

**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

GENASH LLC,)	
)	
Plaintiff,)	
)	
v.)	
)	Case No. 20-1295-IV
ROSE LEGACY, LLC, as successor in)	
interest to AGNOLETTI PROPERTIES,)	
LLC,)	
)	
Defendants.)	
ROSE LEGACY, LLC, as successor in)	
interest to AGNOLETTI PROPERTIES,)	
LLC,)	
)	
Counter-Plaintiff,)	
)	
v.)	
)	
GENASH LLC,)	
)	
Counter-Defendant.)	

**GENASH LLC’S RESPONSE IN OPPOSITION TO ROSE LEGACY, LLC’S MOTION
TO VOID PREMATURE JUDGMENT LIEN**

Rose Legacy, LLC’s Motion to Void Premature Judgment Lien should be denied because the judgment lien is not premature, GENash LLC has not violated the automatic stay, and GENash’s recording of its judgment lien is expressly permitted by Tennessee law. Rose Legacy’s alternative request for an order “automatically and simultaneously” removing the judgment lien at closing should also be denied because Rose Legacy has not satisfied applicable legal requirements and there are compelling discretionary reasons for the Court to refuse to order the removal of the judgment lien in this case.

BACKGROUND

This Court entered final judgment on all claims in this case on November 1, 2023, awarding GENash \$725,249.37 in damages. Final Order of Judgment at 7 (entered Nov. 1, 2023). GENash recorded that final judgment with the Davidson County Register of Deeds the same day. Also the same day, GENash's counsel sent a copy of the recorded judgment to Rose Legacy's counsel. Decl. of A. Mohan at ¶¶ 3-4 & Ex. 1 (attached as **Exhibit A** to GENash's response to Rose Legacy's request for an expedited hearing) (filed Jan. 29, 2024).

For nearly three months, Rose Legacy did nothing. Then, after 9:00 p.m. on Friday, January 26, 2024, Rose Legacy filed a "Motion to Void Premature Judgment Lien." Rose Legacy claims that GENash's judgment lien is impeding the sale of what GENash believes to be Rose Legacy's sole asset of any substantial value—the former Gino's East restaurant property. Rose Legacy's motion seeks two forms of relief: (1) an order declaring GENash's judgment lien void and ordering GENash to release the lien; or, alternatively, (2) an order requiring Rose Legacy to deposit 125% of the judgment amount with the Clerk & Master on the date of closing and ordering that GENash's lien "shall be automatically and simultaneously removed from the Property." Motion at 1-2.

Critically, through this pending sale, Rose Legacy is seeking to dissipate what may be the sole asset from which GENash can collect not only its existing judgment of \$725,249.37 (plus post-judgment interest), but also any future judgments for attorneys' fees incurred on appeal or any judgment at a second trial in the unlikely event that a new trial is granted on appeal. Section 26 of the Lease Agreement provides: "Tenant shall look solely to Landlord's interest in the Building for the satisfaction of any judgment or decree requiring the payment of money by Landlord and no other property or asset of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of such judgment or decree." *See* Lease Agreement § 26

(attached hereto as **Exhibit 1**). To the extent this provision is enforceable,¹ Rose Legacy may use it in an effort to prevent GENash from collecting its attorneys' fees incurred on appeal under the Lease Agreement's fee-shifting provision if it is able to successfully sell the property to a third party before any appeal concludes. *See* Ex. 1, Lease Agreement § 29(l) (prevailing party is entitled to recover fees "incurred in prosecuting or defending any appeal" and "for any supplemental proceedings until final judgment is satisfied in full"). And in the unlikely event of a retrial following appeal, Rose Legacy may try to use this provision to render itself *entirely judgment proof* at any second trial, if it no longer possesses the sole asset from which GENash can collect any judgment.

ARGUMENT

Rose Legacy is not entitled to any relief because GENash's judgment lien is not premature and because Rose Legacy has not satisfied the legal requirements to obtain removal of a judgment lien. There are also compelling discretionary reasons to deny Rose Legacy's motion. Finally, if the Court is inclined to grant Rose Legacy any relief, GENash respectfully requests that the Court stay its ruling to allow GENash to obtain immediate appellate review of the ruling under Tennessee Rule of Appellate Procedure 7, before the closing occurs and Rose Legacy's sole asset becomes potentially unreachable.

