

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**William F. Brooks,
Debtor.**

**Chapter 7
Case # 03-11614**

ORDER
DENYING MOTION TO AVOID LIEN AND TO NULLIFY TAX SALE

The Town of Ludlow has a municipal lien (for both taxes and water and sewer charges) against the Debtor's real property located at 1 Parker Avenue in Ludlow, Vermont. The Debtor's present Motion to Avoid Lien and to Nullify Tax Sale (doc. #42) is his latest attempt to thwart the Town's efforts in enforcing its municipal lien in the Debtor's multiple bankruptcy cases.

Here, the Debtor objects to the Town's claim and seeks to avoid the Town's lien and set aside the Town's Court-approved tax sale on the grounds that the Town either (1) is not secured; (2) is only secured to the extent of \$1.00; or (3) was only entitled to \$1.00 and that sum has been paid. The Court finds all three arguments to be wholly devoid of merit. Moreover, it finds the Debtor's continued efforts to attack the legitimacy of this lien to surpass pure persistence and border on frivolous litigation and bad faith conduct. At this time, however, it declines to make a finding that the Debtor has crossed that line and will set forth its bases for denying the relief sought.

First, the Court finds that the Debtor lacks standing to bring this motion. See In re Blumenberg, 263 B.R. 704, 719 (Bankr. E.D.N.Y. 2001) (reiterating that a debtor lacks standing to object to a claim against the bankruptcy estate because the debtor has no interest in the distribution to creditors of assets of that estate). Even if the Debtor did have standing, he acknowledges – indeed, insists – that the property is worth only \$1.00. If, assuming *arguendo*, that is the case, then there is no equity or value in the property for the Debtor; hence, he has no basis for him to object to the Town's claim.

The Court also finds that since relief from stay has been granted to the Town regarding the subject property, and the order granting relief is final, it is too late for the Debtor to raise the issues he now argues.

Lastly, the Court finds that the Debtor's reliance upon 11 U.S.C. § 506(a) and (d) is misplaced. In Dewsnup v. Timm, 502 U.S. 410 (1992), the Supreme Court made clear that liens on real property may not be stripped down to the alleged value of the subject property, as the Debtor urges. Moreover, this Court is not persuaded by the Debtor's argument that the Town has conceded the value of the subject property to be \$1.00. However, even if the subject property was worth \$1.00, under Dewsnup the Debtor is not entitled to avoid that portion of the Town's lien that exceeds \$1.00.

Therefore, IT IS HEREBY ORDERED that

- (1) the Debtor's objection is OVERRULED;
- (2) the Debtor's Motion to Avoid Lien and to Nullify Tax Sale is DENIED; and
- (3) the Debtor is BARRED from further attacking the legality of the Town's interest in the subject property as documented on its proof of claim filed in this Court.

August 2, 2004
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge