

Filed at 9 O'clock & 40 min. A.M.

Date: 8-24-92

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Statesboro Division

IN RE:)	Chapter 7 Case
)	Number <u>92-60183</u>
ROY BENJAMIN, JR.)	
)	
Debtor)	
_____)	
)	
ROY BENJAMIN, JR.)	
)	
Movant)	
)	
vs.)	
)	
BOARD OF REGENTS OF THE)	
UNIVERSITY SYSTEM OF GEORGIA)	
)	
Respondent)	

ORDER

Roy Benjamin, Jr., debtor in this Chapter 7 proceeding, seeks to avoid the judgment lien held by the Board of Regents of the University System of Georgia ("Board of Regents") to the extent that the lien impairs the exemptions of the debtor/movant pursuant to 11 U.S.C. §522(f)(1)¹. The Board of Regents responded asserting that

_____ ¹11 U.S.C. §522(f)(1) provides:

(f) Notwithstanding any waiver of exemptions, the debtor

its hospital lien is not avoidable pursuant to §522(f). The Board of Regents is correct in its position that there is no provision under §522(f) for the avoidance of a hospital lien established under applicable state law. Official Code of Georgia Annotated (O.C.G.A.) §44-14-470². Bankruptcy Code §101(36) defines judicial lien as a "lien obtained by judgment, levy, sequestration, or other legal or

may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

- (1) a judicial lien. . . .

²O.C.G.A. §44-14-470 provides:

(a) Except where the context otherwise requires in subsection (b) of this Code section, as used in this part, the term:

- (1) "Hospital" means any hospital or nursing home subject to regulation and licensure by the Department of Human Resources.

- (2) "Hospital care, treatment, or services" means care, treatment, or services furnished by a hospital or nursing home.

- (3) "Nursing home" means any intermediate care home, skilled nursing home, or intermingled home.

(b) Any person, firm, hospital authority, or corporation operating a hospital or nursing home in this state shall have a lien for the reasonable charges for hospital or nursing home care and treatment of an injured person, which lien shall be upon any and all causes of action accruing to the person to whom the care was furnished or to the legal representative of such person on account of injuries giving rise to the causes of action and which necessitated the hospital or nursing home care, subject, however, to any attorney's lien. This subsection shall not be construed to interfere with the exemption from this part provided by Code Section 44-14-474.

equitable process or proceeding." The creation of a judicial lien requires the exercise of judicial power; that is, the power of a court to decide and pronounce a judgment and carry it into effect between parties who have brought a matter before it for decision. Black's Law Dictionary p. 761-2 (5th ed. 1979). The Bankruptcy Code defines a statutory lien as a "lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." 11 U.S.C. §101(53). The hospital lien created by statute, O.C.G.A. §44-14-470, clearly is a statutory lien. Bankruptcy Code §522(f)(1) authorizes the debtor to avoid the fixing of a judicial lien to the extent that such lien impairs an exemption to which the debtor would have been entitled under the Bankruptcy Code or applicable state exemption statutes. Section 522(f)(1) is clear. Only judicial liens are avoidable, and §101(36) clearly defines judicial lien. Had Congress intended to include a statutory lien, a defined term under the Bankruptcy Code, see 11 U.S.C. §101(53), §522 would have included this term. See In re: Rench, 129 B.R. 649, 652 (Bankr. D. Kan. 1991).

Section 522(f)(1) by its terms is limited to judicial liens. The lien asserted by the Board of Regents is a statutory

lien. However, to the extent that the Board of Regents has obtained a judgment lien against the debtor that lien is avoidable pursuant to §522(f). From the debtor's schedules and the undisputed facts set forth at hearing, this proceeding appears to be a "no asset" Chapter 7 case, that is there are no unencumbered assets available to pay unsecured creditor claims. Pursuant to applicable state law, O.C.G.A. §44-13-100, all property of the debtor at the time of the bankruptcy filing appears exemptible; and therefore, any judgment lien held by the Board of Regents does impair the exemptions to which the debtor is entitled pursuant to applicable state law and is avoidable under §522(f).

It is therefore ORDERED that to the extent that the Board of Regents of the University System of Georgia holds a judgment lien against the debtor, Roy Benjamin, Jr., that lien is avoided as to the property of the debtor exemptible pursuant to applicable state law. This order of lien avoidance does not extend to any hospital lien asserted by the Board of Regents of the University System of Georgia.³

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

³The debtor does not challenge the validity of the any lien asserted by the Board of Regents, see Bankruptcy Rule 7001; therefore, this decision does not address the existence or the validity of any hospital lien asserted by the Board of Regents.

Dated at Augusta, Georgia
this 20th day of August, 1992.