I. The judgment lien is not premature, and GENash has not violated the automatic stay.

A. GENash's judgment lien is not premature.

By statute, judgments in Tennessee become liens upon the judgment debtor's real property the moment they are recorded in the Register's Office. Tenn. Code Ann. § 25-5-101(b)(1) (judgments obtained after July 1, 1967 "shall be liens upon the debtor's land *from the time a*

¹ GENash does not concede that this provision is enforceable and reserves all arguments it may have against the enforcement or application of this provision.

certified copy of the judgment or decree shall be registered in the lien book in the register’s office of the county where the land is located.” (emphasis added)). As explained below, there is nothing improper about recording a judgment the day it is entered. To the contrary, failing to do so risks subordinating that judgment lien to the interests of other creditors who record their liens first.

The word “judgment” in Tenn. Code Ann. § 25-5-101 refers to a “final judgment.” *Andrews v. Fifth Third Bank*, 228 S.W.3d 102, 112 (Tenn. Ct. App. 2007); *see also Hitachi Cap. Am. Corp v. Cmty. Tr. & Banking Co.*, 2016 WL 5210860, at *3 (Tenn. Ct. App. Sept. 20, 2016) (“A lien on real property is perfected when a final judgment is recorded in the register’s office of the county where the subject property is located.”). “[A] judgment is final for purposes of perfecting a judgment lien” if either “(1) the court expressly designated it as a final judgment pursuant to Tennessee Rule of Civil Procedure 54.02; or (2) the order adjudicated all claims in the action.” *Id.* at 108; *see also Hitachi Cap.*, 2016 WL 5210860, at *3 (restating this rule).

Here, the judgment that GENash recorded on November 1, 2023 was final under the second prong because the order adjudicated all claims in the action. Final Order of Judgment at 7 (entered Nov. 1, 2023) (“With no matters remaining before this Court, this Final Order of Judgment and the Court’s Order on Jury’s Verdict constitute a final judgment for which post-judgment interest shall accrue and execution may issue if necessary.”). Thus, GENash’s judgment lien was valid and effective the moment it was recorded on November 1, 2023. *See Andrews*, 228 S.W.3d at 107-09 (holding that a final judgment that adjudicates all claims is valid and effective as a lien the moment it is recorded); *Hitachi Cap.*, 2016 WL 5210860, at *3 (same).

There is no requirement that a judgment creditor wait until the 30-day deadline to file post-trial motions or a notice of appeal has run before recording a final judgment. *See, e.g., Weaver v. Hamrick*, 907 S.W.2d 385, 387 (Tenn. 1995). In *Weaver*, the judgment creditor obtained its

judgment on January 19, 1990 and, like GENash in this case, recorded it in the Register’s Office “that same day.” *Id.* The Tennessee Supreme Court held that the judgment lien was effective “[u]pon recording . . . in the County Register’s Office” and therefore “had priority” over another judgment lien that was recorded on a later date. *Id.* Given the priority consequences of failing to immediately record a judgment, judgment creditors in Tennessee routinely record their judgments shortly after they are entered, well before 30 days after their entry. *See, e.g., id.* at 387 (judgment recorded the same day it was entered); *Hitachi Cap.*, 2016 WL 5210860, at *1 (judgment recorded on November 1, 2010, 6 days after it was entered); *Halford v. Gunn*, 2007 WL 2380300, at *2 (Tenn. Ct. App. Aug. 22, 2007) (judgment recorded on December 10, 2002, 7 days after it was entered); *Ingle v. Head*, 2007 WL 4530825, at *1 (Tenn. Ct. App. Dec. 26, 2007) (judgment recorded on February 12, 2003, 19 days after it was entered).

