

ORS 311.010
ORS 311.105
ORS 311.115
ORS 311.255
ORS 311.370
ORS 311.405
ORS 454.225
11 U.S.C. §724(b)
11 U.S.C. §726(a)(4)

Robert K. Morrow, Inc. v. City of Portland, Adv. No. 95-3412-dds

In re Belozzer Farms, Inc., Case No. 394-31786-dds7

12/08/95 DDS Unpublished

Chapter 7 Trustee objected to the claim filed by Multnomah County asserting a first position lien in debtor's equipment and machinery. City had certified sewer charges to Multnomah County for collection pursuant to ORS 454.225. On cross-motions for summary judgment, Court found that legislature intended the sewer charges to be treated the same as ad valorem taxes in the collection process which necessarily includes lien rights. Accordingly, County's lien for unpaid sewer charges has first priority in and to the proceeds of debtor's machinery and equipment. However, because the penalty portion of the claim is not enforceable in bankruptcy the County's lien is not enforceable with respect to the penalty portion of the claim per 11 USC §724(b). The County's claim for penalties and interest on penalties is to be paid in accordance with 11 USC §726(a)(4).

P95-21(6)

DEC - 8 1995

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case No.
)	394-31786-dds7
BELOZER FARMS, INC., dba)	
Lynden Farms, an Oregon)	Adversary Proceeding No.
corporation,)	95-3412-dds
)	
Debtor,)	MEMORANDUM IN SUPPORT OF
)	ORDER GRANTING MULTNOMAH
ROBERT K. MORROW, INC., an)	COUNTY'S MOTION FOR
Oregon corporation, as)	SUMMARY JUDGMENT AND
chapter 7 trustee for)	DENYING TRUSTEE'S MOTION
Belozer Farms, Inc.,)	FOR SUMMARY JUDGMENT
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF PORTLAND, OREGON,)	
a municipal corporation;)	
and MULTNOMAH COUNTY,)	
OREGON, a body politic,)	
)	
Defendant.)	

Multnomah County's motion for summary judgment should be granted and the trustee's motion for summary judgment should be denied. Under Oregon law, Multnomah County has a first priority lien on debtor's machinery and equipment. The lien does not cover penalties and interest on penalties which

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1 were included in the assessed amount.

2 I. Background.

3 During calendar years 1990 and 1991, debtor operated
4 a chicken processing plant on Swan Island in the City of
5 Portland (the "City"). In its chicken processing operation
6 debtor used large quantities of water which were discharged
7 into the City's sewage disposal system. The City asserted
8 that during 1990 debtor incurred sewer charges in the amount
9 of \$55,757.34, which includes a penalty in the amount of
10 \$5,068.85. The City asserted that during 1991 debtor
11 incurred sewer charges in the amount of \$64,087.83, which
12 includes a penalty in the amount of \$5,826.17. Pursuant to
13 ORS 454.225, the City certified the 1990 sewer charges to
14 Multnomah County on August 28, 1991 and the County included
15 the 1990 sewer charges in its assessment roll for 1991-92.
16 The City similarly certified the 1991 sewer charges to
17 Multnomah County on July 22, 1992 and the County included the
18 1991 sewer charges in its assessment roll for 1992-93.

19 Debtor filed a chapter 11 on March 24, 1994. On
20 October 18, 1994, Multnomah County filed its amended proof of
21 claim in the case, asserting a first position lien in
22 debtor's machinery and equipment in the amount of \$151,140.44
23 as of March 24, 1994. On June 24, 1994, the court entered an
24 order authorizing the chapter 11 trustee to sell
25 substantially all of debtor's assets. The trustee sold the
26 debtor's machinery and equipment from the processing plant.

1 Proceeds of the sale of the machinery and equipment were
2 impressed with the lien asserted by Multnomah County. The
3 case converted to chapter 7 on August 26, 1994, and the
4 U. S. Trustee appointed Robert K. Morrow, Inc. ("trustee") as
5 the chapter 7 trustee. Thereafter, the trustee filed its
6 complaint seeking a determination of the validity, priority
7 and extent of the lien asserted by Multnomah County.

8 The trustee and Multnomah County filed cross-motions
9 for summary judgment which the court heard on November 29,
10 1995. The trustee conceded during the hearing that debtor's
11 machinery and equipment constitute real property pursuant to
12 Oregon law, and that the City timely certified the 1990 and
13 1991 sewer charges to Multnomah County. Accordingly, there
14 are no genuine issues of material fact and this case can
15 appropriately be resolved by summary judgment.

16 II. Multnomah County Has A Valid, Perfected First-
17 Priority Lien in the Proceeds of Debtor's Machinery
18 and Equipment.

