

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
**01 MAY -4 PM 2:37**  
U.S. BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA  
C/A No. 00-11184-W

IN RE:

Margaret J. Lester,

Debtor.

**JUDGMENT**

Chapter 13

**ENTERED**

MAY 04 2001

**D.G.**

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Objection to Plan and Return to Motion to Value filed by the SC Department of Revenue is overruled. Furthermore, Debtor's Motion to Establish Priority of Tax Claim is granted to the extent stated herein. The Department's tax lien is deemed to be junior to the Internal Revenue Service's lien in the amount of \$4,626.00 and the portion of the IRS's avoided lien in the amount of \$2,180.00 which has been preserved for the benefit of the estate. To make this Order operative, Debtor should submit a supplemental order with the IRS's consent or acknowledgment which sets forth that the IRS's lien is avoided to the extent it is unsecured pursuant to §506(d). If no supplemental order is filed within 10 days of the Order, a further hearing will be held and shall be attended by counsel for Debtor, the SC Department of Revenue, and the IRS.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
May 4, 2001.

**CERTIFICATE OF MAILING**  
The undersigned deputy clerk of the United States  
Bankruptcy court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

✓ MAY 4 2001 ✓

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE ✓

**DEBI GREEN**  
Deputy Clerk

✓  
Debt Rev  
(Dusenbury)

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
at \_\_\_ O'clock & \_\_\_ min. \_\_\_ M  
MAY 04 2001  
BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (8)

IN RE:

Margaret J. Lester,

Debtor.

C/A No. 00-11184-W

**ORDER**

Chapter 13

**ENTERED**

MAY 04 2001

**D.G.**

THIS MATTER comes before the Court upon the Objection to Plan and Return to Motion to Value (“Objection to Plan”) filed by the South Carolina Department of Revenue (the “Department”) on March 6, 2001. The Department objects to Margaret J. Lester’s (“Debtor”) motion in the proposed Chapter 13 Plan to value its claim at \$0.00 and further asserts that there is more than sufficient property to fully secure the Department’s lien; therefore, it opposes the confirmation of said Plan. In conjunction with the Department’s Objection to Plan, on March 15, 2001, Debtor filed a Motion to Establish Priority of Tax Claim in which she seeks to value the secured claim of the Department at \$0.00. More specifically, Debtor seeks to establish the Department’s claim as a general unsecured claim. After considering the pleadings in the case and the argument of counsel at the combined hearing on the Objection to Plan and Motion to Establish Priority of Tax Claim, the Court makes the following Findings of Fact and Conclusions of Law.<sup>1</sup>

---

<sup>1</sup> The Court notes that to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

29

## FINDINGS OF FACT

1. Debtor filed for relief under Chapter 13 of the Bankruptcy Code on December 8, 2000.
2. On December 22, 2000, Debtor filed Schedule A which reflected ownership in fee simple of a residence located at 211 McKellar Drive, Greenwood. The market value of the residence was listed as \$35,100. However, on March 2, 2001, Debtor filed an Amended Schedule A listing the market value of the home at \$16,400, pursuant to the Greenwood County tax assessment. The value of the house based on the tax assessment was not contradicted by the Department.
3. USDA has a residential mortgage on the real property in question in the amount of \$11,773.33, as reflected in the Proof of Claim filed on January 16, 2001.
4. Schedule B listed Debtors' personal property which totaled \$6,135.00 in value; however, at the hearing on the matter, both parties agreed that the equity in all of Debtor's personal property, after abandoning the car, was \$2,180.00.<sup>2</sup>
5. Debtor's Schedules also reflected several tax liens.<sup>3</sup> The Proof of Claim filed with the Court by the Internal Revenue Service ("IRS") on January 10, 2001 states the total amount of the claim to be \$20,614.65. According to the Proof of Claim, the amount due is pursuant to two notices of tax liens, one recorded on March 19, 1992 and the second recorded on April 27, 1993.

---

<sup>2</sup> Debtor's personal property was composed of the following: Household Effects & Furniture- \$1,885.00; Cash- \$45.00; Clothing- \$50.00; and Jewelry- \$200.00.