The Tennessee Court of Appeals has squarely rejected Rose Legacy’s argument that a judgment creditor may not record its judgment lien before the appeal deadline runs. *See Halford v. Gunn*, 2007 WL 2380300, at *3-6 (Tenn. Ct. App. Aug. 22, 2007). *Halford* involved a judgment creditor who obtained a judgment in general sessions court on December 3 and recorded a judgment lien 7 days later, on December 10. *Id.* at *2; *see also id.* at *4 (explaining that the “judgment . . . was filed in the Gibson County Register’s Office on December 10, 2002, which satisfied the statutory prerequisites for creation of a lien pursuant to Tenn. Code Ann. § 25-5-101(b)(1)”). The losing party then appealed the judgment to circuit court, and, in the meantime, sold the encumbered property to a third party. *Id.* at *4. In subsequent litigation between the losing party and the third-party purchaser of the encumbered property, the losing party argued that the judgment lien was invalid because the judgment was “not a ‘final judgment’” when recorded since he had “appealed the . . . judgment” to circuit court, and his appeal was still pending. *Id.* The Court

of Appeals rejected that argument and held that the judgment lien operated as a valid and effective “encumbrance . . . on the subject property” notwithstanding the pending appeal that was filed *after* the judgment lien was recorded. *Id.* at *5-6.

Thus, there was nothing improper about GENash recording its judgment the day it was entered, as the judgment creditor in *Weaver* did, and before the appeal deadline had run, as in *Halford*. Indeed, failing to do so would have been reckless, as “the failure to record leaves the [judgment debtor’s] real property vulnerable to [other] creditors, who can seize the land to satisfy . . . outstanding debt.” *Holiday Hosp. Franchising, Inc. v. States Res., Inc.*, 232 S.W.3d 41, 48 (Tenn. Ct. App. 2006); *see also id.* at 53 (“[T]he judgment lienor’s interest attaches upon the filing of the judgment in the appropriate office . . .”). Only by immediately recording its judgment could GENash “place the world on notice” of its interest in Rose Legacy’s property and ensure that its judgment lien would be “effective as against all the world.” *Id.* at 48.

B. GENash has not violated the automatic stay.

Rule 62.01 provides that, with certain exceptions, “no execution shall issue upon a judgment, nor shall proceedings be taken for its enforcement until the expiration of 30 days after its entry.” Tenn. R. Civ. P. 62.01. Rose Legacy contends that GENash violated this automatic stay by recording its judgment lien on November 1, 2023. That is incorrect: under controlling Tennessee precedent, recording a judgment lien is neither “execution” nor “enforcement” of a judgment.

“A lien itself is not a method to execute on a judgment; rather, it secures the judgment creditor’s right to collect on its judgment from the equity in a judgment debtor’s real property.” 50 C.J.S. Judgments § 743. In contrast to recording a judgment lien, “execution” is “defined as ‘judicial enforcement of a money judgment, usually by seizing and selling the judgment debtor’s property’ and also as ‘a court order directing a sheriff or other officer to enforce a judgment,

usually by seizing and selling the judgment debtor’s property.” *State ex rel. Slatery v. HRC Med. Centers, Inc.*, 2022 WL 2092689, at *3 (Tenn. Ct. App. June 10, 2022) (cleaned up) (quoting *Execution*, Black’s Law Dictionary (11th ed. 2019)). Under Rule 69.07, there are two ways to execute on or enforce a judgment secured by a judgment lien: “the judgment creditor has the option of taking the clerk-issued writ of execution to the sheriff or moving for an order of sale.” *Id.* at *4 (citing Tenn. R. Civ. P. 69.07). GENash has done neither of those things and thus has not violated the automatic stay. Rose Legacy remains in possession of the former Gino’s East property.

The distinction between *recording* a judgment lien (which merely preserves one’s priority against other creditors and gives notice to potential purchasers of the property) and *executing* on a judgment lien is well established in Tennessee law. *See, e.g., Weaver*, 907 S.W.2d at 390 (“Thus, First Tennessee and Tri–City were enjoined from *executing* on their judgment liens against the Dry Branch Road property for as long as the automatic stay remained in effect.” (emphasis added)); *ATS, Inc. v. Kent*, 27 S.W.3d 923, 924 (Tenn. Ct. App. 1998) (explaining that, under a prior version of the judgment lien statutes, a “judgment creditor must *execute* upon the lien within three years of the entry of the judgment” (emphasis added)). GENash has not attempted to execute on its judgment lien or moved for an order of sale, and it will not do so in violation of the automatic stay in Rule 62.01.

