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Steven A. Meyerowitz

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All Is Not Lost: Courts Allow Debtors to Redeem Sold Real Estate Taxes in Bankruptcy to Avoid Losing Their Property

*By Michael T. Benz, James P. Sullivan, and Bryan E. Jacobson**

The authors of this article discuss two recent decisions that have provided some insight into what happens when a debtor files a Chapter 13 bankruptcy petition as a means of redeeming sold real estate taxes.

The question of what happens when a debtor files a Chapter 13 bankruptcy petition as a means of redeeming sold real estate taxes¹ is being addressed throughout the country with more regularity. Recently, bankruptcy courts in Illinois and Georgia have provided some insight into how this question should be answered.

IN RE ROBINSON

In *In re Robinson*,² the real estate taxes had been properly sold to a tax

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¹ Many jurisdictions in the U.S. have enacted statutory schemes to monetize the right to payment of delinquent real estate taxes through "tax sales." While specific procedures vary by county and state, such tax sales typically involve third-parties engaging in competitive bidding at an annual public tax sale auction to purchase the right to payment of the real estate taxes, together with statutory interest. Generally, following the sale, if the landowner, or other interested party such as the mortgagee, does not pay the amount of the delinquent taxes within the redemption period specified by law, together with statutory interest, the tax purchaser can seek to obtain a tax deed to the property in order to acquire title. Redemption periods differ by state. In Illinois, for instance, the period of redemption is two years and six months from the date of the tax sale, and the tax purchaser has the option of extending the redemption period for up to three years from the date of sale, while in Georgia, the record property owner, mortgagee or outstanding security deed holder has 12 months from the date of sale to redeem the property. *See* 25 ILCS 200/21-350(b); GA. CODE ANN. § 48-4-45.

² Case No. 17 bk 12405 (Bank. N.D. Ill. Dec. 4, 2017).

purchaser and the period for the debtor to redeem the taxes had expired prior to the filing of the Chapter 13 petition. The tax purchaser sought relief from the automatic stay in order to obtain a tax deed through the statutory process. The court analyzed a U.S. Court of Appeals for the Seventh Circuit decision from 2010³ holding that “the meaningful transfer [of the property] did not occur at the close of the redemption period, but rather when the tax deed was recorded,” and another from 2014,⁴ which found that a debtor retains title to a property prior to the issuance and recording of a tax deed, and further that a debtor’s treatment of a tax purchaser’s claim under a Chapter 13 plan is not a formal “redemption” of the property, but rather the treatment of a secured claim. In concluding that Seventh Circuit precedent makes clear that a debtor’s rights with respect to real property are not substantively affected by the running of the redemption period, the court held that the debtor was entitled to treat those taxes under her Chapter 13 plan because a tax deed had neither been issued nor recorded, and as such, the tax purchaser’s motion for relief from automatic stay was denied.⁵

IN RE WOODLEY

In *In re Woodley*,⁶ the tax purchaser was the highest bidder at a tax sale of the debtor’s property and took title via tax deed, subject to the 12-month redemption period provided by Georgia law.⁷ The debtor filed her Chapter 13 bankruptcy case prior to the expiration of the redemption period. As in *Robinson*, at issue in *Woodley* was the debtor’s proposal to pay the redemption price through her Chapter 13 plan. The tax purchaser objected, contending that it became the owner of the property after the tax sale, with the debtor retaining only a right to redeem the property. As such, the tax purchaser argued, only the right to redeem—not the property itself—should enter the debtor’s bankruptcy estate, otherwise the plan would be allowing for an impermissible repurchase of

³ *Smith v. SIPI, LLC (In re Smith)*, 614 F.3d 654 (7th Cir. 2010).

⁴ *In re LaMont*, 740 F.3d 397 (7th Cir. 2014).

⁵ In so holding, the court declined to follow *In re Bates*, 270 B.R. 455 (Bankr. N.D. Ill. 2001), which held that a debtor’s ability to treat a tax purchaser’s claim in bankruptcy depended on whether the redemption period had expired prior to the commencement of the case, rather than whether a tax deed had been issued and recorded.

⁶ Case No. 17 bk 53630 (Bank. N.D. Ga. Dec. 18, 2017).

⁷ Under Georgia law, upon payment of the redemption price, the tax purchaser is required to make a quitclaim deed to the property owner, which would have the effect of transferring the title conveyed by the tax sale back to the owner, subject to all liens existing at the time of the tax sale. Ga. Code Ann. §§ 48-4-44; 48-4-45.

the property. The court observed that the issue of whether a Chapter 13 debtor can redeem real property sold in a tax sale through a Chapter 13 plan has created a split in the district and across the country.

The court summarized the two divergent views in the Northern District of Georgia as follows: a debtor cannot redeem property sold in a tax sale through a Chapter 13 plan because only the redemption right, not the property itself, enters the bankruptcy estate vs. a Chapter 13 debtor may redeem the property through a plan because the real property itself has entered the bankruptcy estate, and the tax purchaser merely holds a “claim” subject to modification in a Chapter 13 plan. In finding the latter position more persuasive, the court analogized tax deeds to security transfer deeds, stating that neither of those instruments “transfer the bundle of rights that comprise what is typically understood as property ownership—the rights of possession, use, profits, exclusion of others.” In either instance, the title obtained is less than full and “can be defeated” by the redemption right of the property owner, who remains the titled owner to the property until the tax deed has been recorded and the redemption period has elapsed. As such, the court in *Woodley* held that the property was part of the bankruptcy estate because the debtor’s redemption rights never terminated.⁸ The court also found that, due to the tax purchaser’s entitlement to payment of the redemption price or to foreclose on the debtor’s redemption right and acquire the debtor’s interest in the property, the tax purchaser held a secured claim that could be paid through the debtor’s Chapter 13 plan.

CONCLUSION

Robinson and *Woodley* thus demonstrate that, depending on state law, bankruptcy courts may consider real property, the delinquent real estate taxes of which have been purchased by a third-party, to be a part of a debtor’s bankruptcy estate as long as title to the property has not transferred to the tax purchaser prior to the filing of the debtor’s bankruptcy case. The expiration of the redemption period, at least in Illinois and Georgia, is no longer a bar preventing a debtor from redeeming sold real property taxes through its Chapter 13 plan.

⁸ Pursuant to Georgia state law, the tax purchaser was entitled to record a tax deed immediately following the tax sale, subject to the debtor’s redemption rights. Illinois law requires a tax purchaser to obtain a tax deed through a formal court proceeding, and in *Robinson*, despite the debtor’s redemption rights being expired, the tax purchaser had not yet been granted the right to record a tax deed prior to the debtor’s bankruptcy filing.