


ORDERED.

Dated: December 18, 2018

  
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Jerry A. Funk  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

IN RE:

GEA SEASIDE INVESTMENT, INC.,

Chapter 11

Case No.: 3:18-bk-0800-JAF

Debtor.

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**ORDER VOIDING DAYTONA BEACH'S PROPERTY LIENS**

This case is before the Court on ten different motions filed by Debtor GEA SEASIDE INVESTMENT, INC. ("GEA Seaside") on October 15, 2018. Each of these motions seeks to invalidate certain real estate liens in favor of Creditor CITY OF DAYTONA BEACH (the "City"). These motions came up for preliminary hearing on November 6, 2018, at which time the parties offered argument on the undisputed facts. The Court gave additional time for each side to file written argument. The City filed a response on November 20, 2018. (Doc. 279). The Debtor filed a reply on November 30, 2018. (Doc. 294). Having reviewed the argument of the parties and the applicable law, the Court determines the police-powers exception to the automatic stay does not apply to the imposition of any liens on estate property, and the City's purported liens are void ab initio as violations of the automatic stay in effect at the time the liens were imposed.

***Procedural Background and Undisputed Facts***

GEA Seaside filed the instant Chapter 11 case (3:18-bk-0800) in March 2018. However, GEA Seaside filed a prior Chapter 11 petition in January 2013, which became case no. 3:13-bk-0165 (the “Prior Case”). A Chapter 11 plan was confirmed in the Prior Case, and the Court entered a final decree finding that GEA Seaside had substantially consummated the plan. The Clerk’s Office closed the Prior Case in March 2017.

In July 2017, GEA Seaside sought to reopen the Prior Case to pursue sanctions against the City (and another municipal defendant) for alleged violations of the automatic stay. The Prior Case was reopened, and, in August 2017, the Debtor filed an adversary proceeding associated with the Prior Case, which became proceeding no. 3:17-ap-0143 (the “Sanctions Action”).

The Sanctions Action sought sanctions/damages for the City’s alleged violation of the automatic stay that arose during the pendency of the Prior Case. Paragraph 32 of the original complaint alleged: “In clear contravention of the automatic stay, specifically, 11 U.S.C. § 362(a)(4), the Defendants attempted to create, perfect, or enforce liens against property of [GEA Seaside’s] bankruptcy estate.” (Doc. 1, in Adv. No. 3:17-ap-0143).

Ultimately, the Court dismissed the Sanctions Action on purely procedural grounds and stated: “Although the Court dismisses the instant adversary proceeding with prejudice, this dismissal is without prejudice to GEA Seaside properly raising the appropriate issues in the main case”—i.e., as a motion for contempt within the Prior Case rather than as an adversary proceeding. (Doc. 27 at 7, in Adv. No. 3:17-ap-0143). GEA Seaside did not file a motion for contempt in the Prior Case. The Clerk’s Office closed the Sanctions Action in December 2017 and subsequently re-closed the Prior Case in January 2018.

The automatic stay, in effect during the Prior Case, commenced on the date the prior petition was filed and terminated on the date the Chapter 11 plan was confirmed—i.e., from January 10, 2013 to January 6, 2016. The stay expired upon plan confirmation because the confirmation order re-vested all estate property with the Debtor. See 11 U.S.C. § 362(c)(1) (2013). It is undisputed that all subject liens were imposed and recorded between October 13, 2013 and July 20, 2015, while the automatic stay was in effect. It is further undisputed that all lien property was property of the bankruptcy estate at the relevant times.

On October 15, 2018, GEA Seaside filed the ten motions at issue here, which seek to invalidate the ten liens purportedly held by the City (on eight pieces of real estate). At the preliminary hearing, the City claimed the benefit of the police-powers exception to the automatic stay found in 11 U.S.C. § 362(b)(4). GEA Seaside argued that the § 362(b)(4) exception to the automatic stay applies only to acts stayed under paragraphs (a)(1), (a)(2), (a)(3), and (a)(6) of § 362. In other words, the imposition of the liens was stayed by § 362(a)(4), yet (a)(4) is expressly excluded from the § 362(b)(4) exception.

After the hearing, the City filed a response that did not address the argument raised by GEA Seaside. (Doc. 279). GEA Seaside filed a reply and maintained its same argument. (Doc. 294). GEA Seaside seeks a declaration that the purported liens are invalid, void, and of no legal effect.

### *Analysis*

Section 362 of the Bankruptcy Code provides for an automatic stay of certain acts upon the filing of a bankruptcy petition. 11 U.S.C. § 362 (2013). Subsection (a) lists the various acts that are stayed, while subsection (b) lists various exceptions to the automatic stay. 11 U.S.C. § 362(a), (b) (2013).

Paragraph (a)(4) provides for a stay of “any act to create, perfect, or enforce any lien against property of the estate.” 11 U.S.C. § 362(a)(4) (2013). Paragraph (b)(4) contains the police-power exception that is at issue here and provides:

(b) The filing of a petition . . . does not operate as a stay—

. . .

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s or organization’s police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s or organization’s police or regulatory power.

11 U.S.C. § 362(a)(4) (2013). Clearly, “[t]he police power exception [ ] does not apply to acts prohibited by § 362(a)(4).” In re Shannon, 590 B.R. 467, 492 (Bankr. N.D. Ill. 2018). “It applies only to acts covered by § 362(a)(1), (2), (3), and (6).” Id.

In other words, “although § 362(b)(4) permits a governmental unit to enforce its regulatory powers in certain circumstances, the creation, perfection or enforcement of a lien that is imposed by a governmental unit against property of the estate does not fall within the exception.” In re McFarland, 2008 WL 4550378, at \*4 (Bankr. M.D. Fla. July 24, 2008).<sup>1</sup>

Here, all liens imposed on estate property between January 10, 2013 and January 6, 2016 were imposed in violation of the automatic stay and are, therefore, invalid. All such purported

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<sup>1</sup> Although the plain language of the statute controls, it is worth noting that the liens would likewise fail the broader test employed under § 362(b)(4). Generally, courts employ two tests to determine whether the police-power exception applies: the “pecuniary purpose” test and the “public policy” test. In re Shannon, 590 B.R. 467, 492 (Bankr. N.D. Ill. 2018). Under these tests, courts focus on whether the governmental action relates primarily to the protection of the government’s pecuniary interest or to matters of public safety. Id. at 493. Only those matters relating primarily to public safety are excepted from the stay. Id. Here, the imposition of a lien pertains to the City’s pecuniary interest and is, thus, not excepted.

liens are void ab initio and of no legal effect, regardless of who sought to impose the lien. This holding has no effect on the debt underlying the purported liens and makes no determinations concerning such debt. The Court concludes merely that the liens are void as a matter of law.

Accordingly, it is hereby ORDERED that:

1. Any and all liens imposed by the City, between January 10, 2013 and January 6, 2016, on property of the Debtor's bankruptcy estate at the time, are void ab initio.
2. The voided liens include liens imposed on the following property:
  - a) Real property at 509 Harvey Avenue, Daytona Beach, FL 32218.
  - b) Real property at 21 South Peninsula, Daytona Beach, FL 32218.
  - c) Real property at 121 South Grandview, Daytona Beach, FL 32218.
  - d) Real property at 317 North Hollywood, Daytona Beach, FL 32218.
  - e) Real property at 216 Morningside, Daytona Beach, FL 32218.
  - f) Real property at 319 North Hollywood, Daytona Beach, FL 32218.
  - g) Real property at 229 North Hollywood, Daytona Beach, FL 32218.
  - h) Real property at 358 Nautilus Avenue, Daytona Beach, FL 32218.