

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re)	Bankruptcy Case No. 87C-01916
)	
CASCADE ENERGY & METALS CORPORATION,)	Chapter 11
)	
Debtor.)	
)	
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CASCADE ENERGY & METALS CORPORATION,)	Adversary Proceeding No. 88PC-0861
)	
Plaintiff,)	
)	
vs.)	
)	
JEFFREY G. BANKS, et al.)	
)	
Defendants.)	DECISION AND ORDER

A continued hearing was held on May 2, 1989, on plaintiff's Amended Motion for Summary Judgment Regarding Issue of a Lien Filed Against Debtor's Property in California and Defendants' Status as a Secured Creditor, filed February 22, 1989. Plaintiff, Cascade Energy & Metals Corporation, was represented by Delano S. Findlay;

and the Associate Defendants and Gold Technics Defendants were represented by Geoffrey W. Leonard.

The court heard arguments of counsel and took the matter under advisement. The court has carefully reviewed the pleadings on file and the parties' memoranda and supporting exhibits, and has made an independent review of pertinent authorities. Being now fully advised, the court will render its decision on the issue of whether the lien described in the September 16, 1985, judgment of the United States District Court for the District of Utah in *Cascade Energy & Metals Corp. v. Banks, et al.*, Civil No. C-82-1223C (the "equitable lien"), is a valid and perfected lien on property of the plaintiff. This decision addresses both the plaintiff's and the Associate Defendants' related motions concerning the equitable lien issue.

BACKGROUND

On September 16, 1985, the United States District Court for the District of Utah in *Cascade Energy & Metals Corp. v. Banks, et al.*, Civil No. C-82-1223C, entered a Final Judgment that awarded, *inter alia*, money judgments for the Associate Defendants and the Gold Technics Defendants. The court also awarded an equitable lien on certain specified mining claims situated in San Bernardino County, California, to secure payment of the money judgment awarded to the Associate Defendants. The equitable

lien was to be effective from December 31, 1980, subject to the rights of non-parties who acquired adverse interests in the property in good faith and without notice.

On April 10, 1986, a copy of the district court judgment was recorded in the Recorder's Office of San Bernardino County, California.

On June 16, 1986, the district court stayed execution on the judgment for sixty days (which period was later extended) and ordered that the plaintiff's posting of a satisfactory supersedeas bond would stay all execution on the district court judgment during the pendency of the parties' appeal to the United States Court of Appeals for the Tenth Circuit. The district court's order also provided that upon plaintiff's posting of a satisfactory bond, the defendants would be required to release a lis pendens encumbering plaintiff's property. The court further stated: "At such time as the Final Judgment shall be paid in full, the [equitable] lien placed against the Telegraph Mine property by the Court as described in the Final Judgment of the Court in this matter shall immediately be released." The court's order did not specifically address the effect of plaintiff's posting of a supersedeas bond on the equitable lien.

On October 7, 1987, the district court, after approving the adequacy of the security for the supersedeas bond and denying the defendants' Motion to Increase the Bond, ordered the defendants to release the lis pendens.

DECISION

It is clear that the district court awarded the Associate Defendants an equitable lien on the property specifically described in the judgment dated September 16, 1985. The Associate Defendants' equitable lien is a judicially declared right to have the specified property subjected to payment of their judgment, as a charge on the property. *See, e.g., Caldwell v. Armstrong*, 342 F.2d 485, 490 (10th Cir. 1965); *Dias v. Sacramento County Welfare Dept. (In re Dias)*, 70 B.R. 424, 427-28 (Bankr. E.D. Cal. 1987); *Brunson v. Babb*, 145 Cal. App. 2d 214, 302 P.2d 647, 656-57 (Cal. Dist. Ct. App. 1956); 42 Cal. Jur. 3d *Liens* § 10. Plaintiff's posting of the supersedeas bond did not have the effect of terminating or extinguishing that equitable lien or of vacating the district court judgment. Rather, the posting of the bond stayed execution on the judgment and thus enforcement of the equitable lien.

