

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

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In re ) Bankruptcy Case No. 80C-00025  
 )  
GARTH FARR HEINER dba )  
HEINER DEVELOPMENT, )  
 )  
Debtor. ) FINDINGS OF FACT, CONCLUSIONS  
 ) OF LAW

Appearances: Bonnie Esplin, Deputy Salt Lake County Attorney, Salt Lake City, Utah, for Salt Lake County; Ted Boyer, Clyde, Pratt, Gibbons & Cahoon, Salt Lake City, Utah, for American Savings and Loan; James Blakesley, Nemelka, Blakesley & Blakesley, Salt Lake City, Utah, for Summit West, Inc.; Richard N. Cannon, Salt Lake City, Utah, for himself as trustee.

INTRODUCTION

This case asks the court to decide whether a creditor in a chapter 11 case should receive the treatment specified by a confirmed plan of reorganization for which it affirmatively voted and, if so, to determine that treatment.

FINDINGS OF FACT

Debtor filed his petition for relief under chapter 11 on January 9, 1980.

On February 6, 1980, debtor filed his schedules of assets and liabilities. Schedule A-1, entitled "Creditors having priority," listed the following claim for taxes:

SL County Assessor C&C Bldg., Room 305,  
SLC UT 84111

1978-79 Real property tax, Clover Hollow  
PUD #1 & #2

\$15,000.00

On March 31, 1980, Merrell K. Davis, Deputy County Attorney, filed several proofs of claim on behalf of the Salt Lake County Treasurer for property taxes. The claims are listed as follows:

<u>Claim #</u>	<u>Amount</u>	<u>Property</u>	<u>Date proofs of claim say debts were due</u>
21	\$ 270.24	Lot 14, Clover Hollow #2 PUD	November 30, 1979
22	270.24	Lot 18, Clover Hollow #2 PUD	November 30, 1979
23	270.24	Lot 19, Clover Hollow #2 PUD	November 30, 1979
24	270.24	Lot 15, Clover Hollow #2 PUD	November 30, 1979
25	824.18	Lot 13, Clover Hollow PUD	November 30, 1979
26	270.24	Lot 20, Clover Hollow #2 PUD	November 30, 1979
27	270.24	Lot 21, Clover Hollow #2 PUD	November 30, 1979
28	1,079.22	Lot 29, Federal Heights, Plat B	November 30, 1979
29	223.89	Ref #00479160 Serial #210551001	November 30, 1979
30	17.49	Ref #00381209 Serial #210551003	November 30, 1979
31	87.54	Lot 12, Clover Hollow PUD	November 30, 1979
32	1,057.03	Lot 26, Clover Hollow #2 PUD	November 30, 1979
33	1,179.05	Lot 11, Clover Hollow PUD	November 30, 1979

All claims were filed as unsecured priority claims. Attachments to the claims indicate that the claims were for 1979 taxes.

On April 15, 1980, debtor filed an amended Schedule A-1, which contained the following entry:

SL County Treasurer  
C&C Bldg., Rm. 105,  
SLC UT 84111

1978-79 Real property tax,       \$15,000.00  
Clover Hollow PUD #1 & #2

On October 1, 1980, the court held a hearing to consider confirmation of a plan of reorganization filed on September 18, 1980 and filed by the trustee and by Summit, West, Inc. The plan classified the claim of the Salt Lake County Treasurer as an unsecured priority tax claim to be treated in Class II of the plan. The plan, in paragraph 3.1, provided that

Class II creditors listed on Schedule "A" attached hereto and by reference made a part hereof, shall be paid in full twelve (12) months from the effective date of the Plan. No interest, penalty or other charges shall be paid on these claims.

