UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

In Re:	)	Case No. 95-30196
	)	Chapter 11
U.S. FACSIMILE, INC.,	)	
	)	
Debtor.	)	

ORDER OVERRULING OBJECTION TO CONFIRMATION

This Matter is before the court for hearing on the confirmation of Debtor's Amended Plan of Reorganization and the Internal Revenue Services' objection thereto. After review of the record and the arguments of counsel, along with the applicable statutory and case law, the court finds that the objection should be overruled. Thus, since all other provisions of §1129 have been met, the court will hereby confirm the debtor's plan of reorganization. The court makes the following Findings of Fact and Conclusions of Law:

1. The debtor filed its petition under Chapter 11 of the Bankruptcy Code on February 14, 1995.

2. The debtor filed its Proposed Plan of Reorganization on July 17, 1995.

3. The debtor filed its Amended Plan of Reorganization on October 11, 1995.

4. The United States of America, on behalf of the Internal Revenue Service filed its Proof of Claim for Internal Revenue Taxes on May 23rd, 1995, which was subsequently amended and replaced by a new claim filed August 18, 1995. The amended proof of claim sets forth a secured claim under §506 in the amount of

$5,644.63, an unsecured priority claim under §507(a)(8) in the amount of $36,216.80, and an unsecured general claim in the amount of $11,593.66.

5. Since no objection was made to the Service's claim, it is deemed allowed under §502(a).

6. In the debtor's amended plan, Article II and Article IV provide that

> [u]pon receipt of the total amount of the secured claim and applicable interest thereon, the Internal Revenue Service lien shall be deemed fully satisfied, canceled and extinguished of record and the Internal Revenue Service shall take all steps necessary to cancel the lien on the Public Record within sixty (60) days of payment of the secured claim.

7. The Internal Revenue Service filed an objection to the debtor's plan on November 1, 1995, claiming that the Service should not be required to cancel the tax liens because its liens are specially protected under 26 U.S.C. §6325(a)(1) and Bankruptcy Code §506(d).

8. Section 6325(a)(1) of the Internal Revenue Code provides that the Service shall release its tax liens if it finds "that the liability for the amount assessed . . . has been fully satisfied or has become legally unenforceable."

9. Section 506 of the Bankruptcy Code provides that

> (a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim.

> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void. . . (and goes on to provide two exceptions which not relevant to this matter.)

10. After this section was enacted, most courts found that the plain language of §506(a) meant that a creditor held a secured claim up to the value of the collateral and an unsecured claim for any amount of the lien over the value of the collateral. Accordingly, the debtor or trustee could ask the court to void a lien of an undersecured creditor to the extent that it exceeded the amount of the allowed secured claim, limiting the lien to the secured portion. See, e.g., Houghland v. Lomas & Nettleton Mortgage Co., 86 F.2d 1182, 1183 (9th Cir. 1989); In Re Lindsey, 823 F.2d 189 (7th Cir. 1987).

11. However, in Dewsnup v. Timm, 502 U.S. 410 (1992), the Supreme Court held that Chapter 7 debtors cannot "strip down" a creditor's lien against property of the estate if the claim is secured by a lien and has been fully allowed under §502. This was in following with the idea that "liens pass through bankruptcy unaffected." Id. at 415 (citing Johnson v. Home State Bank, 501 U.S. 78 (1991)). Notwithstanding the willingness of the Court to reject Chapter 7 lienstripping, the Court was careful to restrict its holding to the facts of that particular case. Id. at 416-17. Dewsnup involved a Chapter 7 debtor with a consensual lien.[1] The lienholder held a deed of trust for $119,000 on the

[1] Subsequent cases have applied the Dewsnup opinion to apply to all liens in a Chapter 7, whether consensual or nonconsensual. See, e.g. In Re Wrenn, 40 F.3d 1162, 1164 (11th Cir.

debtor's land which was valued at $39,000. The debtor argued that under §506(d) the Court could void the deed for the amount above the value of the land. The Court rejected this argument, holding that no amount of the lien could be avoided because §506(a) is not a definitional section, and thus, when §506(d) refers to "allowed secured claim" the reader should not refer to §506(a). Id. at 415-17. Instead, the Court held that "allowed secured claim" means any lien that is an allowed claim under §502 and secured by collateral, without regard to the value of the collateral. Id. at 415.

