

CHAPTER XVIII

ATTACHMENTS

STANDARD 18.1

NATURE AND DURATION OF ATTACHMENT

STANDARD: AN ATTACHMENT CONSTITUTES A LIEN UPON AN INTEREST IN REAL PROPERTY WHEN A CERTIFIED COPY OF THE ATTACHMENT, INCLUDING A DESCRIPTION OF THE REAL PROPERTY, IS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED.

THE LIEN OF THE ATTACHMENT CONTINUES UNTIL:

- (A) EXECUTION IS ISSUED AND LEVY MADE AGAINST THE REAL PROPERTY;**
- (B) A REASONABLE PERIOD OF TIME TO REDUCE THE CLAIM TO JUDGMENT HAS ELAPSED AND NO JUDGMENT IS OBTAINED; OR**
- (C) A JUDGMENT IS ENTERED AND NO LEVY IS MADE AGAINST THE REAL PROPERTY WITHIN A REASONABLE PERIOD OF TIME.**

Problem A: An attachment against Blackacre was recorded in 1993. In 2004, a reasonable period of time to obtain a judgment had elapsed, there had been no release of the attachment and no judgment had been obtained by the attaching creditor. Does the attachment constitute a lien on Blackacre?

Answer: No.

Problem B: An attachment against Blackacre was recorded in 1993. On October 24, 1996, a judgment was obtained by the attaching creditor. As of December 24, 1996, there was no execution levy against Blackacre. On December 24, 1996, did the attachment constitute a lien on Blackacre?

Answer: Yes. The Michigan Supreme Court has held that a delay of two months in levying execution after the entry of a judgment is not an unreasonable delay.

Authorities: Problem A: MCL 600.4035. *Avery v Stephens*, 48 Mich 246, 12 NW 211 (1882); *Trowbridge v Bullard*, 81 Mich 451, 45 NW 1012 (1890); *Levy v Gittleson*, 324 Mich 242, 37 NW2d 105 (1949).

Problem B: *Geiges v Greiner*, 68 Mich 153, 36 NW 48 (1888).

Comment A: Dismissal of the suit operates as a release of the attachment. *Orr v Keyes*, 37 Mich 385 (1877); *Roehl Storage Co v Wilson*, 268 Mich 691, 256 NW 598 (1934).

Comment B: An attachment may be discharged of record in accordance with MCL 600.4041.

STANDARD 18.2

PRIORITY AS BETWEEN ATTACHMENT AND UNRECORDED PRIOR CONVEYANCE

STANDARD: AN ATTACHMENT IS A LIEN UPON THE INTEREST IN THE ATTACHED REAL PROPERTY OWNED BY THE DEBTOR AT THE TIME A CERTIFIED COPY OF THE ATTACHMENT IS RECORDED WITH THE REGISTER OF DEEDS. THE INTEREST OF A GRANTEE OR MORTGAGEE OF THE DEBTOR UNDER AN UNRECORDED CONVEYANCE MADE BEFORE THE RECORDING OF THE ATTACHMENT HAS PRIORITY OVER THE ATTACHMENT.

Problem: Oscar Roy, mortgaged Blackacre to Edward Lane. Before the mortgage was recorded, an attachment was recorded against Blackacre in an action brought against Roy. Does the attachment have priority over the mortgage?

Answer: No.

Authorities: MCL 600.4035. *Columbia Bank v Jacobs*, 10 Mich 349 (1862); *French v DeBow*, 38 Mich 708 (1878); *Campbell v Keys*, 130 Mich 127, 89 NW 720 (1902).

Comment: See Standard 19.4 regarding the priority of an execution levy as against a prior unrecorded conveyance.