On October 1, 1980, Merrell K. Davis, Deputy County Attorney, on behalf of Salt Lake County, filed a ballot accepting this plan. The ballot form contained two spaces, one for secured and the other for unsecured claims. Salt Lake County's ballot completed the space for secured claims as follows:

The undersigned, the holder of a claim against the debtor in the unpaid principal amount of \$15,432.30 (as of 9-24-80) (Real Property Taxes) of the following described security: 22 real estate parcels in Clover

Hollow Planned Unit Development, of the above named debtor;

Accepts . . . the Amended Plan for the reorganization of the above named debtor.

This ballot was dated September 30, 1980.

At the October 1 hearing, the court determined that the plan could not be confirmed and scheduled a confirmation hearing on an amended plan for October 9, 1980.

On October 9, 1980, Merrell K. Davis, Deputy County Attorney, on behalf of Salt Lake County, filed a second ballot dated October 8, this time to vote on the plan considered at the October 9 hearing. The ballot accepted the plan. This ballot differed from the one filed on October 1 in that it said the claim was for \$15,321.14 (the previous ballot said \$15,432.30) and it did not contain the notation found on the previous ballot that the claim was asserted "as of 9-24-80."

On October 9, 1980, the court held a confirmation hearing on the amended plan. The court found that the plan could be confirmed. The court signed the order confirming the plan on October 17, 1980.

The plan confirmed by the court and accepted by Salt Lake County, which was filed on October 6, 1980 by Richard N. Cannon, the trustee, and Summit West, Inc., provided in Paragraph 1.2 that "Claims entitled to priority by Section 507(a)(6) of the Bankruptcy Code" would be classified in "Class II." Creditors

in Class II were provided the following treatment, in paragraph 3.1 of the plan:

Class II creditors listed on Schedule "A" attached hereto and by reference made a part hereof, shall be paid in full twelve (12) months from the effective date of the Plan. No interest, penalties, or other charges shall be paid on these claims.

Schedule "A" listed as a member of Class II the Salt Lake County Treasurer. Schedule "A" designated the "Amount Listed" as \$15,000.00 and the "Amount Claimed" as \$6,089.84. The plan also provided, at paragraph 3.12, that post petition creditors would be treated as follows:

Those creditors of the debtor whose claims arose after the filing of the Petition herein, and who shall have timely filed a written proof of claim, shall be treated and paid as though their claims had arisen prior to the filing of the petition, and will be paid according to the respective classes they would fit into as set forth in the Plan.

At no time did Salt Lake County assert, other than by marking its ballots as if it were a secured claim holder, that its claim for unpaid taxes was a secured claim.

On March 25, 1983, the court heard a motion brought by the trustee for clarification of the plan.

At the hearing, the parties made various arguments regarding the statutes of the State of Utah and their application to the taxes which are the subject of the claims of Salt Lake County.

At the March 25 hearing, the court made the following ruling:

This is an interesting problem, and problems that occur now and then when people don't think of a problem that might come forth in the future.

The proofs of claims filed by the county were filed individually on each lot. All of the proofs of claim are filed as priority unsecured claims. The county did not assert a position as a secured claim at all. One of the ballots filed by the county in the file is number 21(A) filed 9-30 1980 claiming the amount due of \$15,432.30. It states that the claim is for real property taxes as of 9-24 1980. That ballot votes in favor of the plan.

The first plan on file proposes to pay the county in equal installments over a period of six years, which is the county's right if it's not treated as a secured creditor. The plan lists the county in Class 2, which is defined by the plan as unsecured creditors.

The plan in paragraph 3.1 provides that Class 2 creditors listed on Schedule A will be paid in full 12 months from the effective date of the plan without interest, penalties or charges. Schedule A shows that the county will be paid \$6,089.84.

Paragraph 3.12 of the plan deals with the post-petition creditors and states those creditors arose after the filing of the petition herein and who shall have timely filed a written proof of claim shall be treated and paid as though their claims had arisen prior to the filing of the petition and will be paid according to the respective classes they would fit into as set forth in the plan.