<sup>3</sup> Schedule E reflects a tax lien recorded on March 19, 1992 by the Internal Revenue Service ("IRS") in the amount of \$3,965.74; a second tax lien recorded on September 24, 1992 by the Department in the amount of \$578.77; and a third tax lien filed on April 27, 1993 by the IRS in the amount of \$5,688.76.

The tax lien pursuant to the first tax notice is in the total amount of \$8,796.75<sup>4</sup> while the tax due pursuant to the second notice is in the total amount of \$11,817.90.

6. The Department has a tax lien which was recorded on September 24, 1992. As of March 1, 2001, the amount of the Department's claim was in the amount of \$1,080.55. Therefore, the Department's tax lien is only junior to the IRS's first lien in the amount of \$8,796.75.

7. On March 12, 2001, the IRS filed an Amended Proof of Claim which still reflected the total amount of the claim due as \$20,614.65 but valued the secured portion of the claim at \$4,627.00. The Amended Proof of Claim clearly listed the collateral as including the real estate, motor vehicle, and "all of debtor's right, title and interest to property- 26 U.S.C. §6321."

8. The Chapter 13 Plan filed on December 22, 2000 along with the Schedules proposed to pay the IRS \$300.00 per month and \$25.00 per month to the Department. On February 2, 2001, a confirmation hearing was held to consider the Plan filed on December 22, 2000. An Order was entered stating that the Plan did not comply with the requirements of Chapter 13 and thus the confirmation of the Plan as filed was denied. However, Debtor was given ten days within which to propose and file an Amended Plan.

9. On March 2, 2001, Debtor filed a Notice of Plan Modification Before Confirmation which proposed to value the IRS's claim lien at \$4,627.00 and avoid the remaining lien and also proposed to value the Department's claim at \$0.00. As to the IRS's claim, the Amended Plan specifically provided as follows:

Secured tax debt-- Payments of \$99.00 or more per month to  
Internal Revenue Service on its claim secured by a tax lien until the

---

<sup>4</sup> The amount takes into account the tax due and the penalty and interest on the tax claim due up to the petition date.

net balance plus 10% interest has been paid in full. If lien is to be valued, the debtor hereby moves to value the lien at \$4,627.00 in accordance with SC LBR 3015-1 and the notice attached hereto. The basis of the debtor's value is as follows: Greenwood County Tax Assessor's Appraisal. Liens senior to the above-named creditor are held by the following creditors in the following amounts: USDA Rural Housing \$11,773.33. Of the remaining tax claim, the following amount of \$0.00 will be accorded priority unsecured tax status and the balance of the claim will be accorded general unsecured status and paid in accordance with paragraph 6(a) if a proof of claim is timely filed.

10. On March 6, 2001, the Department filed an Objection to Plan and Return to Motion to Value claiming that the Department's claim was in the proximate amount of \$1,080.55 and asserting that there was more than sufficient property to fully secure its lien.

11. On March 15, 2001, Debtor filed a Motion to Establish Priority of Tax Claim in which it moved to value the Department's secured claim at \$0.00.

12. In its Return to Motion to Establish Priority, the Department argued that, pursuant to S.C. Code Ann. §12-54-120(A)(1), tax liens encumber all of a debtor's property, both real and personal and that exemptions allowed under 11 U.S.C. §522<sup>5</sup> do not apply to tax liens.

Furthermore, the Department argued that, as agreed to by the parties, Debtor has \$6,806.67 of net equity in her real and personal property composed of the following:

Real Property	\$4,626.67
Household effects & Furniture	\$1,885.00
Cash	\$45.00
Clothing	\$50.00
Jewelry	\$200.00
-----	
Total Property	\$6,807.67
IRS's valued lien	(\$4,627.00)
-----	

---

<sup>5</sup> Further references to the bankruptcy Code shall be by section number only.

Net Equity after IRS lien                      \$2,180.67

Thus, after deducting the IRS's lien valued at \$4,626.00, there would still be approximately \$2,180.00 equity in the personal property which the Department asserts will fully secure its lien.

### CONCLUSIONS OF LAW

The main issue in this case is whether the portion of the IRS's lien which was avoided pursuant to §506 should be preserved for the benefit of Debtor's estate or whether, as the Department argues, the avoidance of the lien benefits the Department. As the facts detailed above reflect, Debtor owns real property which is worth \$16,400.00 and is encumbered by a mortgage to USDA in the amount of \$11,773.33. The parties agree that the equity in the real estate is in the amount of \$4,626.67 and agree that Debtor owns personal property on which the tax liens at issue can attach and that the value of said property is \$2,180.00. Thus, the total amount of collateral on which the tax liens can attach is \$6,807.67.

