A large corporation owned property in fee simple, as the real estate records showed. The corporation entered into a valid written contract to convey the property to a shareholder. At closing, the shareholder paid the price in full and received an instrument in the proper form of a deed, signed by duly authorized corporate officers on behalf of the corporation, purporting to convey the property to the shareholder. The shareholder did not then record the deed or take possession of the property.

Next, a creditor (who had no knowledge of the contract or the deed) obtained a substantial money judgment against the corporation. Then, the shareholder recorded the deed from the corporation. Thereafter, the creditor properly filed the judgment against the corporation.

A statute of the jurisdiction provides: "Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

Afterward, the shareholder entered into a valid written contract to convey the property to a local businessman. The businessman objected to the shareholder's title and refused to close.

The recording act of the jurisdiction provides: "Unless the same be recorded according to law, no conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice."

The shareholder brought an appropriate action to require the businessman to complete the purchase contract.

For whom should the court decide?

A. The businessman, because even though the corporation's deed to the shareholder prevented the creditor's judgment from being a lien on the property, the creditor's filed judgment poses a threat of litigation.

B. The businessman, because the creditor's judgment was obtained before the shareholder recorded the deed from the corporation.

C. The shareholder, because the shareholder received the deed from the corporation before the creditor filed his judgment.

D. The shareholder, because the shareholder recorded her deed before the creditor filed his judgment.

Explanation:

A money judgment is a court order awarding the plaintiff (ie, creditor) a sum of money that the defendant (ie, debtor) must pay. A **judgment lien** is created when:

the creditor obtains a money judgment against the debtor *and*

the **money judgment is properly filed** in the land records (majority rule).

Once a judgment lien is created, it attaches to the debtor's property and (1) prevents the owner from conveying marketable title and (2) remains with the property even if it is later conveyed to another. However, the lien can only attach to property **owned** by the debtor **at the time the lien is filed**.

Here, the creditor filed his judgment against the corporation *after* the shareholder had received the deed from the corporation—ie, when the corporation no longer owned the property. As a result, the judgment lien did not attach to the property, and the shareholder can convey marketable title. The court should therefore find in her favor and require the businessman to specifically perform the purchase contract.

(Choice A) A threat of litigation renders title unmarketable if a third party (eg, the creditor) could reasonably claim a superior interest in the buyer's property. Since the corporation's deed to the shareholder prevented the creditor's subsequent judgment from being a lien on the property, the creditor has no interest in the property. Therefore, though the creditor's filed judgment may pose a threat of litigation, the shareholder can convey marketable title.

(Choice B) The creditor's judgment would have attached to the property only if it had been *filed* before the shareholder received her deed. The fact that it was *obtained* before she recorded her deed is immaterial.

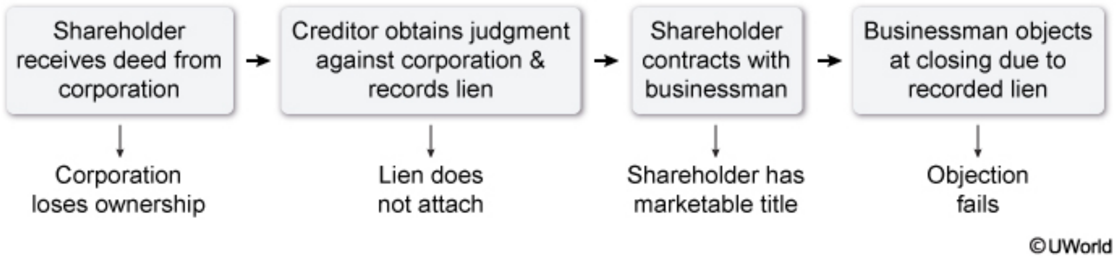
(Choice D) Recording is not required to transfer an interest in property. And since the property transferred to the shareholder when she *received* her deed (before the judgment was filed), she will prevail on that basis instead.

Educational objective:

A properly filed judgment lien attaches to the debtor's property. The lien prevents the owner from conveying marketable title and remains with the property even if it is later conveyed to another. But a judgment lien can only attach to property owned by the debtor at the time the judgment lien is filed.

References

46 Am. Jur. 2d Judgments § 352 (2018) (priority of judgment liens).


Shareholder receives deed from corporation
Creditor obtains judgment against corporation & records lien
Shareholder contracts with businessman
Businessman objects at closing due to recorded lien
Corporation loses ownership
Lien does not attach
Shareholder has marketable title
Objection fails
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