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CIVIL PRACTICE

Verdict and Judgment: Provide for Discharge of Liens Against Real and Personal Property

CODE SECTION: O.C.G.A. § 9-12-93 (amended)
BILL NUMBER: HB 72
ACT NUMBER: 786
SUMMARY: The Act provides that when a bona fide purchaser has been in possession of real property for four years or personalty for two years, the property shall be discharged from the lien of any judgment against the seller or any predecessor in title.
EFFECTIVE DATE: July 1, 1994

History

HB 72 was introduced to codify the prior interpretation of Code section 9-12-93 given to it by lawyers and title insurance companies.¹ Previously, Code section 9-12-93 sought to discharge real property and personalty from liens only against the *seller* if the property was possessed by a bona fide purchaser for four or two years respectively.² Thus, prior to the amendment, Code section 9-12-93 could have produced the inequitable result of preserving the lien against the property to the extent allowed by Code section 9-12-60³ if the lien was against a predecessor in title other than the seller.⁴ For example, prior to amendment, assume A owned Blackacre, a judgment was obtained against A, and a lien was levied on Blackacre. A then sells Blackacre to a bona fide purchaser, B. B owns the property for less than four years and then sells Blackacre to a bona fide purchaser, C. C owns the property for four years. Since A was not the immediate predecessor in title, or "seller," the lien on the property would not be discharged even though C held the property for four years.⁵

Fortunately, lawyers, title searchers, and courts have not interpreted the Code section in this fashion.⁶ Following the suggestion of the

1. Telephone Interview with Rep. Ray Holland, District No. 157 (Apr. 5, 1994) [hereinafter Holland Interview]. Rep. Holland was the sponsor of HB 72. *Id.*

2. O.C.G.A. § 9-12-93 (1993), amended by *id.* § 9-12-93 (Supp. 1994).

3. O.C.G.A. § 9-12-60 generally provides for lapsing of judgment liens after a seven-year period. *Id.* § 9-12-60 (1993).

4. Holland Interview, *supra* note 1.

5. *Id.*

6. *Id.*

Lawyer's Title Insurance Corporation, Representative Holland introduced HB 72 to preclude the potential inequitable results of this law.⁷

HB 72

The Act amends Code section 9-12-93 to provide that judgment liens against the seller or any predecessor in title shall be discharged if a bona fide purchaser has been in possession of real property for four years or personal property for two years.⁸ Under HB 72, as introduced, a discharge from a lien levied against a predecessor in title was extended only to real property.⁹ The House Committee on Special Judiciary offered a committee substitute that extended the discharge provision to any predecessor in title of personalty.¹⁰ Therefore, after the committee substitute, the bill applied equally to realty and personalty with the exception of the period of time required before the lien against the property would be discharged.¹¹ After a floor amendment which provided that "[n]othing contained herein shall be construed to otherwise affect the validity or enforceability of such judgment, except to discharge such property from any such lien of judgment," the bill passed both houses.¹²

Under Code section 9-12-93, as amended, if A owns Blackacre, a judgment has been obtained against A, and a judgment lien exists on Blackacre, then a bona fide purchaser, B, may buy Blackacre, hold it for less than four years, then sell Blackacre to bona fide purchaser C. If C then holds blackacre for four years, the judgment lien against Blackacre would be discharged.¹³

Arguably, under Code section 9-12-93, as amended, if A owns Blackacre, a judgment has been obtained against A, and a judgment lien exists on Blackacre, then a bona fide purchaser, B, may buy Blackacre, hold it for two years, then sell Blackacre to bona fide purchaser C. If C then holds blackacre for two additional years, the judgment lien against Blackacre would be discharged.¹⁴ In other words, HB 72 could be construed to authorize "tacking" of time

7. *Id.*

8. O.C.G.A. § 9-12-93 (Supp. 1994).

9. HB 72, as introduced, 1994 Ga. Gen. Assem.

10. HB 72 (HCS), 1994 Ga. Gen. Assem.

11. *Id.*

12. HB 72, (HFACS), 1994 Ga. Gen. Assem.

13. Holland Interview, *supra* note 1; see O.C.G.A. § 9-12-93 (Supp. 1994).

14. See O.C.G.A. § 9-12-93 (Supp. 1994).

analogous to tacking in the adverse possession context. However, the General Assembly did not intend this interpretation.¹⁵

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15. Holland Interview, *supra* note 1. The above scenario was discussed with Rep. Holland and may become the subject of further amendments. *Id.*