

SECURED CREDITORS BEWARE: SECOND CIRCUIT RULES NOT ALL LIENS PASS THROUGH BANKRUPTCY UNAFFECTED

Despite the widely-held belief that secured liens pass through bankruptcy unaffected, on August 4, 2015, the United States Court of Appeals for the Second Circuit in *City of Concord, N.H. v. Northern New England Telephone Operations LLC (In re Northern New England Telephone Operations, LLC)* clarified that under the Bankruptcy Code, a Chapter 11 plan will extinguish a lien if the plan does not preserve the lien, if the property subject to the lien is “dealt with” by the plan and if the lienholder has participated in the bankruptcy proceedings.

In this case, the City of Concord filed proofs of claim for property tax bills issued to the debtor pre-petition; however, it failed to file proofs of claim for tax bills issued post-petition, which were secured by the same lien as the pre-petition bills. The City moved the bankruptcy court for payment of the post-petition tax bills and the court denied the motion, holding that the debtor’s plan extinguished the lien.

On appeal, the Second Circuit affirmed, explaining that the plan did not specifically preserve the lien and because the plan declared “all property” of the debtor to be free and clear of liens, the plan properly “dealt with” the property subject to the lien. In addition, the Court determined that the City participated in the bankruptcy case by filing proofs of claim for the pre-petition tax bills. This case underscores the need for secured creditors to closely monitor bankruptcy proceedings to ensure that their liens are adequately protected.

To learn more about this matter or to discuss it in greater detail, please contact:

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If you have any questions about the issues addressed here, or any other matters involving Bankruptcy and Creditors' Rights issues, please feel free to contact:

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