

IN THE CHANCERY COURT FOR THE
TWENTIETH JUDICIAL DISTRICT OF TENNESSEE,
AT NASHVILLE

GENASH LLC,

Plaintiff,

vs.

ROSE LEGACY, LLC,

Defendant.

Case No. 20-1295-IV

ROSE LEGACY, LLC,

Counterclaimant,

vs.

GENASH LLC,

Counter-Defendant.

JURY DEMANDED

ROSE LEGACY LLC'S MOTION TO VOID PREMATURE JUDGMENT
LIEN, MOTION FOR EXPEDITED HEARING, AND
SUPPORTING MEMORANDUM

Rose Legacy, LLC ("Rose Legacy") moves the Court for an expedited hearing on this motion and to enter an order:

1. Declaring that the purported judgment lien registered by GENash LLC ("GENash") and encumbering Rose Legacy's real property at 311 Third Avenue South in Nashville, Tennessee (the "Property") is premature, void, and unenforceable and ordering GENash to immediately register the release of that purported lien; or

2. Alternatively, to the extent the Court determines the judgment lien is not premature, ordering that at the closing of the pending sale of the Property, Rose Legacy shall deposit 125% of the judgment amount with the Clerk and Master and GENash's

purported lien shall be automatically and simultaneously removed from the Property and placed on the deposited funds.

In support of this motion, Rose Legacy relies on the attached declaration of Daniela Agnoletti, its supporting memorandum below, and the entire record in this case.

FACTS

As the Court is aware, Rose Legacy owns the real property at 311 Third Avenue South in Nashville, Tennessee (the “Property”), which is under contract to be sold. Agnoletti Declaration at ¶¶ 2–3. The closing of that sale is imminent.¹ *Id.*

The Court entered judgment against Rose Legacy on November 1, 2023, and GENash registered a copy of the judgment with the Davidson County Register of Deeds the same day. *Id.* at 4. That judgment constitutes an encumbrance upon Rose Legacy’s title to the Property and is impeding its ability to close on the sale of the Property. *Id.* at 5.

ARGUMENT

GENash has violated Tenn. R. Civ. P. 62’s automatic stay of enforcement of non-final judgments by registering the Court’s judgment against the Property before it is final and enforceable. GENash’s premature registration of the judgment has encumbered the Property, is impeding Rose Legacy’s ability to close on the sale of the Property and

¹ Due to confidentiality obligations, Rose Legacy is not disclosing the expected closing date in this motion. If the Court determines disclosure of this information is necessary to resolve Rose Legacy’s motion to void GENash’s premature judgment lien, Rose Legacy requests permission to provide that information to the Court under seal for *in camera* review.

is an improper attempt by GENash to force Rose Legacy to pay a judgment it is not yet and may never be entitled to enforce.

A judgment does not become final until thirty days after entry: “The passage of thirty days after the entry of the trial court's final order is significant. Orders resolving all the claims between all the parties become final thirty days after they are entered, unless a party files one of the post-trial motions specified in Tenn. R. App. P. 4(a) in a timely manner. A trial court loses jurisdiction over a case once its judgment has become final, and it cannot modify the judgment even if the parties agree to the trial court's action.” *Chorost v. Chorost*, 2003 WL 21392065, at *4 (Tenn. Ct. App. June 17, 2003) (cleaned up). If a party files post-trial motions pursuant to Tenn. R. Civ. P. 59, the judgment does not become final until thirty days after entry of the order disposing of those motions. Tenn. R. App. P. 4(b). Thus, a judgment does not become final until the trial court loses the ability to revise it.

A judgment may not be enforced until it is final. Tenn. R. Civ. P. 62 is titled “Stay of Proceedings to Enforce a Judgment.” Tenn. R. Civ. P. 62.01 provides that “no execution shall issue upon a judgment, nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry,” and Tenn. R. Civ. P. 62.02 extends that stay during the pendency of post-trial motions and for thirty days after entry of the order disposing of those motions.

A judgment lien is a means of enforcing a judgment. Tenn. R. Civ. P. 69, titled “Execution on Judgments,” provides multiple tools for enforcing a judgment. Rule

69.07, titled "Execution on Realty," authorizes enforcement of a judgment by executing on realty, and subsection (2), titled "Judgment Lien," authorizes enforcement of a judgment by registering the judgment as a lien. Because a judgment may not be enforced until it is final, a judgment lien is a means of enforcing a judgment, a judgment lien may not be registered until the judgment is final and enforceable.