12. The Dewsnup opinion expressly reserved the issue of whether its holding applies under the reorganization chapters. Id. at 416-17. The few lower court decisions on the subject have split. See, e.g., In Re Dever, 164 B.R. 132 (Bankr. C.D.Cal. 1994) (allowing lien stripping of IRS liens in a Chapter 11 case); In Re 680 Fifth Street Associates, 156 B.R. 726 (Bankr. S.D.N.Y. 1993) (allowing lien stripping of mortgage liens in a Chapter 11 case); In Re Jones, 152 B.R. 155 (Bankr. E.D.Mich. 1993) (allowing lien stripping of mortgage liens in a Chapter 13 case and stating in dicta that Dewsnup should not apply under any

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1994); Crossroads of Hillsville v. Payne, 179 B.R. 486, 491 (W.D.Va. 1995). In the present case, the Service argues that since the full amount of the debtor's liabilities will not be satisfied by the payment of $5,644.63 as stated in the plan, it should not be required to release its lien. The court disagrees. There is nothing in §506 or §1129 of the Bankruptcy Code that suggests that an IRS lien is especially protected from avoidance. Thus, if a voluntary lien can be "stripped down" under Chapter 11, then there is no reason that an involuntary lien cannot be also.

of the reorganization chapters). But see In re Taffi, 144 B.R. 105 (Bankr. C.D.Cal. 1992), rev'd on other grds., 1993 WL 558844; accord In Re Blue Pacific Car Wash, 150 B.R. 434 (W.D.Wis. 1993).

13. This court finds persuasive the logic underlying those cases allowing lien stripping in Chapter 11 cases. As explained in In Re 680 Fifth Street, there exists at least two arguments supporting the conclusion that Chapter 11 lien stripping exists. First, under §1129(b), a Chapter 11 plan need only provide for the retention of a creditor's liens up to the value of the secured creditors collateral. There is no requirement that the lien exceed the collateral's value. Second, under §1111(b), an undersecured creditor has the option of relinquishing its deficiency claim, retaining its lien for the full amount of its claim, and receiving payments equal to the entire allowed claim with a present value at least equal to the secured amount. For these sections to have any effect whatsoever, there must be some mechanism by which a Chapter 11 debtor can allow for lien stripping. Otherwise, the lien would endure regardless of the plan language or the creditor's decision under §1111(b), and each of these sections would become irrelevant.

A third argument, and probably the strongest, states that to bar lienstripping in Chapter 11

> would, in essence, gut the sum and substance of the reorganization and rehabilitation of debt concept under the Bankruptcy Code. In such cases, the debtor would propose a plan for repayment of creditors to the extent of the value of the property securing the creditor's claim, but would still owe the unsecured portion of the claim, post confirmation, in order to obtain a release of the lien on said property. This would require all

> plans under Chapters 11, 12 and 13 to pay all creditors one hundred percent of their claims in order for the debtor to emerge from bankruptcy with a "fresh start". Clearly, this has never been the purpose contemplated for §506.

In Re Butler, 139 B.R. 258, 259 (Bankr. E.D.Okla. 1992).

14. Based on the foregoing, the court finds that the Internal Revenue Service's secured claim will be paid in full by the debtor's plan of reorganization. Since the secured claim will be paid in full, the debtor is entitled to have the lien canceled and extinguished of record. The Internal Revenue Service's objection should be overruled.

15. The court held in its oral ruling at the hearing on January 10, 1996, that all the applicable provisions of §1129 of the Bankruptcy Code have been fulfilled. The court therefore will confirm the debtor's plan of reorganization.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The objection of the Internal Revenue Service is hereby overruled;

2. All of the provisions of §1129 of the Bankruptcy Code have been fulfilled by the debtor;

3. The debtor's Amended Plan of Reorganization is hereby confirmed; and

4. The debtor shall submit a proposed order of confirmation of the Plan of Reorganization to the court.

This the 31st day of January, 1996.

George R Hodges
George R. Hodges
United States Bankruptcy Court