

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

TELEPHONE (605) 224-0560  
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October 30, 1995

John E. Harmelink, Esq.  
Counsel for Debtor  
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Yankton, S.D. 57078

Joan Stentiford Ulmer  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 7328  
Ben Franklin Station  
Washington, D.C. 20044

Subject: ***In re Francis D. Laffey,***  
Chapter 7; Bankr. No. 93-40570

Dear Counsel:

The matter before the Court is Debtor's Motion Requesting Order Satisfying Judgments and Liens of Record and the Internal Revenue Service's objection thereto. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that the IRS's lien shall not be deemed satisfied based on the present record.

Debtor filed a Chapter 7 petition on September 15, 1993. On his schedules, he listed the IRS as the holder of an unsecured priority claim for \$9,951.21 for withholding taxes from 1985 or 1986. A discharge was entered December 15, 1993.

On May 22, 1995, Debtor filed a Motion Requesting Order Satisfying Judgments and Liens of Record. Therein, Debtor asked *inter alia* that a lien filed in Yankton County by the IRS on February 24, 1992 for \$10,724.52 plus interest be discharged pursuant to 11 U.S.C. §§ 524, 522(f), and 727. An attachment to the Motion indicates the IRS's lien actually was filed in March 1995 while the taxes were assessed on February 24, 1992.

The IRS objected on June 12, 1995. It stated Aten Marine,

which Debtor at times operated as a sole proprietorship, failed to pay in full withholding taxes for 1988. The IRS stated that in early 1995, two partial payments were made but that a principal balance of \$2,950.54 is still due. On March 6, 1995, the IRS filed a Notice of Federal Tax Lien against Debtor. The IRS claims this

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assessment is non dischargeable under 11 U.S.C. §§ 523(a)(1) and 507(a)(8)(C).

A hearing was held July 18, 1995. Appearances included John E. Harmelink for Debtor and Joan Stentiford Ulmer, a Department of Justice Tax Attorney, for the IRS. Debtor's counsel stated Aten Marine was a corporation from 1980 to 1989 and that Debtor was the sole shareholder. In 1989, Debtor sold one-half of the stock to Rolly Bredrick [sic]. In 1992, a bank foreclosed on Aten Marine, Inc., and no assets remained after the foreclosure sale. In September 1992, Charles Thomas purchased the stock. In October 1993, Charles Thomas terminated Debtor's employment. Counsel stated that two years after Debtor's discharge, the IRS garnished his wages and levied on some accounts based on a tax claim that may have been incurred by Aten Marine, Inc. Counsel further argued that the purchaser of Aten Marine, Inc., would have assumed the corporation's tax liabilities.

Attorney Ulmer stated IRS records indicate that Aten Marine was operated as a sole proprietorship during 1988. She argued that if Debtor contested the validity of the lien, then Debtor would have to file an adversary proceeding for a judicial determination of whether the tax obligation was the corporation's or Debtor's.

Debtor's counsel acknowledged that Aten Marine at times has been operated as a sole proprietorship, not as a corporation. He could not provide dates of incorporation. He further acknowledged that Aten Marine, Inc., did not file bankruptcy.

Debtor's counsel presented two exhibits. Exhibit A was a Taxpayer's Copy of Notice of Levy dated October 2, 1993 that stated withholding taxes in 1988 and 1992 totaling \$9,192.20 were due. The Notice was addressed to Aten Marine. The taxpayer identification number was 47-0633061. Exhibit B was a Notice of Intent to Levy from the IRS dated January 10, 1994 that was addressed to Aten Marine and Debtor. Again, the taxpayer identification number was 47-0633061. Debtor's counsel said the taxpayer identification was the corporation's number, not Debtor's personally, and therefore, that the liability is the corporation's.

The Court held that unless the IRS's records indicated Aten Marine was a corporation in 1988 when the taxes were incurred, then Debtor's Motion would be denied as to the satisfaction of the IRS's lien. Both exhibits were faxed to Attorney Ulmer so that she could research the matter and respond by letter.

By letter dated July 25, 1994, Attorney Ulmer informed the Court that the tax returns for Aten Marine for 1988, the year for which the taxes were assessed, were filed as a sole proprietorship with Debtor as the owner. Attorney Ulmer acknowledged that IRS Bankr. No. 93-40570  
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records indicate that in 1990 Aten Marine filed a corporate income tax return. She further stated that Aten Marine, Inc., received a new employer identification number in 1992. She concluded, however, that for all times relevant to this bankruptcy, Aten Marine was operated as a sole proprietorship and that Debtor remains personally liable for the unpaid 1988 withholding taxes.

By letter dated August 1, 1995, Debtor's counsel advised the court that Debtor claims Aten Marine was a Nebraska corporation in 1988. In a separate letter dated the same day, Debtor's counsel requested that the matter be set for hearing.

The Court finds no support for Debtor's argument that the 1988 tax assessments, which lead to the IRS's lien, were against the corporation Aten Marine rather than against Aten Marine as a sole proprietorship. Aten Marine filed 1988 tax returns as a sole proprietorship. The taxpayer identification number made no distinction between Aten Marine as a corporation or as a sole proprietorship. Until removal of the 1995 lien was sought, the IRS had no reason to believe its tax assessments were in error. Consequently, based on the present record, the Court finds that Debtor remains personally liable for the 1988 taxes. Any lien arising from those taxes shall not be satisfied or discharged pursuant to 11 U.S.C. §§ 523(a)(1) and 507(a)(8)(C).

Debtor's counsel shall prepare an order that grants Debtor's Motion Requesting Order Satisfying Judgment and Liens of Record only as to creditors Ralph Brown and Sorenson Broadcasting and that denies the Motion as to the IRS. If Debtor want to challenge the validity of the IRS's lien, he must pursue a different avenue.

The original of this letter will be docketed. Counsel will receive copies.

Sincerely,

Irvin N. Hoyt  
Chief Bankruptcy Judge

INH:sh  
CC: Bankruptcy Clerk