS COURT that Defendant is determined to have a valid  
judgment lien for purposes of distribution in this case.

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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This \_\_\_\_ day of May, 1992.