


ORDERED.

Dated: February 28, 2017

  
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Jerry A. Funk  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Case No.: 3: 16-bk-3105-JAF

HENRY CRUSAW,

Chapter 13

Debtor.  
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**ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR  
RELIEF FROM AUTOMATIC STAY FILED BY JOHN CRUSAW, JR, BERTHA  
WRIGHT, AND W. JAMES CRUSAW**

This case came before the Court upon Motion for [Relief from the Automatic] Stay (the “Motion”) filed by John Crusaw, [Jr.], Bertha Wright, and W. James Crusaw (“Movants”) (Doc. 31). The Court conducted a hearing on February 8, 2016 at which it elected to take the matter under advisement. Upon consideration, the Court finds it appropriate to grant the Motion in part and to deny the Motion in part.

**Background**

On June 29, 2016, the Circuit Court of the Third Judicial Circuit in and for Suwannee County, Florida (the “Circuit Court”) entered a Final Judgment of Partition,

Fees and Costs (the “Partition Order”) in Case No. 61-2009-93-CP (the “Partition Action”). The Partition Order partitioned approximately 200 acres of real property which Debtor and his siblings owned as tenants in common with equal undivided interests. Paragraph 4(d) of the Partition Order provides that: “[e]ach parcel, except the parcels of John Crusaw, Jr. and Bertha Wright is subject to judgment as indicated below. A judgment is rendered against each heir in favor of John Crusaw, Jr. and Bertha Wright jointly of \$10,794.29 for 1/12 attorney[’s] fees and costs . . . [Debtor] sustain[s] an additional amount of \$24,388.00 in the judgment against [him] in favor of John Crusaw, Jr. and Bertha Wright jointly [for profits he received from the property] . . . these costs and fees shall be part of the judgments of conveyance referred to in Paragraph 5 below.” Paragraph 5 of the Partition Order provides that after the surveys of the parcels are completed the Circuit Court will enter judgments of conveyance “vesting title of their share in each heir or heir’s estate subject to the court’s ruling set forth in paragraphs 4(d) and 6(e) of [the Partition Order].” Paragraph 6(e) of the Partition Order finds that Debtor owes \$35,879.43 to John Crusaw, Jr. and Bertha Wright.

On August 15, 2016, prior to the entry of a judgment of conveyance against him, Debtor filed this Chapter 13 bankruptcy petition.

### **Discussion**

Movants argue that by virtue of the Partition Order, John Crusaw, Jr. and Bertha Wright have an interest in Debtor’s share of the partitioned property, which interest they argue creates a secured claim. They seek relief from the automatic stay in order to permit the Circuit Court to enter a judgment of conveyance as to Debtor which provides as follows: “[p]ursuant to [the Partition Order] . . . the land described in Exhibit 1 attached

hereto is conveyed by this judgment to and shall vest title in [Debtor]. The proposed judgment of conveyance also provides that such conveyance and vesting of title in Debtor is “subject to . . . a lien of [\$35,879.43] in favor of John Crusaw, Jr. and Bertha [Wright], jointly, judgment holders (the “Lien Language”).” Movants argue that without the Lien Language, Debtor will obtain title to his share of the partitioned property without having to pay his share of the attorney’s fees and costs incurred in the Partition Action and without having to reimburse John Crusaw, Jr. and Bertha Wright for their share of the profits which he received.

Debtor consents to the Court lifting the automatic stay in order to permit the Circuit Court to enter a judgment which identifies and conveys the parcel to him. But, Debtor objects to a judgment of conveyance which includes the Lien Language because he believes that such language may elevate John Crusaw, Jr. and Bertha Wright from judgment lien holders<sup>1</sup> to secured creditors. However, a judgment lien holder is a secured creditor. See United States v. Ron Pair Enterprises, 489 U.S. 235, 239 (1989) (“[T]here are two types of secured claims: (1) voluntary (or consensual) secured claims, each created by agreement between the debtor and the creditor and called a ‘security interest’ by the Code, and (2) involuntary secured claims such as a judicial or statutory lien, which are fixed by operation of law and do not require the consent of the debtor.”)

Debtor’s true concern appears to be that if the Lien Language is permitted to be included in a judgment of conveyance, Debtor will not be able to avoid the fixing of the

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<sup>1</sup> “A judgment, order, or decree becomes a lien on real property in any county when a certified copy of it is recorded in the official records or judgment lien record of that county.” Fla. Stat. § 55.10(1). While the Partition Order is clearly a judgment, Movants presented no evidence that a certified copy of the Partition Order was recorded in the public records of Suwannee County. Accordingly, it is not clear that the Partition Order is a judgment lien. Nonetheless, because Debtor concedes that the Partition Order is a judgment lien, the Court will assume for purposes of argument that it is.

lien pursuant to 11 U.S.C. § 522(f) because the lien will not be a “judicial lien” as set forth in that section. A judicial lien is a “charge against or interest in property to secure payment of a debt” which is “obtained by judgment . . . or other legal or equitable process or proceeding.” 11 U.S.C. §§ 101 §§ 37, 36. “Courts have described a judicial lien as ‘an interest which encumbers a specific piece of property granted to a judgment creditor who was previously free to attach any property of the debtor's to satisfy his interest but who did not have an interest in a specific piece of property before occurrence of some judicial action.’” In re Washington, 242 F.3d 1320, 1323 (11<sup>th</sup> Cir. 2001)(citations omitted). “When deciding whether a lien is consensual or judicial, a court should look to the origins of the lien—more specifically whether it was first agreed to, like a settlement, mortgage, or contract; or forced upon one of the parties by the other through the leverage of judicial power . . . If a creditor first obtains an interest in a debtor's property by virtue of a judicial action, then he has a judicial lien on that property, not a consensual one.” In re Moore, 2011 WL 6887126, at \*4 (Bankr. N.D. Tex. Dec. 29, 2011)(citations omitted).

Assuming the other requirements of § 522(f) are met, the Court does not believe that the allowance of the Lien Language in a judgment of conveyance would somehow alter Debtor’s rights with respect to the avoidance of a judicial lien as to his interest in the partitioned property. However, in an abundance of caution, the Court will not permit the Lien Language to be included in a judgment of conveyance. Upon the foregoing, it is

**ORDERED:**

1. Motion for Relief from the Automatic stay is granted in part and denied in part.
2. The Automatic Stay is lifted to permit the Circuit Court of the Third Judicial

Circuit in and for Suwannee County, Florida to enter a final judgment of conveyance as to Debtor in the Partition Action.

3. Any such judgment shall not include any reference to a lien in favor of John Crusaw, Jr. and Bertha Wright.

Attorney Rehan N. Khawaja is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.