Even if GENash *had* attempted to execute on or enforce its judgment lien (it has not), that action would be permitted in these circumstances under an exception to the automatic stay in Rule 62.01. Under that rule, “[t]he party in whose favor judgment is entered may also obtain execution or take proceedings to enforce the judgment prior to expiration of the 30-day period if the party against whom judgment is entered is about fraudulently to dispose of, conceal or remove his or her property, thereby endangering satisfaction of the judgment.” Tenn. R. Civ. P. 62.01. As discussed

in detail below, *infra* Part II, Rose Legacy's pending sale may endanger satisfaction of the existing judgment and any future judgments for attorneys' fees incurred on appeal or damages at a second trial, particularly if Rose Legacy invokes Section 26 of the Lease Agreement in an effort to limit GENash's ability to collect any judgment solely to the property Rose Legacy is currently trying to sell to a third party and thus place outside of GENash's reach. *See* Ex. 1, Lease Agreement § 26 (purporting to limit GENash's ability to satisfy any judgment solely to the former Gino's East property). Under these circumstances, the pending sale would certainly qualify as fraudulent as to GENash, which is both a present and likely future creditor of Rose Legacy. *See, e.g., In re Est. of Ralston*, 2013 WL 1804291, at *6 (Tenn. Ct. App. Apr. 29, 2013). These circumstances thus warrant an order "to preserve the status quo [and] the effectiveness of any judgment that may subsequently be entered" on GENash's claims for attorneys' fees on appeal or damages and pre-judgment interest following a second trial. Tenn. R. Civ. P. 62.08.

II. The Court should not order the removal of the judgment lien.

Rose Legacy alternatively requests that the Court decree that GENash's judgment lien be removed "automatically and simultaneously" at closing so that Rose Legacy can sell its sole asset to a third party and jeopardize GENash's ability to collect what it is owed at the conclusion of this litigation. Motion at 2, 5. The Court should deny that alternative request for many reasons.

To begin, no provision of law authorizes a court to decree that a judgment lien shall be "automatically and simultaneously" removed from the register's office at the closing of a real estate transaction. Instead, the removal of a judgment lien is governed by specific criteria set forth in Rule 62.05 of the Tennessee Rules of Civil Procedure. But notably, Rose Legacy has not even invoked Rule 62.05, much less tried to satisfy its requirements. Rose Legacy has therefore waived any argument under Rule 62.05. *See Sneed v. Bd. of Pro. Resp. of Supreme Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010) ("It is not the role of the courts, trial or appellate, to research or construct a

litigant's case or arguments for him or her, and where a party fails to develop an argument in support of his or her contention or merely constructs a skeletal argument, the issue is waived.”).

Even if Rose Legacy had invoked Rule 62.05, it has not satisfied its requirements. Under Rule 62.05, a court “upon motion *may* order the judgment creditor to remove any judgment lien from the register's office,” but only if “the amount of a judgment is fully bonded as provided in subsection (1)” of Rule 62.05. Tenn. R. Civ. P. 62.05(3) (emphasis added). Here, the amount of the judgment is not fully bonded as provided in subsection (1). Rose Legacy has not given any bond to obtain a stay of execution, and it cannot do so until “*at or after* the time of filing the notice of appeal,” which has not occurred yet. Tenn. R. Civ. P. 62.04 (emphasis added). Moreover, a stay pending appeal would become effective only once “the bond is approved by the court.” Tenn. R. Civ. P. 62.04. None of these prerequisites to relief under Rule 62.05 has occurred yet; they may never occur; and the adequacy of any bond submitted by Rose Legacy may be subject to litigation.

For these reasons, Rose Legacy has not satisfied Rule 62.05, and its request for this Court to order the removal of GENash's judgment lien is at best premature. The Court should not bend the Rules of Civil Procedure to facilitate Rose Legacy's dissipation of its sole asset to a third party.

Even if Rose Legacy *had* satisfied the requirements of Rule 62.05, the decision whether to order the removal of a judgment lien is a discretionary one for the Court. *See* Tenn. R. Civ. P. 62.05(3) (the court “*may* order the judgment creditor to remove any judgment lien,” but it is not required to do so (emphasis added)). Here, there are compelling reasons for the Court to exercise its discretion not to order GENash to remove its judgment lien.

