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The lien of a judgment for money upon real estate of the judgment debtor embodied in Sections 8-386 and 8-390 of the Virginia Code has been radically changed by the Acts of 1960, c. 466 and c. 255 respectively. How these amendments affect the liens of judgments obtained before as well as those obtained after the effective date of the amendments (June 27, 1960) will be considered below.

A. *The 1960 Changes.*

Prior to the amendment of 1960, Section 8-386 provided that every judgment rendered in Virginia by any state or federal court, other than by confession in vacation, became a lien on all real estate wherever situated in Virginia of or to which the judgment defendant is or becomes possessed or entitled at or after the date of the judgment or, if it was rendered in court, at or after the commencement of the term at which it was so rendered, if the case was at least matured and ready for hearing on the first day of that term. Judgments by confession in vacation became liens from the time of day at which they were respectively confessed, subject, however, to different priority as among themselves should the defendant so direct.

As amended by Acts 1960, c. 466, Section 8-386 now provides as follows:

> Every judgment for money rendered in this State by any state or federal court or by confession of judgment, as provided by law, shall be a lien on all the real estate of or to which the defendant in the judgment is or becomes possessed or entitled, from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city where such land is situated.

The 1960 amendment makes two fundamental changes. Now the lien of a judgment commences when and only when the judgment is recorded on the judgment lien docket in the proper clerk's office of the county or city where the land is located. The date of the entry of the judgment in no way affects the commencement of the lien. There is no relation back of the lien to the beginning of any term of court. A recorded judgment has priority over a judgment rendered earlier but recorded later.

Prior to the 1960 amendment, the lien of a judgment extended throughout the State. Under the amendment, the judgment is a lien only on lands of the judgment debtor in the county or city of recordation. For a judgment to operate as a lien in each of the counties and cities of the State, it must now be recorded in each; and of course the lien would commence as to the lands in each county or city only at the time of the recordation there.

Priority as among judgments against the same debtor depends upon the order of recordation. The amendment thus favors the judgment creditor who happens to know where the land of the judgment debtor is located. Also, it enables a judgment debtor to prefer a later judgment creditor over an earlier one by disclosing to the later judgment creditor the location of the judgment debtor's land of which the earlier judgment creditor is unaware. It renders almost imperative the examination of a judgment debtor on interrogatories under Section 8-435 as early as possible after the judgment is rendered to ascertain in what counties or cities he may own land.

Section 8-390 as amended by Acts 1960, c. 255, is as follows:

> No judgment or decree rendered in a court of this State or in the circuit court of appeals or a district court of the United States within this State shall be a lien on real estate as against a purchaser thereof for valuable consideration without notice until and except from the time that it is duly docketed in the proper clerk's office of the county or city wherein such real estate may be. Provided, however, when a judgment is revived under

> the provisions of §8-396, that such revived judgment shall not be a lien as prescribed in this section until and unless said judgment is again docketed as provided herein. In such event the lien shall be effective from the date of the original docketing.

Strangely enough, amended Section 8-386 requires recordation of the judgment to create the lien, while amended Section 8-390 provides for docketing. Does each of these words refer to acts required of the clerk in Section 8-377? We may be accustomed to consider recording as the spreading of the language of an instrument verbatim on some book in the clerk's office, yet in various sections of the Code the word "recorded" is used as a synonym for "docketed". Section 17-64 provides that "abstracts of all judgments authorized or required by law to be docketed or recorded . . . shall be recorded in . . . the judgment docket." Indeed, Section 8-378.1 uses "recorded" in one place and "docketed" in another, but they clearly refer to the same act. A third designation is used in Section 19.1-142, which requires the clerk to "enter the abstract of judgment upon his judgment docket". An inquiry directed to clerks of several courts reveals that each now enters on the judgment docket the information obtained from extracts of judgment just as he did prior to the 1960 amendments and hence makes no distinction between the docketing and the recording of judgments. Therefore, we may safely assume that the words "recorded" and "docketed" in the amendments to Sections 8-386 and 8-390 mean the same thing.

The first sentence of Section 8-390 was not changed by the 1960 amendment. It created the only exception to or limitation upon the legal lien of the judgment as provided in Section 8-386 as it existed prior to the 1960 amendment. See the discussion of this in *Gordon* v. *Rixey,* 76 Va. 694, 702 (1882). It provides that as against a purchaser for valuable consideration without notice a judgment or decree does not become a lien on real estate until and except from the time it is duly docketed. Under the 1960 amendment to Section

8-386 the legal lien of the judgment commences only if and when such judgment is recorded in the proper clerk's office of the county or city in which the land is located. And under Section 8-343 the word "judgment" includes a decree or order requiring the payment of money. Hence, the requirement of docketing a judgment prescribed in the first sentence of Section 8-390 is now under Section 8-386 the prerequisite of the existence of a judgment lien in all instances. Accordingly, it appears that no need now exists for the first sentence of Section 8-390 to protect purchasers for valuable consideration without notice.

The second sentence in Section 8-390 is new. It provides that, when the life of a judgment is extended (the word "revived" is used, although it obviously should have been "extended") under the provisions of Section 8-396, "such revived judgment shall not be a lien as prescribed in this section until and unless said judgment is again docketed as provided herein". As this proviso relates specifically to the lien mentioned in Section 8-390, it would appear to be applicable only to purchasers for valuable consideration without notice. Why this proviso was not placed in Section 8-386 rather than in Section 8-390 is not at all clear. As recordation is now the basis of the judgment lien, it would seem that recording of the "revived" judgment should either be required to extend the lien for all purposes or be discarded. Yet the plain wording of the sentence appears to make it necessary only as to purchasers for valuable consideration without notice. The new third sentence of Section 8-390 provides that upon the docketing of the "revived" judgment the lien shall be effective from the date of the original docketing.

