

The United States Bankruptcy Court for the District of Maryland avoided a federal tax lien encumbering a debtor's real property as the aggregate liens on the property exceeded the value of the property.

***In re Francisco J. Rodriguez*, No. 13-31164(TJC), 2015 Bankr. LEXIS 1539 (Bankr. D. Md. May 5, 2015).**

Summary by Kristen M. Siracusa, Miles & Stockbridge PC

In *In re Rodriguez*, the Chapter 11 debtor sought to avoid the lien of the Internal Revenue Service ("IRS") pursuant to 11 U.S.C. § 506, as the amount of the liens on the debtor's real property exceeded the value of the property. There was no dispute as to the value of the property, as to the amount of the IRS's tax lien, or that the property was underwater. The legal disputes before the court involved whether the holdings in *Dewsnup v. Timm*, 502 U.S. 410 (1992) and *Ryan v. Homecomings Financial Network*, 253 F.3d 778 (4th Cir. 2001) preclude the avoidance of the IRS lien in a Chapter 11 case, and whether 26 U.S.C. § 6321 or 11 U.S.C. § 522(c)(2) prevents the debtor from avoiding the lien; the court ultimately concluded that they do not.

Judge Catliota held that when read in conjunction with §§ 1123(b)(5) and 1129(b), § 506 of the Bankruptcy Code permits the stripping and avoidance of liens in a Chapter 11 case. *Rodriguez* at *4. Further, the court found that there is nothing in the language of 26 U.S.C. § 6321 that precludes an IRS tax lien from avoidance in bankruptcy. *Id.* at *5 citing *In re Johnson*, 386 B.R. 171 (Bankr. W.D. Pa. 2008), *aff'd*, *I.R.S. Dept. of Treasury of U.S. v. Johnson*, 415 B.R. 159 (W.D. Pa. 2009). Finally, the court noted that § 522(c)(2) excepts tax liens from the avoidance powers of the trustee and the debtor, but only when the debtor attempts to take an exemption in such property subject to the lien. Here, the debtor had not taken an exemption in the real property. Thus, the court concluded that the IRS lien may be stripped off and avoided based on the Bankruptcy Code, "clear Congressional intent" and case law. *Rodriguez* at *6.