Given Rose Legacy's pending post-trial motions, the Court's judgment in this case is not yet final and therefore is not yet enforceable. That judgment will not become final and enforceable unless and until thirty days after this Court denies Rose Legacy's post-trial motions. Thus, GENash has no right to take any action to enforce the judgment, including registering a purported judgment lien against the Property.

GENash's improper, premature lien is impeding the closing of the sale of the Property by encumbering Rose Legacy's title to the Property. By encumbering the Property, GENash has made it impossible for Rose Legacy to sell the Property unless Rose Legacy pays GENash the judgment in full. In other words, by prematurely registering the judgment as lien, GENash has gained what Rule 62 denies it: the ability to force Rose Legacy to pay the judgment. This violates the letter, spirit, and policy of Rule 62 that a party should not be forced to pay a judgment until the trial court has fully resolved post-trial motions and lost the power to modify its judgment.

"Trial courts possess inherent, common-law authority to control their dockets and the proceedings in their courts." *Hodges v. Att'y Gen.*, 43 S.W.3d 918, 921 (Tenn. Ct. App. 2000). "It is well-settled that Tennessee courts are afforded broad inherent authori-

ty over their court proceedings.” *Baxter Bailey Invs. LLC v. APL Ltd. Inc.*, 2015 WL 5560563, at *6 (Tenn. Ct. App. Sept. 21, 2015). A court’s inherent powers are “those powers that are necessary to the court’s existence and to the effective and orderly exercise of its jurisdiction.” *Id.* (cleaned up). Thus, the Court has inherent authority to enforce Rule 62’s stay and correct GENash’s violation of that stay.

Because GENash’s purported judgment lien violates Rule 62, the Court should declare the lien premature, void, and unenforceable and order ordering GENash to immediately register the release of the purported lien.

Alternatively, to the extent the Court determines the judgment lien is not premature, pursuant to Tenn. R. Civ. P. 67.02 and its inherent powers as a court of equity, the Court should order that at the closing of the pending sale of the Property, Rose Legacy shall deposit 125% of the judgment amount² with the Clerk and Master and GENash’s purported lien shall be automatically and simultaneously removed from the Property and placed on the deposited funds. *Cf. Weaver v. Hamrick*, 907 S.W.2d 385, 391 (Tenn. 1995) (“When a debtor’s property is sold by order of a court, the court may direct that the property be sold free of encumbrances with the judgment liens being transferred to the funds.”). Transferring the judgment lien from the Property to funds equaling the

² Tenn. Code Ann. § 27-1-124(a) provides: “If a plaintiff in a civil action obtains a judgment under any legal theory, the amount of the appeal bond necessary to stay execution during the course of all appeals or discretionary reviews of that judgment by any appellate court shall not exceed the lesser of twenty-five million dollars (\$25,000,000) or one hundred twenty-five percent (125%) of the judgment amount.”

maximum appeal bond amount would more than adequately secure GENash's judgment.³

Given the imminent closing date for the sale of the Property, Rose Legacy respectfully requests an expedited hearing but, in the event the Court does not grant that relief, is alternatively setting this motion on Court's regular motion docket in accordance with the local rules.

CONCLUSION

For the reasons stated above, Rose Legacy requests the Court grant the relief described above and any other necessary or proper relief.

Respectfully submitted:

/s/ W. Justin Adams

W. Justin Adams (TNBPR 022433)

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Counsel for Rose Legacy, LLC

³ In the event Rose Legacy appeals from the judgment, this amount would also satisfy the requirement of posting an appeal bond.

NOTICE OF HEARING

THIS MOTION IS REQUESTED TO BE SET FOR AN EXPEDITED HEARING BUT IF THAT RELIEF IS NOT GRANTED, IS EXPECTED TO BE HEARD AT 9 A.M. ON FEBRUARY 9, 2024 IN PART IV OF THE DAVIDSON COUNTY CHANCERY COURT.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing was served on January 26, 2023 via email pursuant to Tenn. R. Civ. P. 5.02 on the following:

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