Given the Utah Code requirement for a levy, the vote in favor of the plan which indicates the amount it will be given as of 9-24-80, the affirmative vote in favor of the plan, provisions of paragraph 3.12, and the provisions of the bankruptcy code 1141(D)(1)(A), which discharges debts that arose before the date of the confirmation, I

hold that all taxes for the year 1980 and prior were dealt with in the plan. And the specific amount described in Schedule A which must be paid within the year was \$6,089.84.

The county did not have a lien on any of the property that was property of the debtor as of the date of the confirmation. If the county has received more since confirmation than \$6,089.84, it must pay that money back to the debtor.

After making this ruling, the trustee asked the court whether the ruling included "the penalty and interest" and whether the \$6,089.84 figure "includes all claims up to the time of the confirmation of the plan, or . . . all of the 1980 taxes." The court responded as follows: "It includes all of the 1980 taxes."

Thereafter, the parties were unable to agree on written findings of fact and conclusions of law.

On June 28, 1983 the court held a hearing and heard argument from the parties. Subsequently, on July 27, 1983, the trustee submitted findings of fact and conclusions of law for the court's signature.

#### CONCLUSIONS OF LAW

Having reviewed the files in this matter, the court has concluded that it will not sign the findings of fact and conclusions of law submitted by the trustee but instead will make these findings and conclusions.

The findings made by the court on the record at the March 25, 1983 hearing were erroneous in one aspect and should be modified. The court, when it examined the voluminous ballot and claims files, did not discover the ballot filed on October 9, 1980 until after the March 25 hearing. The change in this finding of fact, however, does not alter the fact that Salt Lake County accepted a plan which proposed specific treatment of its claim. The relevant question is not what notations appear on the ballot but rather what is the effect of the confirmed plan accepted by Salt Lake County.

Section 1141 is the governing statute in this case. It provides, in pertinent part, as follows:

(a) . . . the provisions of a confirmed plan bind the debtor, . . . and any creditor . . . of . . . the debtor, whether or not the claim . . . is impaired under the plan and whether or not such creditor . . . has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) After confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors . . . except as otherwise provided in the plan or in the order confirming the plan.

(d)(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan --

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind



specified in section 502(g), 502(h), or 502(i) of this title, whether or not --

- (i) a proof of claim based on such debt is filed or deemed filed under section 501 of this title;
- (ii) such claim is allowed under section 502 of this title; or
- (iii) the holder of such claim has accepted the plan.

The confirmed plan in this case discharges all tax debts owed to Salt Lake County that arose before October 17, 1980, the date of the entry of the order confirming the plan, and all tax debts which are of a kind specified in Section 502(i), except as provided in the plan, which calls for a payment over twelve months to Salt Lake County of \$6,089.84, and except as provided in paragraph 3.12 of the plan providing for post-petition claims. Moreover, the confirmed plan frees all property dealt with by the plan from any liens for taxes Salt Lake County may have had before October 17, 1980. That Salt Lake County marked its ballot as a secured claimant makes no difference. Ballots indicate either acceptance or rejection of a plan but do not constitute modifications of a plan.

There is no question that 1979 and pre-1979 taxes owed by the debtor to Salt Lake County arose before October 17, 1980. The remaining question of law is the effect of the confirmed plan on debtor's 1980 real property tax obligation to Salt Lake County.

Collier explains that:

except as provided in the plan of reorganization or the order confirming the plan of

reorganization, pursuant to section 1141(d), as a general rule, the confirmation of the plan discharges the debtor from any debt that arose prior to the date of confirmation (including administrative claims) and any debt which arose by reason of rejection of an executory contract or unexpired lease, recovery of property under sections 522(i) 550 or 553, and any tax claim arising after commencement of the case even if the debt technically arises after confirmation.