Debtor argues that because it has valued the IRS's claim of \$8,796.75 to \$4,626.00 and the IRS filed an Amended Proof of Claim after the Notice of Plan Modification Before Confirmation, thus avoiding a portion of its lien; the bankruptcy estate receives the benefit of the avoided lien pursuant to §551. The Department, on the other hand, argues that such result would create a windfall for Debtor and that, because the amount of the net equity in Debtor's real and personal property, which is in the amount of \$2,180.00, is more than sufficient to secure the Department's lien; thus, the Department's claim is fully secured.<sup>6</sup>

---

<sup>6</sup> The Department also argued that Debtors' claim of exemption in the subject personal property does not bar its lien pursuant to §522(g) and that, as a result, Debtor's retention of the property while valuing off the Department's lien creates a windfall to Debtor. However,

Section 551 of the Bankruptcy Code provides: “Any transfer avoided under section 522, 544, 545, 547, 548, 549 or 724(a) of this title, or any lien void under section 506(d) of this title, is preserved for the benefit of the estate but only with respect to property of the estate.” §551 (emphasis added). Thus, the first question is whether §506 is a methodology which would enable the Chapter 13 Debtor to “strip off” the IRS’s lien. Section 506 provides in pertinent part:

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor’s interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor’s interest.

...

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless--  
(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or  
(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

At the hearing on the Motion, counsel for the Department argued, among other things, that §506(d) would not allow “lien stripping” in the present case; however, the Court disagrees with the argument. The Court acknowledges that pursuant to the Supreme Court’s decision in

---

the Court does not hold that the property is exempt as to Department’s lien; rather, it finds that the Department’s lien is junior to the IRS’s lien; therefore, the Departments’ lien has a value of \$0.00 and concludes that such result is beneficial to the bankruptcy estate.

Dewsnup v. Timm, 502 U.S. 410 (1992), §506(d) does not authorize lienstripping in the Chapter 7 context. However, the Supreme Court was clear in limiting the extent of its holding to the facts before it, and the majority of courts have held that the Dewsnup decision does not apply to reorganization cases under Chapter 11, 12, or 13. See, e.g. In re Virello, 236 B.R. 199, 202 (Bankr. D.S.C. 1999); see also Bank One v. Flowers, 183 B.R. 509 (N.D. Ill. 1995) (“This court is now asked to decide what a number of courts around the country have already decided: whether lien stripping is permissible in the chapter 13 context when the collateral is not the debtor’s principal residence. The overwhelming majority of courts have held that it is permissible. This court agrees.”); McDonough v. Plaistow Coop. Bank (In re McDonough), 166 B.R. 9, 13 (Bankr. D. Mass. 1994) (“In §§1322(b) and 1325, this Court finds a specific legislative intent to vary from any pre-Code practice allowing liens to pass through bankruptcy unaffected. More importantly, in the above mentioned legislative history, this Court finds in Chapter 13 cases the crucial nexus between the modification of secured claims and §506(a)’s definition of “allowed secured claim”, which nexus the *Dewsnup* Court could not find in the Chapter 7 context. In view of the foregoing, this court adopts the reasoning that 11 U.S.C. §506 is a methodology which enables Chapter 13 debtors to strip down liens falling outside of *Nobleman*’s carved out exception in §1322(b)(2).”).

In Flowers the court noted that when considering §§1322(b), 1325(a)(5)(B), and 1327, it becomes obvious that Congress intended to give Chapter 13 debtors an opportunity to “strip down” or “strip off” the allowed unsecured claims of their creditors. The court went on to note: “[i]n other words, ‘allowed secured claim,’ as used in §506(d), mean[s] ‘secured claim,’ as defined in §506(a), in Chapter 13 proceedings.” Id. at 515.

