

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
Southern Division

In re: ) Bankr. No. 97-40015  
 ) Chapter 7  
DARRELL HOOKIE )  
Soc. Sec. No. 503-60-6059 ) MEMORANDUM OF DECISION RE:  
 ) DEBTOR'S MOTION TO AVOID  
Debtor. ) COUNTY POOR LIEN

The matter before the Court is the Motion to Avoid County Poor Lien filed by Debtor. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum of Decision and accompanying Order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that the aid lien of Brookings County shall be voided because it was filed in violation of the automatic stay.

I.

Darrell Hookie filed a Chapter 7 petition on January 7, 1997. Among his unsecured creditors was the Brookings County Auditor for \$8,211.00 for "county poor lien-Sioux Valley Hosp." A discharge order was entered April 14, 1997. The case remains open because the trustee has assets to distribute.

On January 6, 1998, Debtor filed a Motion to Avoid County Poor Lien wherein he asked that a county poor lien held by Brookings County for \$8,745.82 be avoided. No response to the Motion was received. At the Court's request, Debtor supplemented his Motion twice. In the second supplement, Debtor disclosed that after his petition was filed, Brookings County had reimbursed a hospital for pre-petition medical bills. This debt to the county, however, had been scheduled by Debtors in anticipation of the county's payment.

Through Debtor's counsel, the county indicated it did not object to the relief sought.

The matter was taken under advisement in light of the Court's recent decision in *In re Taylor*, Bankr. No. 89-40349, slip op. (March 19, 1998).

## II.

### APPLICATION OF 11 U.S.C. § 524(a) AND S.D.C.L. § 15-26-20.

As discussed in *Taylor*, only judgments, not liens, are discharged under 11 U.S.C. § 524(a) and S.D.C.L. § 15-16-20. Therefore, while the county's contingent claim was discharged under 11 U.S.C. § 727(b), we must look to other law to determine whether the county's aid lien survives Debtor's bankruptcy.

## III.

### EFFECT OF THE AUTOMATIC STAY

Sections 362(a)(4) and (5) prohibits a creditor from taking any action post-petition to "create, perfect, or enforce" a lien against bankruptcy estate property or against the debtor's property to the extent that the claim arose pre-petition. That stay went into effect on January 7, 1997 and was still in effect on February 11 and February 25, 1997 when the County obtained their statutory aid liens under S.D.C.L. § 28-14-5. Accordingly, the automatic stay was violated since the County's actions were an attempt to create and perfect a lien.

Some courts have held that an act in violation of the automatic stay is void ab initio; others say the act is voidable. See *Riley v. United States*, 118 F.3d 1220, 1222 n.1 (8th Cir.



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|---------|------------------|-----------------------------|-------------------------------------------------------------|
| Debtor  | Hookie, Darrell  | 317 Harvey Dunn,            | Brookings, SD 57006                                         |
| Aty     | Pierce, Lee Ann  | 316 Fourth St., PO Box 524, | Brookings, SD 57006-0524                                    |
| Trustee | Lovald, John S.  | PO Box 66,                  | Pierre, SD 57501                                            |
| Aty     | Gering, Bruce J. | Office of the U.S. Trustee, | #502, 230 South Phillipa Avenue, Sioux Falls, SD 57104-6321 |