19 ORS 311.405(1) provides in relevant part: "All ad
20 valorem taxes lawfully imposed or levied on real...property
21 are liens on such real...property...." The trustee argued
22 that ORS 311.405(1) only refers to "ad valorem" taxes, and
23 that because the court must apply the statute as written, no
24 lien could be created for sewer charges as a result of
25 inclusion by Multnomah County on the tax rolls. Multnomah
26 County argued that the legislature intended sewer charges to
have equal dignity with ad valorem taxes. Resolution of this

1 dispute turns on the court's interpretation of ORS 311.405.

2 In interpreting a statute, the first level of
3 analysis requires the court to discern the intent of the
4 legislature by examining both the text and context of the
5 statute. Portland General Electric Company v. Bureau of
6 Labor and Industries, 317 Or. 606, 609, 859 P.2d 1143 (1993).
7 Based upon a review of the statutory collection scheme, the
8 court finds that ORS 311.405(1) created a lien upon debtor's
9 machinery and equipment for the unpaid 1990 and 1991 sewer
10 charges.

11 Under Oregon law, the City is authorized to certify
12 unpaid sewer charges to the Multnomah County Assessor for
13 collection. The City properly certified debtor's 1990 and
14 1991 sewer charges to Multnomah County pursuant to
15 PCC 17.36.100 and ORS 454.225. Once the sewer charges were
16 certified, the sewer charges were to be collected by
17 Multnomah County in the same manner and at the same time as
18 other taxes which Multnomah County is obligated to collect.
19 ORS 454.225; ORS 311.255(1). It is clear that the
20 legislature intended the sewer charges to be treated the same
21 as ad valorem taxes in the collection process which
22 necessarily includes lien rights under the more reasonable
23 interpretation.

24 Multnomah County's collection procedure begins with
25 an assessment of the sewer charges against the premises
26 serviced, in this case debtor's real property, which

1 consisted of machinery and equipment. ORS 454.225; ORS
2 307.010; ORS 311.370(1). The assessment is accomplished when
3 the tax assessor certifies the sewer charges to be placed on
4 the tax roll. ORS 311.105; ORS 311.370(1). The completed
5 tax roll is then delivered by the tax assessor to the tax
6 collector, ORS 311.115, who is required to post payments,
7 ORS 311.370(3), and to collect any deficiencies,
8 ORS 311.370(5). Finally, ORS 312.010(2) authorizes the
9 collection of the sewer charges by foreclosure.

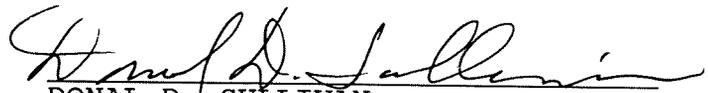
10 Because it is clear that the legislature intended the
11 sewer charges to be treated the same as ad valorem taxes in
12 the collection process, and because it does not make sense to
13 authorize the foreclosure of the sewer charges unless the
14 sewer charges constitute a lien upon property, the court
15 concludes that the term ad valorem taxes as used in
16 ORS 311.405(1) includes the sewer charges at issue. Using
17 the same analysis, the term ad valorem taxes as used in
18 ORS 311.405(7) includes the sewer charges at issue.
19 Accordingly, Multnomah County's lien for the unpaid sewer
20 charges has first priority in and to the proceeds of debtor's
21 machinery and equipment.

22 III. Multnomah County's Lien Does Not Extend to Penalties
23 and Interest on Penalties.

24 Pursuant to PCC 17.36.100, the City included a 10%
25 penalty in the sewer charges certified to Multnomah County.
26 To the extent Multnomah County's lien is for penalties and/or

1 interest on penalties, it is not enforceable in bankruptcy.
2 11 U.S.C. § 724(b) In re Petite Auberge Village, Inc., 650
3 F.2d 192, 194 (9th Cir. 1981). Multnomah County's secured
4 claim shall be reduced by the amount of penalties and
5 interest on penalties included in the secured claim. The
6 County's claim for penalties and interest on penalties shall
7 be paid in accordance with 11 U.S.C. § 726(a)(4). The
8 County, after consulting with the Trustee, shall submit an
9 appropriate order regarding the amount of its claim.

10 The court will enter a separate order consistent with
11 the foregoing.

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13 
14 DONAL D. SULLIVAN
15 Bankruptcy Judge

16 cc: Sanford R. Landress
17 Sandra N. Duffy
18 Benjamin Walters
19 U. S. Trustee
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RECOMMENDATION

For the reasons stated above, the judgments of the Bankruptcy Court should be AFFIRMED and plaintiff's Notice of Appeal (docket #53) should be DISMISSED.

DATED this 6th day of September, 1995.

A handwritten signature in cursive script, appearing to read "Janice M. Stewart", written over a horizontal line.

Janice M. Stewart
United States Magistrate Judge

NOTICE

Objections to these Findings and Recommendations are waived unless written objections are filed and served within ten days after service. 28 USC §§ 636(b)(1)(B) and (C); LR 135-3.