In the case presently before the Court, the IRS's claim was bifurcated pursuant to §506(a) and the secured portion of the claim was valued at \$4,627. Furthermore, as reflected in the Amended Proof of Claim filed by the IRS on March 12, 2001, the IRS was aware of the extent of its lien and the fact that its lien attached to both Debtor's real and personal property. In fact, as previously stated, in the box reflecting the collateral which secured the claim, the IRS marked off the box indicated "real estate", "motor vehicle", and "other". As to the latter category, it added "all of debtors right, title and interest to property -- 26 U.S.C. §6321." This demonstrates that the IRS was aware that its lien could have been secured in the amount of \$6,806.67, but agreed to allow its claim to be secured only to the extent of Debtor's remaining equity in the real estate and allowed the remaining portion of its tax lien to be voided pursuant to §506(d). While the Court finds that §§506(a) and (d) have acted in conjunction in this case to void the IRS's lien to the extent over \$4,627.00, as demonstrated by the Amended Proof of Claim, for purposes of clarifying the record, the Court requests that Debtor provide a supplemental order, consented to or acknowledged by the IRS, which specifically provides that the unsecured portion of the IRS's lien is voided pursuant to §506(d).<sup>7</sup>

As stated previously, §551 provides that any lien void under §506(d) is preserved for the benefit of the estate. Section 551 was enacted by Congress in 1978 for the main purpose of "prevent[ing] junior lienors from improving their position at the expense of the estate when a

---

<sup>7</sup> This Court has previously held that "§506(d) alone does not operate to void a lien but that it must be used in connection with another statute such as §722, §1129, §1225, or §1325." *In re Virello*, 236 B.R. 199, 204 (Bankr. D.S.C. 1999). Despite the fact that the Chapter 13 Plan has yet to be formally confirmed by Order in this case, the Court notes that the IRS has not objected to Debtor's treatment of its claim under the Plan filed on March 2, 2001; therefore, the Plan is confirmable as to the IRS.

senior lien is avoided.” S. Rep. No. 989, 9th Cong., 2d Sess. 91 (1978); see also Dunes Hotel Assoc. v. Hyatt Corp., 245 B.R. 492, 502-03 n.7 (D.S.C. 2000); Tennessee Machinery Co. v. Appalachian Energy Ind. (In re Appalachian Energy Ind.), 25 B.R. 515, 516-17 (Bankr. M.D. Tenn. 1982). In addressing the objective of §551, the court in In re Appalachian Energy Ind. stated:

Without the authority to preserve under §551, the avoidance of a lien would shift rank and priorities and each junior lienor would realize an enhancement of its position. Correspondingly, without lien preservation, the estate for whose benefit the trustee originally avoided the lien would be enriched, only if after avoiding the lien and paying all junior lienors, equity remained in the property for the estate. Junior lienors would be benefited by the actions of the trustee in situations where few equities would favor such a result.

In re Appalachian Energy Ind., 25 B.R. at 516-17 (citation omitted). The Court finds that in this case, the Department’s claim, which is junior to the IRS’s claim, should not receive the benefit of the avoidance of a portion of the IRS’ lien. Such result is not contemplated in the language of §551. It is therefore,

ORDERED that the Objection to Plan and Return to Motion to Value filed by the SC Department of Revenue is hereby overruled. The Department’s tax lien is junior to the IRS’s lien, which is in the amount of \$4,626.00 and the portion of the IRS’s voided lien in the amount of \$2,180.00 has been preserved for the benefit of the estate.

IT IS FURTHER ORDERED that Debtor’s Motion to Establish Priority of Tax Claim is granted to the extent stated herein.<sup>8</sup>

---

<sup>8</sup> At the hearing and in the proposed orders submitted to the Court, neither party argued whether the Department’s claim should be treated as a priority, unsecured claim or a general unsecured claim, so the Court makes no determination on such issue without further request.

IT IS FURTHER ORDERED that to make this Order operative, Debtor should submit a supplemental order with the IRS's consent or acknowledgment which sets forth that the IRS's lien is avoided to the extent it is unsecured pursuant to §506(d). If no supplemental order is filed within 10 days of this Order, a further hearing will be held and shall be attended by counsel for Debtor, the Department, and the IRS.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
May 4, 2001.

  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States  
Bankruptcy court for the District of South Carolina hereby certifies  
that a copy of the document on which this stamp appears  
was mailed on the date listed below to:

**MAY 4 2001**

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

**DEBI GREEN**

Deputy Clerk

DEPT REV  
(Dusenbury)