Suppose the extension order is obtained in the eighteenth year of the judgment. Under the above proviso, does the lien of the original judgment cease as to purchasers for valuable consideration without notice upon the entry of the extension order but upon the later docketing of the "revived" judgment spring back into being and then become effective from the date of the docketing of the original judgment or does the lien of the original judgment continue until the end of its

original period (twenty years from the entry of the judgment) and then cease subject to revival and relation back to the date of original docketing whenever the "revived" judgment is again docketed? It would seem that the period of the lien of the original judgment should not be diminished by the very act of obtaining an order extending its life.

B. *To what judgments do the 1960 amendments apply?*

Of course, the 1960 amendments to Section 8-386 and 8-390 apply to all judgments rendered on or after June 27, 1960, the effective date of the amendments. But, do these amendments apply to judgments obtained theretofore? Each is silent as to whether it is prospective only or is both prospective and retrospective.

The general rule is that a statute is not retrospective in its application in the absence of clear legislative intent to make it so. Besides, even if a statute is in terms made retrospective, it cannot affect vested rights. A judgment entered two years before the 1960 amendments became effective constituted a lien on the lands of the judgment debtor through the State as against all persons other than purchasers for valuable consideration without notice, even though it was not docketed. Clearly, this lien was a vested right when the 1960 amendments became operative, and it could not be affected by these amendments even if they had been specifically made retrospective. It is well settled in Virginia that, when the right of a judgment creditor under a money judgment becomes vested, any act of the legislature divesting or adversely affecting this vested right is unconstitutional and void. This doctrine was enunciated in *Murphy* v. *Gaskins*, 28 Gratt (69 Va.) 207 (1877) and has been adhered to in later decisions.

However, rights under a judgment for money do not become vested unless the judgment of the trial court is affirmed by the Supreme Court of Appeals or unless such events have transpired since the rendition of the judgment in the trial court that it is no longer possible for that judgment to be affected by any action of the Supreme Court of Appeals.

Thus, in *Bain* v. *Boykin,* 180 Va. 259, 23 S.E. 2d 127 (1942), the plaintiffs, who were partners and who had not complied with the fictitious name statute, were on that ground held by the lower court not entitled to recover on their claim for money judgment against the defendant. The plaintiffs obtained a writ of error, and the case was argued and submitted in the Supreme Court of Appeals. However, before that court rendered its decision, the legislature amended the fictitious name statute to allow anyone in the plaintiffs' situation to recover. The Supreme Court of Appeals gave effect to the amendment and allowed the plaintiffs to recover on the basis that the defendant had acquired no vested right in the judgment in his favor so long as the case had not been finally decided by that court on the writ of error. Hence, with respect to judgments rendered prior to June 27, 1960, as to which the defendant could on or after that date still take appropriate steps to have an appeal to the Supreme Court of Appeals granted or as to which an appeal had been granted but the Supreme Court of Appeals had not on that date finally affirmed the judgment below, it would appear that the 1960 amendments would be effective if they be deemed retrospective.

In view of the principle that a statute is not to be construed as retrospective in the absence of clear legislative intent to that effect and in view of the well established doctrine that a statute, though in terms retrospective, cannot affect vested rights existing in judgments entered before the effective date of such statute, it would seem the proper construction of the 1960 amendments to Sections 8-386 and 8-390 is that they should not apply to the existing lien of any judgment rendered before they became effective. This should be true, even though such judgment had not at the effective date of the amendments been affirmed by the Supreme Court of Appeals and it was still possible for such judgment to be later affected by action of that court.

The final question suggested by the 1960 amendment to Section 8-390 is whether docketing of the "revived" judgment is required as to purchasers for valuable consideration

without notice when the original judgment was rendered prior to June 27, 1960. The mode of extending the life of a judgment is a matter of remedy and procedure; and a statutory change in such mode could be made applicable to all earlier judgments, provided reasonable opportunity be allowed for compliance with the new mode. Thus, what is now Section 8-396 was amended in 1948 to eliminate the extension of the life of a judgment by the issuance of executions thereon. This amendment was in terms retrospective with certain limitations. In *Phipps* v. *Sutherland,* 201 Va. 448, 111 SE 2d 422 (1959), the amendment was held to prevent the life of a judgment rendered earlier from being extended by the issuance of an execution after the amendment became effective. However, as the 1960 amendment is not in terms made retrospective, it would seem that docketing of the "revived" judgment is not required even as to purchasers for valuable consideration without notice when the original judgment was rendered prior to June 27, 1960.

Thus, under the 1960 amendments to Sections 8-386 and 8-390 the lien of the judgment commences only when the judgment is recorded and is in no way affected by the date the judgment was rendered; the lien affects only land in the county or city of recordation; statewide coverage of the lien is eliminated; and as to purchasers for valuable consideration without notice redocketing is required when the life of the judgment is extended by an extension order. The old system of judgments liens, which apparently operated without any considerable difficulties for some one hundred and ten years, now exists only with respect to liens of judgments rendered prior to June 27, 1960.