5 COLLIER ON BANKRUPTCY ¶1141.01 at 1141-10 (15th ed. 1983) (emphasis added). Collier's footnote to the underscored statement just noted refers to Section 502(i), which states:

A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(6) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

Salt Lake County's claims for 1980 taxes which arose after the commencement of debtor's case are to be treated both under §§ 1141 and 502(i) as well as under paragraph 3.12 of the plan the same as if they had arisen before the date of the filing of the petition.

Section 59-5-4, Utah Code Ann., as amended in 1977, the statute which was in effect from the filing of debtor's case through the confirmation of the plan, provided that

The county assessor must, before the fifteenth day of April of each year, ascertain the names of all taxable inhabitants and all property in the county subject to taxation except such as is required to be assessed by the state tax commission and must assess such

property to the person by whom it was owed or claimed, or in whose possession or control it was, at 12 o'clock m. of the first day of January next preceding, and at its value on that date (emphasis added).

Section 59-10-26, Utah Code Ann., as amended in 1980, provided that

(1) all taxes, except those otherwise specifically provided for and except as otherwise provided for in section 59-10-27, unpaid at noon on the 30th of November, or if that day falls on a Sunday or a holiday, then at noon on the 29th day of November, of each year, following the date of levy, are delinquent, and the county treasurer shall then close his office for the receipt of taxes until he has prepared his delinquent list for publication.

Section 59-9-6.3, Utah Code Ann., as amended in 1969, provided that

The board of county commissioners of each county must levy a tax on the taxable property of the county between the last Monday in the seventh month of each fiscal year and the second Monday in the eighth month of each fiscal year to provide funds for county purposes.

Under these provisions, debtor's 1980 real property taxes owing to Salt Lake County, although they were not yet delinquent on October 17, 1980, the date of the order confirming the plan, had been assessed and levied and thus had arisen before October 17, 1980 within the meaning of Section 1141(d)(1)(A). Therefore, the confirmation of debtor's plan, under paragraphs 1.2 and 3.12 of the plan and under Section 1141 of the bankruptcy

code discharged all 1980 and pre-1980 real property taxes owing to Salt Lake County.

The plan confirmed by the court clearly provided only for the payment of \$6,089.84 to Salt Lake County on account of 1980 and pre-1980 tax obligations. Salt Lake County was not required to vote in favor of the plan. Salt Lake County was not required to waive its rights, if it had any, to a lien for delinquent taxes. Salt Lake County was not required to agree to receive only \$6,089.84 as full payment for 1980 and pre-1980 tax obligations. Nevertheless, Salt Lake County voted for the plan and under the law is bound by the plan. "[A] plan is binding upon all parties once it is confirmed and all questions which could have been raised pertaining to such plan are res judicata." COLLIER, supra at 1141-5. See Stoll v. Gottlieb, 305 U.S. 165, reh denied, 305 U.S. 678 (1935); Miller v. Meinhard-Commercial Corp., 462 F. 2d 358 (5th Cir. 1972).


The bankruptcy code presumes that creditors, in voting for or against a plan of reorganization, will carefully assess the plan's treatment of their claims and vote accordingly. Creditors in chapter 11 cases frequently give up rights and vote to accept plans based on their judgment that to do so is in their best interest. If Salt Lake County did not intend for the plan to modify any of its rights, including lien rights or rights to payment, it should have rejected the plan and objected to its

confirmation. Having accepted the plan, however, Salt Lake County must abide the consequences.

IT IS THEREFORE ORDERED that to the extent that Salt Lake County has been paid more than \$6,089.84 on account of debtor's 1980 and pre-1980 real property tax debts, Salt Lake County has been overpaid and is ordered to return forthwith the full amount of any overpayment. To the extent that Salt Lake County may have asserted liens based on debtor's 1980 and pre-1980 real property taxes, those liens are invalid under Section 1141 of the bankruptcy code and must be released forthwith.

DATED this 30 day of October, 1983.

BY THE COURT:

  
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GLEN E. CLARK  
UNITED STATES BANKRUPTCY JUDGE