

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: September 09 2009

A blue ink signature of Mary Ann Whipple, written in a cursive style.

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 08-36745
)	
Perry Lee Hartley and)	Chapter 13
Susan Marie Hartley,)	
)	
Debtors.)	JUDGE MARY ANN WHIPPLE

ORDER REGARDING OBJECTION TO CLAIM OF SENECA COUNTY TREASURER

This case is before the court on Debtors' objection to the proof of claim filed by the Seneca County Treasurer ("Treasurer") [Doc. # 26] and the Treasurer's response [Doc. # 45]. At a hearing on the objection held on July 28, 2009, counsel for Debtor appeared in person and counsel for the Treasurer appeared by telephone.

The Treasurer filed a proof of claim for manufactured home taxes owed by Debtors in the amount of \$1,537.79. The parties agree that there is no factual dispute regarding the amount of the taxes owed. Debtors have surrendered the manufactured home to their creditor holding a purchase money security interest in the home. The sole issue before the court is whether Debtors can now be held personally liable for the taxes owed without the Treasurer enforcing the county's lien against the property that secures payment of those taxes. According to Debtor, the Treasurer must seek recovery of the taxes owed by enforcing the county's lien. The Treasurer, on the other hand, directs the court to Ohio Revised Code § 4503.06 and argues that although the county has a first and best lien on the manufactured home, she may also pursue individuals who were responsible when the taxes accrued on an in personam basis.

Under § 4503.06(C), any manufactured home that is not taxed as real property, as is the case here, is subject to an annual manufactured home tax. The statute also addresses the collection of delinquent taxes when they are not paid within sixty days after the delinquent manufactured home tax list is delivered to the county treasurer:

[T]he county treasurer *shall*, in addition to any other remedy provided by law for the collection of taxes, penalties, and interest, enforce collection of such taxes, penalties, and interest by civil action in the name of the treasurer against the owner for the recovery of the unpaid taxes following the procedures for the recovery of delinquent real property taxes in sections 323.25 to 323.28 of the Revised Code.

Ohio Rev. Code § 4503.06(H)(3) (emphasis added). Section 323.25, in turn, provides that “the county treasurer *shall* enforce the lien for the taxes by civil action . . . for the sale of such premises in the same way mortgage liens are enforced or for the transfer of such premises to an electing subdivision pursuant to section 323.28 of the Revised Code. . . .” (emphasis added). Section 323.28 provides that from the proceeds of the sale, “costs shall be first paid, next the amount found due for taxes [in the civil action], then the amount of any taxes accruing after the entry of the finding and before the deed of the property is transferred to the purchaser following the sale, *all of which taxes shall be deemed satisfied, though the amount applicable to them is deficient.*” Ohio Rev. Code § 323.28(B) (emphasis added).

Thus, the statute to which the Treasurer directs the court appears to require, at a minimum, that the Treasurer pursue enforcement of its lien by a civil action for the sale of the property and, in light of the anti-deficiency provision, suggests that the Treasurer cannot hold the owner personally liable. However, because the parties did not fully address these provisions at the hearing on Debtors’ objection, the court will schedule a further hearing in order to address the proper application of the above cited statutes and any further arguments in support of the parties respective positions.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that Debtor’s Motion Objecting to Claim [Doc. # 26] is hereby set for *Further Hearing* on **Tuesday, October 6, 2009, at 10:45 a.m.** in Courtroom No. 2, Room 103, United States Courthouse, 1716 Spielbusch Avenue, Toledo, Ohio.