Most significantly, Section 26 of the Lease Agreement purports to limit GENash's ability to collect any judgment solely to the property Rose Legacy is currently trying to sell to a third party: “Tenant shall look solely to Landlord's interest in the Building for the satisfaction of any

judgment or decree requiring the payment of money by Landlord and no other property or asset of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of such judgment or decree.” Ex. 1, Lease Agreement § 26. Thus, if Rose Legacy is able to successfully sell the property to a third party, Rose Legacy may seek to use this provision to render itself judgment proof in two separate ways that could prevent GENash from being made whole at the conclusion of this litigation.

First, even if Rose Legacy eventually posts bond in an amount sufficient to secure the *existing* judgment of \$725,249.37, GENash will be entitled to recover its attorneys’ fees incurred on appeal if the judgment is affirmed under the Lease Agreement’s fee-shifting provision. *See* Ex. 1, Lease Agreement § 29(1) (prevailing party is entitled to recover fees “incurred in prosecuting or defending any appeal” and “for any supplemental proceedings until final judgment is satisfied in full”). GENash’s attorneys’ fees on appeal could easily exceed six figures, and those fees may well be unrecoverable if Rose Legacy is allowed to dissipate its sole asset, the former Gino’s East restaurant, and then distribute the proceeds of that sale to its sole member, Daniella Agnoletti. That is especially true if Rose Legacy is allowed to invoke Section 26 of the Lease Agreement. Thus, allowing the sale to move forward could well render Rose Legacy judgment proof against GENash’s claim for attorneys’ fees incurred on appeal.

Second, in the unlikely event that Rose Legacy succeeds on appeal and secures a new trial on remand, GENash may well proceed with its claim for rescission at any second trial and seek rescission damages of about \$1.8 million, in addition to all attorneys’ fees incurred since entry of the original final judgment. The original jury already found by clear and convincing evidence that Rose Legacy was liable for fraudulent inducement. If GENash were to obtain rescission damages and/or additional attorneys’ fees at a second trial, any existing bond Rose Legacy might post would

be woefully insufficient to satisfy that judgment. And again, if Rose Legacy is allowed to invoke Section 26, Rose Legacy could potentially render itself *entirely judgment proof* at a second trial by transferring the sole asset from which any judgment could be satisfied to a third party. That is yet another reason not to allow Rose Legacy to dissipate its sole asset and potentially make itself judgment proof both for GENash's attorneys' fees on appeal and at any second trial on remand.

III. If this Court grants Rose Legacy any relief, it should stay its ruling to allow GENash to take an immediate appeal before Rose Legacy's sole asset is sold.

In the unlikely event this Court grants Rose Legacy any relief on its motion, GENash respectfully moves the Court to temporarily stay its ruling while GENash takes an immediate appeal of the ruling under Tennessee Rule of Appellate Procedure 7.

Under Appellate Rule 7, GENash is entitled to take an appeal of right to "obtain review of an order entered pursuant to [R]ule 62 of the Tennessee Rules of Civil Procedure," Tenn. R. App. P. 7(a), which includes an order requiring a judgment creditor "to remove any judgment lien from the register's office," Tenn. R. Civ. P. 62.05(3). If this Court orders the removal of GENash's judgment lien (even though Rose Legacy has neither invoked Rule 62.05 nor satisfied its requirements), the Court should stay that ruling while GENash obtains appellate review of that order under Rule 7. A stay will ensure that appellate review occurs *before* Rose Legacy conveys the former Gino's East property to a new owner and potentially renders itself judgment proof on any future claims for attorneys' fees on appeal or damages at a second trial.

Moreover, a stay pending appellate review under Rule 7 will serve the interest of all parties. Consider the scenario in which the Court orders removal of the judgment lien, Rose Legacy closes on the sale of the property before appellate review of that order is concluded, and the Court of Appeals later holds the order to remove the judgment lien invalid. In that case, the new owner of the property will have taken title to an encumbered piece of property that is subject to GENash's

judgment lien, the very result Rose Legacy is currently seeking to avoid. In that scenario, the parties' respective rights regarding the property will be thrown into question, potentially leading to more litigation that now involves a third party. Far better to conclusively resolve the parties' rights through the appellate process under Rule 7 *before* the sale is finally consummated.

CONCLUSION

The Court should deny Rose Legacy's motion in full.

DATED: February 1, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2024 a true and exact copy of the foregoing was served by operation of the Chancery Court's Odyssey e-File & Serve system and/or by email to the following:

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