



IT IS ORDERED as set forth below:

Date: January 20, 2010

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 09-69530

Kenya M Valentine,

CHAPTER 13

Debtor.

JUDGE MASSEY

Kenya M Valentine,

Movant,

v.

CONTESTED MATTER

Georgia Department of Revenue,

Respondent.

ORDER DENYING MOTIONS TO AVOID LIENS

Debtor moves in two separate motions (Doc. Nos. 33 and 34) under 11 U.S.C. § 522(f)(1) to avoid tax liens of the Georgia Department of Revenue. Section 522(f)(1) of the Bankruptcy Code provides in relevant part:

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is--

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523(a)(5)[.]

The term “judicial lien” is defined as a “lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.” 11 U.S.C. § 101(36).

The Court takes judicial notice that Respondent filed a proof of claim based on Debtor’s failure to pay income taxes. Debtor has not objected to that claim and did not state in the motions the basis for her liability to Respondent. Nor did she schedule any claim of Respondent.

The lien asserted by Respondent is not a judicial lien, notwithstanding that Respondent issued State Tax Executions, copies of which are attached to the motions, which command sheriffs to levy on property of the Debtor. It is not the levy that a Sheriff might perform that creates the lien. Rather, Respondent’s lien for unpaid income taxes arises under O.C.G.A. § 48-2-56(e), which provides in relevant part as follows:

(e) The lien for taxes imposed by the provisions of Article 2 of Chapter 7 of this title, relating to certain income taxes, shall:

(1) Arise and cover all property of the taxpayer as of the time a tax execution for these taxes is entered upon the general execution docket[.]

The tax executions attached to the motions show that one was recorded in 2006 and the other in 2007. It was the recording of these executions on the general execution docket that created the liens, which are statutory liens. They were not obtained by entry of a judgment, by levy or sequestration or in connection with any legal or equitable process or proceeding. Hence,

the tax liens asserted by Respondent are not judicial liens and cannot be avoided under section 522(f)(1) of the Bankruptcy Code.

For this reason, the motions (Doc. Nos. 33 and 34) are DENIED.

The Clerk is directed to serve a copy of this Order on Debtor, Debtor's counsel, the Chapter 13 Trustee, the Georgia Department of Revenue and the Attorney General of Georgia.

END OF ORDER