

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE:)	CHAPTER 7
)	
JOHN S. LOVETTE and ALTHEA L. LOVETTE,)	CASE NO. 03-65646
)	
Debtors.)	JUDGE RUSS KENDIG
)	
)	ADV. PRO. NO. 03-6154
)	
JOHN S. LOVETTE and ALTHEA L. LOVETTE,)	
)	
Plaintiffs,)	ORDER
vs.)	
)	
DANIEL F. SMITH et al.,)	
)	
Defendants.)	

This matter comes before the court upon a motion for summary judgment filed against defendant State of Ohio, Department of Taxation (hereafter "State"), in the above styled adversary proceeding. No response was received from the State. For the reasons that follow, the motion for summary judgment is **DENIED**.

Federal Rule of Bankruptcy Procedure 7056 provides that a motion for summary judgment should be granted "forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). In reviewing a motion for summary judgment, "the inferences to be drawn from the underlying facts contained in the [moving party's] materials must be viewed in the light most favorable to the party opposing the motion." *Adickes v. S. H. Kress and Co.*, 398 U.S. 144, 158-59 (1970) (quoting *U.S. v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)). If the evidence as presented "could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citing *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968)).

The moving party "bears the initial responsibility of informing the . . . court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Thereafter, the nonmoving party must come forward and demonstrate

the existence of genuine issues of material fact. The nonmoving party cannot rely on the pleadings or a mere scintilla of evidence to demonstrate the existence of such facts, but instead must specifically set forth evidence sufficient to demonstrate the existence of disputed material facts. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex*, 477 U.S. at 324; *Cities Serv.*, 391 U.S. at 288. Only facts which could conceivably impact the outcome of the litigation are material. *See Liberty Lobby*, 477 U.S. at 248.

The court cannot find that the plaintiff met its burden in this case. Although plaintiff asserts that the State holds judgment liens on the property, no copies of these liens were attached to the motion. Instead, the court was referred to the Richland County Records. These records are not available online and the court has no way to verify whether the liens to which plaintiff refers are judgment liens or statutory liens. Therefore, viewing the facts in a light most favorable to the State, the court cannot find that there is no issue of material fact since it is plausible that the liens which plaintiff seeks to avoid are not of a type that is avoidable under 11 U.S.C. § 522(f).

For the foregoing reasons, plaintiff's motion for summary judgment is **DENIED**, without prejudice.

It is so ordered.

/s/ Russ Kendig

SEP 23 2004

RUSS KENDIG
U.S. BANKRUPTCY JUDGE

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