Notwithstanding that the equitable lien was not extinguished, the court believes that the lien was not properly perfected. Although the equitable lien in this case arose some time prior to the district court's judgment, *see, e.g., Hise v. Superior Court*, 21 Cal. 2d 614, 134 P.2d 748, 755 (Cal. 1943), the lien was judicially declared and adjudicated by the district court in the September 16, 1985, judgment and thus made effective except as to the rights of non-parties who acquired adverse interests in the property in good faith and without notice. *See Holder v. Williams*, 167 Cal. App. 2d 313,

334 P.2d 291, 293 (Cal. Dist. Ct. App. 1959); *New v. New*, 148 Cal. App. 2d 372, 306 P.2d 987, 993 (Cal. Dist. Ct. App. 1957) (equitable lien is not cognizable until it is declared by the court); 42 Cal. Jur. 3d *Liens* § 10; *see also Sheldon Appel Co. v. Albert & Olier*, 47 Cal. 3d 863, 765 P.2d 498, 512 (Cal. 1989) ("right of a court to impose an equitable lien"). For a federal district court judgment (and thus the judicial declaration of a lien right in this case) to be a recordable, enforceable, and recognized judgment in another state, that judgment must be final by appeal or expiration of time for appeal¹ and registered in an appropriate district within that state by filing a certified copy of such judgment. 28 U.S.C. § 1963. Only when that judgment is so registered shall it have the same effect as a judgment of the district court of the district where registered and be enforced in a like manner. *Id.* Until then, the foreign² judgment, and its consequent lien declaration, has no force or effect in that jurisdiction. The court believes, based on its independent review of California law, that a foreign judgment that is not registered with an appropriate court in California is not a recordable document affecting the title to real property located in that state.³ And under California law,

¹28 U.S.C. § 1963 does not authorize registration of a judgment in another federal district during the pendency of an appeal, even though the judgment debtor has not yet filed a supersedeas bond to obtain a stay. *See, e.g., Abegglen v. Burnham*, 94 F. Supp. 484 (D. Utah 1950).

²The court uses the term "foreign" simply to refer to judgments rendered outside the state of California.

³The court is aware of Cal. Gov't Code § 27280 which provides that "[a]ny instrument or judgment affecting the title to or possession of real property may be recorded." The court believes, however, that for a federal district court judgment to affect title to real property located in California, it
(continued...)

recordation of a document not entitled to be recorded does not give constructive notice either of its existence or of its terms. *See Dreifus v. Marx*, 40 Cal. App. 2d 461, 104 P.2d 1080, 1083 (Cal. Dist. Ct. App. 1940); *Hale v. Pendergrast*, 42 Cal. App. 104, 183 P. 833, 835 (Cal. Dist. Ct. App. 1919); 55 Cal. Jur. 3d *Records and Recording Laws* §§ 21-23, 37, 41.

Based on the foregoing, this court believes that the Associate Defendants' recording in California of the judgment from the District of Utah does not give constructive notice of the equitable lien to the world. There is no genuine issue of material fact, and the court finds, as a matter of law, that the equitable lien was not properly perfected.

The Associate Defendants have contended that the plaintiff is estopped from denying the validity of the equitable lien as a result of representations of plaintiff's counsel. The court need only conclude and concurrently finds that plaintiff is not estopped from contesting the perfected status of the equitable lien. Further, inasmuch as the court has determined that the equitable lien was not perfected and thus may be avoided by the plaintiff as debtor-in-possession, it is unnecessary to determine whether or not the Associate Defendants had any lien rights on mining claims abandoned prior to the September 16, 1985, judgment, but subsequently reacquired by the plaintiff.

³(...continued)

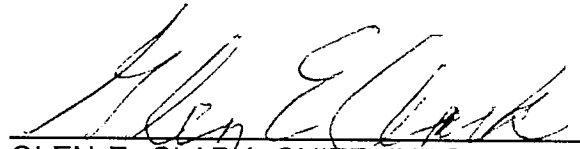
must be enforceable and recognized in that state and thus given the same effect as a judgment rendered in California.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's amended motion for summary judgment with regard to the equitable lien issue is granted. Correspondingly, the Associate Defendants' motion for summary judgment on the equitable lien issue is denied.

DATED this 7 day of July, 1989.

BY THE COURT:



GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT