



**IT IS ORDERED as set forth below:**

**Date: September 23, 2010**

*Wendy L. Hagenau*

Wendy L. Hagenau  
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN THE MATTER OF	)	CASE NO. 09-64634-WLH
	)	
JEWEL ROGERS WADDY,	)	CHAPTER 13
	)	
Debtor.	)	
_____	)	
	)	
JEWEL ROGERS WADDY,	)	
	)	
Movant,	)	
	)	
v.	)	CONTESTED MATTER
	)	
FULTON COUNTY TAX	)	
COMMISSIONER,	)	
	)	
Respondent.	)	
_____	)	

**ORDER DENYING DEBTOR'S OBJECTION TO FULTON COUNTY TAX  
COMMISSIONER'S PROOF OF CLAIM**

This matter is before the Court on Debtor's Objection to Fulton County Tax Commissioner's Proof of Claim (Docket No. 39) and Fulton County Tax Commissioner's Response thereto (Docket No. 56). A hearing was held on August 25, 2010, at which Ann

Broussard was present on behalf of the Debtor and Shannon Sams was present on behalf of the Fulton County Tax Commissioner. After hearing oral arguments from the parties, the Court took the matter under advisement.

The question presented in this case is whether the Fulton County Tax Commissioner has a valid unsecured priority tax claim for taxes assessed pre-petition against real property owned by the Debtor, when stay relief as to the real property has been granted to the holder of the security deed on the property. The Court concludes that the Debtor is personally liable for the Fulton County taxes assessed against the property in 2007, 2008, and 2009, and the Fulton County Tax Commissioner, therefore, has a valid priority claim.

## **I. BACKGROUND**

The facts in this case are undisputed. On February 24, 2009, Jewel Waddy (“Ms. Waddy”) filed a petition under Chapter 13 of the United States Bankruptcy Code. (Docket No. 1). Ms. Waddy was the record owner of real property located at 92 Stafford Street, N.W., Atlanta, Georgia 30314 located in Fulton County (the “Property”), and the Property was identified by Ms. Waddy on Schedule A. Ms. Waddy scheduled S&L Financial Lenders, LLC (“S&L Lenders”) as the holder of a deed to secure debt on the Property.

On May 28, 2009, S&L Lenders filed a Motion for Relief from Stay relating to the Property. (Docket No. 27). Because the Property served as investment property for Ms. Waddy, she did not oppose the Motion. A No Opposition Order Granting Motion for Relief from Stay was entered on June 11, 2009. (Docket No. 30). As of the date of the August 25, 2010 hearing, however, S&L Lenders had not yet foreclosed on the Property. Therefore, Ms. Waddy remains the record owner of the Property.

On June 3, 2009, the Fulton County Tax Commissioner filed Claim No. 15 as an unsecured priority claim in the amount of \$8,218.51 related to taxes assessed on the Property.

The total amount claimed is comprised of the following:

<b>Tax Year</b>	<b>Tax Liability</b>
2007	\$2,792.29
2008	\$2,718.36
2009	\$2,707.86

In response to the Fulton County Tax Commissioner's Proof of Claim, Ms. Waddy filed an Objection to Proof of Claim (Docket No. 39) asserting that the granting of relief from the stay as to the Property to S&L Lenders on June 30, 2009 absolved Ms. Waddy of any personal liability for the Property taxes owed to Fulton County. Ms. Waddy maintains that she should not be responsible for the taxes, because she has not derived any use or enjoyment from the property since stay relief was granted. Further, Ms. Waddy argues that, as a matter of equity, she should not be liable for taxes on the Property due to S&L Lender's failure to foreclose on the property since the granting of stay relief.

The Tax Commissioner argues that taxes are assessed and a tax lien for assessed taxes attaches to all property in which the debtor has an interest on January 1<sup>st</sup> of the applicable tax year. The Commissioner argues that, since Ms. Waddy was the owner of the Property on January 1 of each tax year for which the claim is made, she remains liable for the taxes personally, notwithstanding the lien on the Property for taxes.

## II. LEGAL ANALYSIS

Under Georgia law, taxes are assessed against real property as of January 1 of each year, and the taxpayer holding the property as of January 1 is responsible for “returning” it. O.C.G.A. § 48-5-10. Further, “[a]ll taxes are personal debt of the person required by this title to file the returns or to pay the taxes imposed by [ ] title [48].” O.C.G.A § 48-2-55. Since Ms. Waddy was the title holder of the Property on each of January 1, 2007, 2008, and 2009, under a plain reading of Title 48 of the Georgia Code, she remains personally liable for the taxes assessed against the Property for those years.

This result is consistent with the Georgia Court of Appeals’ decision in *Mulligan v. Security Bank of Bibb County*, 280 Ga. App. 248 (2006) where the court resolved a dispute between former property owners and the county over whether county ad valorem taxes were permissibly paid from surplus proceeds obtained from a foreclosure sale. After foreclosure, the county made a claim to the surplus proceeds, which would otherwise have been paid to the former owners, for payment of delinquent taxes on the subject property. The prior property owners opposed the tax commissioner’s claim to the surplus proceeds, asserting that the property had been sold subject to any outstanding ad valorem taxes, liens or assessments. *Id.* at 249.

On appeal, the Georgia Court of Appeals noted that, “Under Georgia law, ad valorem taxes are chargeable either as a personal debt of the taxpayer or as a lien ...”. *Id.* at 249-50. The court added, “Thus, while a tax commissioner retains a lien on the property that is enforceable against a subsequent purchaser of the property, the prior owner also *remains* liable for the taxes.” *Id.* at 250. (emphasis in original). *See also Jamestown Assocs. V. Fulton Cnty. Bd. of Tax Assessors*, 228 Ga. App. 360, 361(1997) (concluding that a prior property owner remained liable for ad valorem taxes until the date of legal transfer of the title to the real property at issue); *Jones*

*v. Morse Bros. Lumber Co. et al.*, 171 Ga. 753 (1931)(concluding owners are liable for taxes assessed while title holder, even though property subject to contract for sale); *In re Anchor Glass Container Corporation*, 375 B.R. 683 (Bankr. M.D. Fla. 2007)(noting that since debtor became liable for Georgia ad valorem taxes as of January 1, the taxes were not administrative claims in a case filed after January 1).

Here, there is no dispute that Ms. Waddy was the owner of the Property as of January, 2007, 2008, and 2009. She, therefore, remains personally liable for the ad valorem taxes assessed against the Property in those years.

Although Ms. Waddy does not offer case law contradicting the general legal principles set forth in *Mulligan* and other cases cited, she alternatively argues that it is unfair to require her to pay the taxes through her plan when the taxes are secured by a first priority lien on the Property, she has agreed to stay relief and receives no benefit from the Property, but S&L Lender has refused to foreclose. Ms. Waddy relies upon the case of *Decatur County Building & Loan Assoc. v. Thigpen*, 173 Ga. App. 363 (1931), for the proposition that S&L Lender should be liable for the taxes. However, Ms. Waddy misreads the *Decatur* decision. The Supreme Court in *Decatur* actually upheld a tax sale where the taxes were not paid by the prior owner. In the case, the Court noted that,

The public may treat property as belonging either to the maker or the holder of a bond for title, when the latter is in possession; yet, as between the parties, the one receiving the rents or enjoying the use is liable for the tax. Civil Code, § 1018. And it has been held in effect that where an owner of property conveys legal title thereto as security for a debt, retention of the equitable interest is such substantial beneficial ownership as will render him liable for the taxes thereon.

*Id.* at 388 (cites omitted; emphasis added).<sup>1</sup> Thus, the Court noted the rights of the owner and holder of the security bond *vis a vis* each other, while holding the owner liable for the taxes. *Id.* The use and benefit of the Property was not a factor in the prior owner's liability to the taxing authority, only as between the owner and secured party.

Moreover, S&L Lenders is not a party to this contested matter, and the Court cannot adjudicate S&L Lenders' liability when it is not a party to the matter. However, as between Ms. Waddy and the Tax Commissioner, it is not unfair to hold Ms. Waddy liable for the 2007-2009 taxes. Ms. Waddy had an obligation not only to the Tax Commissioner but also to the lender to pay the taxes. This obligation was defined and agreed to in the Purchase Money Deed to Secure Debt and Security Agreement executed between S&L Lenders and Ms. Waddy. Specifically, Article 1 of the security deed, Section 1.02 Taxes, Liens and Other Charges subsection (a) states:

Borrower shall pay, on or before the due date thereof, *all taxes*, assessments, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed confirmed or imposed on, or in respect of, or which may be a lien upon, the Property, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof...

(emphasis added). Therefore, the security deed of S&L Lenders secured Ms. Waddy's obligation to the lender to pay the very taxes in dispute. Moreover, the 2007, 2008, and 2009 taxes were assessed on January 1<sup>st</sup> of the respective tax year, all of which were prior to the filing of Ms. Waddy's Chapter 13 petition on February 24, 2009. Therefore, Ms. Waddy was liable to S&L Lenders for the assessed taxes as of the Petition Date.<sup>2</sup>

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<sup>1</sup> Section 1018 was later amended and codified in O.C.G.A. § 48-5-9. Unlike Civil Code § 1018, O.C.G.A. § 45-5-9 no longer contains language relating to receiving rents.

<sup>2</sup> This Order does not address or resolve any claim related to taxes for 2010, which were assessed after S&L Lenders was granted stay relief.

**III. CONCLUSION**

In conclusion, the undersigned holds that Ms. Waddy remains personally liable on the taxes assessed against the Property in 2007, 2008 and 2009.

**IT IS ORDERED** that Debtor's Objection to Fulton County Tax Commissioner's Proof of Claim is **OVERRULED**.

**END OF DOCUMENT**

## **DISTRIBUTION LIST**

Jewel Rogers Waddy  
10598 Starling Trail  
Hampton, GA 30228

Ann V. Broussard  
Suite 400  
235 Peachtree St. N.E.  
Atlanta, GA 30303

Fulton County Tax Commission  
141 Pryor Street, Suite 1113  
Atlanta, Georgia 30303

William Shannon Sams  
Office of the County Attorney  
141 Pryor Street, Suite 4038  
Atlanta, Georgia 30303