

11 U.S.C. § 1327(c)
11 U.S.C. § 1328(a)(1)

Murphy v. Lane County, Adv. No. 688-5244
In re Murphy, Case No. 686-07207, Bap NO. OR-89-1934

Snowden v Lane County, Adv. No. 689-6070
In re Snowden, Case No. 684-08688, BAP No. OR-89-2124

3/21/91 BAP affirming PSH Unpublished

On consolidated appeals, the BAP affirmed Judge Higdon's ruling that a prepetition tax lien "provided for" but no paid through a Chapter 13 plan survived bankruptcy and could not be avoided post-discharge. The liens were never paid because no proof of claim had been filed although the debts were listed as secured and payment was provided for in the plans. Held: unless successfully challenged or fully paid, liens are unaffected by a Chapter 13 discharge.

E91-6(6)

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re)
 DAVID JAMES MURPHY & CAROLYN JEAN)
 MURPHY/THOMAS GENE & BETTY JEAN)
 SNOWDEN,)
) Debtor.)
 _____)
 DAVID JAMES MURPHY & CAROLYN JEAN)
 MURPHY,)
) Appellant(s),)
 v.)
 LANE COUNTY, OREGON,)
) Appellee(s).)
 _____)
 THOMAS GENE & BETTY JEAN SNOWDEN,)
) Appellant(s),)
 v.)
 LANE COUNTY, OREGON,)
) Appellee(s).)
 _____)

BAP No. OR-89-1934-OMeR
 OR-89-2124-OMeR

Bankruptcy No. 686-07207
 684-08688

Adversary No. 688-5244-H
 689-6070-H

FILED

MAR 21 1991 C A

NANCY B. DICKERSON, CLERK
 U.S. BKCY. APP. PANEL
 OF THE NINTH CIRCUIT

JUDGMENT

ON APPEAL from the United States Bankruptcy Court for
 the District of OREGON.

THIS CAUSE came on to be heard on the record from the
 above court and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by
 this Panel that the judgment of the Bankruptcy Court is AFFIRMED.

BANKRUPTCY APPELLATE PANEL
 OF THE NINTH CIRCUIT

A True Copy
 Attest:

 Nancy B. Dickerson, Clerk

Cynthia E. Ashton
 by Deputy Clerk 4/15/91

FOR THE PANEL,
 Nancy B. Dickerson
 Panel Clerk

Cynthia E. Ashton
 By: Cynthia E. Ashton
 Deputy Clerk

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

1
2
3 In re:) BAP No. OR-89-1934-OMeR
4 DAVID JAMES MURPHY and)
CAROLYN JEAN MURPHY,) Bankr. No. 686-07207
5 Debtors.) Adv. No. 688-5244-H

6
7 DAVID JAMES MURPHY and)
CAROLYN JEAN MURPHY,)
8 Appellants,)

9 -v-)

10 LANE COUNTY, OREGON,)
11 Appellee.)

12
13 In re:)

14 THOMAS GENE SNOWDEN and)
BETTY JEAN SNOWDEN,)
15 Debtors.)

16
17 THOMAS GENE SNOWDEN and)
BETTY JEAN SNOWDEN,)
18 Appellants,)

19 -v-)

20 LANE COUNTY, OREGON,)
21 Appellee.)

BAP No. OR-89-2124-OMeR
Bankr. No. 684-08688-W13
Adv. No. 689-6070-H

M E M O R A N D U M

22
23 Argued and Submitted on
September 13, 1990 at Portland, Oregon

24 Filed - MAR 21 1991

25 Appeal from the United States Bankruptcy Court
26 for the District of Oregon

27 Honorable Polly S. Higdon, Bankruptcy Judge, Presiding
28 Before: OLLASON, MEYERS, and RUSSELL, Bankruptcy Judges.

FILED

MAR 21 1991 c.A

NANCY B. DICKERSON, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

1 The debtors in these consolidated appeals each filed a
2 complaint to avoid a lien in favor of Appellee Lane County. The
3 bankruptcy court held that the liens were not avoidable in both
4 cases and the debtors appealed. We affirm.

5 FACTS

6 Debtors Murphy filed a Chapter 13 plan on February 3,
7 1986. On April 23, 1986, their plan was confirmed by the
8 bankruptcy court. The plan provided for payments to appellee
9 Lane County in the amount of \$906.00. Because Lane County had a
10 valid pre-petition tax lien on the debtors' home, the plan listed
11 the county's claim as secured, and provided that "secured
12 creditors shall retain their liens until their allowed secured
13 claims have been paid."

14 No payments were made to Lane County under the plan or
15 otherwise. Lane County filed no proof of claim against the
16 estate. On November 25, 1988, debtors were discharged in
17 bankruptcy. Thereafter, debtors commenced an adversary
18 proceeding in the bankruptcy court to avoid the lien held by Lane
19 County. That matter was decided on cross-motions for summary
20 judgment based on stipulated facts. The bankruptcy court held
21 that Lane County's lien remained enforceable, notwithstanding the
22 bankruptcy discharge.

23 Debtors Snowden filed a third modified Chapter 13 plan
24 on October 29, 1985. It provided for payments to Lane County in
25 the amount of \$9,032.00 as a secured claim. That plan also
26 provided that "Secured creditors shall retain their liens until
27 their allowed secured claims have been paid." That plan was

1 confirmed on May 2, 1986. The Snowdens were discharged in
2 bankruptcy on March 30, 1989. On May 2, 1989, they commenced an
3 adversary proceeding seeking to avoid Lane County's lien. It was
4 dismissed by the bankruptcy court on October 10, 1989. In that
5 order of dismissal, the court made reference to the dismissal in
6 the Murphy case and incorporated by that reference the reasoning
7 in the Murphy case.

