

SUMMARIES OF WRITTEN OPINIONS
ISSUED BY JUDGE BURTON PERLMAN
(Prepared by M. Elizabeth Hils for the March 15, 2016 Meeting
of the Cincinnati Bar Association Bankruptcy Committee)

INTERPRETION OF STATE LAW:
WHAT CONSTITUTES AN "ASSESSMENT" FOR INCLUSION IN TAX LIEN
CALCULATION?

Chapter 13 Case No. 15-11886

In re: Kenneth Wayne Addison, Sr.

Decision entered in the United States Bankruptcy Court for the Southern District of Ohio, Western Division, on March 3, 2016.

DESCRIPTION:

First mortgagee objected to Chapter 13 Plan based on Debtor's inclusion of certain "assessments" in calculation of tax liens encumbering rental properties.

PROCEDURAL CONTEXT:

Decision on: (1) parties' stipulation of facts, including fair market values and breakdowns of property tax liabilities; and; and (2) oral argument, after which the Court took the matter under advisement.

FACTS:

Debtor owned rental properties located at 35 Ridge Road, North Bend, Hamilton County, OH, and 21 Timea Avenue, Cleves, Hamilton County, OH. Each property was encumbered by tax liens and a first mortgage held by Ciras, Inc. ("Ciras"). Debtor filed an Amended Chapter 13 Plan on June 18, 2015, to which Ciras objected on June 23, 2015.

The parties stipulated as to the fair market value of each property and as to the amount owed to Ciras on its mortgages. They agreed the properties were "under water" in that the mortgage balances significantly exceeded the fair market values. They also cited Hamilton County tax records itemizing the governmental charges levied against the properties. These included a fine of \$17,493.64 levied by the City of North Bend, based upon Debtor's failure to register the Ridge Road property under a rental registration ordinance, as well as delinquent water and garbage assessments.

As to each property, Debtor proposed to pay Ciras an amount equal to the difference between the fair market value and the total of all taxes, assessments, and other governmental charges levied against the property, plus interest of 4.75%. The parties disagreed as to the amount to be subtracted for governmental charges. Ciras conceded that real estate taxes were deductible; however, Ciras disagreed that the North Bend fine and the water and garbage assessments were includable.

ISSUE NO. 1:

Do real estate taxes constitute a lien superior to a first mortgage?

COURT'S RULING:

YES. The Court cited In re McCollum, Case No. 11-12102 (November 21, 2011), in support of this well established legal principle.

ISSUE NO. 2:

Are fines or water and garbage assessments includable in the calculation of property tax liens?

COURT'S RULING:

NO. The Court turned to Ohio law to ascertain the meaning of "assessment." The Court cited Homeowners Loan Corp. v. Tyson, 133 Ohio St. 184 (Ohio 1938) for its holding that the term, "assessment," as used in ORC § 5321.10 (which grants the state a first lien for the amount of "taxes, assessments, interest, and penalty" included in a delinquent land list), refers only to special assessments levied to pay the costs of public improvements. In light of this interpretation, the Court held that the North Bend fine for non-registration of rental property did not fall within the statutory definition. The Court reached the same conclusion with respect to the water and garbage assessments. The fine and these "assessments" were dischargeable to the extent they constituted prepetition debts. To the extent they constituted post-petition obligations, they were unsecured debts, which did not reduce the amount recoverable by Ciras.

OUTCOME:

The Court sustained the objection to the plan.