8 In neither case did the debtors file a proof of claim
9 for the county or make any effort to avoid the lien until they
10 filed their post-discharge complaints. In the adversary
11 complaints they alleged that since Lane County failed to file a
12 proof of claim their claim was deemed denied notwithstanding
13 their inclusion in the plan. They also alleged that since the
14 plan "provided for" the obligation owed to Lane County by listing
15 it, the property of the estate of the debtor would vest in them
16 "free and clear of any claim or interest of any creditor. . ."
17 11 U.S.C. §1327(c).

18 ISSUE

19 Both consolidated appeals present the same question of
20 law: Does the discharge order in a Chapter 13 case extinguish a
21 lien when the underlying obligation has not been satisfied as
22 provided in the plan? We review the bankruptcy court's
23 conclusions of law de novo.

24 DISCUSSION

25 In both cases, debtors assert that by properly
26 providing for a secured creditor in a Chapter 13 plan, the
27 discharge order extinguishes the lien whether the claim is paid

1 or not. Debtors cite In re Work, 58 BR 868 (Bankr.D.Or. 1986),
2 in support of that proposition.

3 As in the case at bar, Work involved a secured claim of
4 a governmental entity for real property taxes. The debtors in
5 Work mentioned the secured claim at issue in their plan, but did
6 not correctly list it as a secured debt. Debtors here apparently
7 seized upon the following language from Work:

8 In order for a claim or interest to be
9 provided for by a plan, the plan must
10 acknowledge the claim or interest and make
11 explicit provision for the treatment of the
12 claim or interest. In re Gregory, 19 B.R.
13 668, 8 B.C.D. 1309 (BAP 9th Cir. 1982)
[footnote omitted]. Since Plaintiff's plan
made no provision for the Defendant's lien in
their plan, the residence which vested in
Plaintiffs after confirmation remains subject
to Douglas County's lien.

14 Had the debtors desired to "provide for"
15 the lien of the Defendant in their plan, they
could have made provision therefore in
paragraph 2(b). In re Work, 58 B.R. at 871.

16 Debtors contend that since they "provided for" the liens of
17 appellee by properly listing them in their plans, 11 U.S.C.
18 section 1327 has caused the liens to be extinguished. That
19 section provides, in part:

20 (b) Except as otherwise provided in the
21 plan or the order confirming the plan, the
confirmation of a plan vests all property of
the estate in the debtor.

22 (c) Except as otherwise provided in the
23 plan or the order confirming the plan, the
property vesting in the debtor under
24 subsection (b) of this section is free and
clear of any claim or interest of any
25 creditor provided for by the plan.

26 Debtors have misconstrued the holding in Work. The
27 benefits to be derived from providing for a secured claim in a
28

1 Chapter 13 plan are conditioned upon compliance with the plan:

2 By adding the name of the Defendant to this
3 paragraph they would have been providing that
4 the trustee pay the debt and that the
5 Defendant retain its lien until the amount
6 owing upon the lien was paid. Such a
7 provision would have been in compliance with
8 §1325(a)(5)(B). In re Work, 58 B.R. at 871.

9 Section 1328(a), which controls the Chapter 13 discharge,
10 specifically provides that secured debts which are not fully paid
11 during the course of the plan are not affected by the discharge
12 order. 11 U.S.C. section 1328(a)(1). See In re Hines, 20 B.R.
13 44, 49 (Bankr. S.D. Ohio 1982); In re Work, 58 B.R. at 873.

14 Work also noted the long-standing general rule that
15 those claimants with valid, pre-petition security interests may
16 refuse to participate in the bankruptcy proceedings and rely upon
17 their liens for repayment. Id. at 869. That rule is now found
18 in 11 U.S.C. §506(d), which codified judicial decisions dating
19 back to Long v. Bullard, 117 U.S. 617, 620-21 (1886), and which
20 provides, in essence, that liens pass through bankruptcy
21 unaffected. See generally In re Junes, 99 B.R. 978, 980-81 (9th
22 Cir. BAP 1989) (tracing judicial and legislative history of
23 proposition that liens pass through bankruptcy unaffected). For
24 that reason, the fact that Appellee never filed a proof of claim
25 does not change the outcome. As the Work court observed: "It
26 would be anomalous to read §1327(c) to allow a debtor to reap a
27 windfall because of the failure of a creditor secured by a lien
28 to file a claim."

Debtors also appear to have misconstrued their own
plans, which provided, in each of these consolidated appeals,

1 that appellee would retain its liens until they were fully paid.
2 Sections 1327(b) and 1327(c) do not apply, by their own terms, to
3 circumstances where, as here, the plan or confirmation order
4 provides a different result. As the panel recognized in Junes,
5 supra, 99 B.R. at 981, "there appears to be no sound reason for
6 lifting liens by operation of law at confirmation under Chapter
7 13." Nor is there any sound reason to extinguish the lien of a
8 creditor who has been paid nothing under a plan which provided
9 that the lien would remain until satisfaction of the underlying
10 obligation. The windfall sought by the debtors is at odds with
11 the language of their plans and the Bankruptcy Code.

12 CONCLUSION

13 Debtors' plans provided that the subject liens would
14 remain in place until the underlying debts were paid. Although
15 the liens were thus acknowledged, they were not satisfied due to
16 the lack of payments. Regardless, unless successfully challenged
17 or fully paid, liens are unaffected by a Chapter 13 discharge.

18 **Affirmed.**

PROOF OF SERVICE OF MANDATE

I, Cynthia E. Ashton, sent a certified copy of the attached judgment


to CLERK

U. S. Bankruptcy Court

at P.O. BOX 1335
(address)

EUGENE, OREGON 97440

on 4/15/91
(date)


Cynthia E. Ashton
Deputy Clerk