

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

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	:	
DIANE M. HOUCHINS,	:	CASE NO. 16-20740 (JJT)
	:	
DEBTOR.	:	
<hr/>	:	RE: ECF No. 46

APPEARANCES

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RULING ON MOTION FOR CONTEMPT AND NULLIFICATION OF TRANSFER

Before the Court is Diane M. Houchins' (the "Debtor") Motion for Contempt and Nullification of Transfer (ECF No. 46, the "Motion"), in response to the City of Norwich's (the "City") post-petition transfer and recording of title to the Debtor's real property, located at 13-15 South A. St., Taftville, CT 06380 (the "Property"), following a duly executed tax sale of the Property pursuant to the Tax Collector Sales Procedure set forth in Conn. Gen. Stat.¹ § 12-155 *et seq.* For the reasons set forth herein, the Motion is granted in part and reserved in part for further proceedings.

¹ (hereinafter "C.G.S.")

I. BACKGROUND²

The Debtor is a single parent with limited means. The Debtor's only significant asset is the Property, which she can only afford to heat with a kerosene heater. Prior to the events that gave rise to these proceedings, the Property had no mortgage against it but was encumbered by judgment liens of \$21,113.36 and liens related to water, sewer and municipal property taxes in the approximate amount of \$40,815.50.

By complaint, dated June 22, 2010, the City commenced a foreclosure action against the Debtor in Superior Court for the Judicial District of New London to foreclose on the Property, following the default in the payment of property taxes to the City. On October 1, 2015, the City commenced a non-judicial tax sale against the Property pursuant to C.G.S. § 12-155 *et seq.*. On December 4, 2015, the Property was sold via non-judicial tax sale to the City, the sole bidder, for the outstanding taxes, interest and attorneys' fees and costs in the amount of \$40,815.50 (the "Tax Sale").

Pursuant to Connecticut Tax Collector Sales Procedure, *see* C.G.S. § 12-157(f), the Debtor was provided by law with a six-month redemption period with respect to the Property, the final day of which period was June 4, 2016.

The Debtor filed a petition under Chapter 7 of the Bankruptcy Code on May 5, 2016. On June 20, 2016, the Debtor moved to convert her Chapter 7 case to a Chapter 13 case. The motion to convert was granted the following day.

In addition, on June 20, 2016, the Debtor brought an adversary proceeding against the City seeking to avoid the Tax Sale as a fraudulent conveyance. On June 27, 2016, the Debtor

² The parties stipulated to the relevant facts included herein at ECF No. 13 in the related adversary proceeding, *Houchins v. City of Norwich*, No. 16-02053 (Bankr. D. Conn. June 20, 2016). By order dated March 31, 2017, this Court dismissed the Debtor's adversary proceeding against the City for the reasons stated therein.

filed an application with this Court to employ a real estate agent to sell the Property on her behalf.

On July 6, 2016, the Debtor filed a Chapter 13 plan (the “Plan”) listing outstanding taxes of \$40,815.50 due to the City as a priority claim. The Plan proposed that the Debtor would list and sell the Property to pay all allowed claims.

On July 7, 2016, the City recorded the tax collector deed for the Property in volume 2969, page 11 of the Norwich land records. At some point thereafter, the Debtor was removed from the Property by the local police, and the City boarded up the Property.³

The City did not petition this Court for relief from the automatic stay imposed by § 362(a) of the Bankruptcy Code prior to recording the tax collector deed. Further, the City does not dispute that it was aware of the Debtor’s pending bankruptcy case when it recorded the deed. Instead, the City argues that it relied on § 108(b) of the Code and supporting case law for the proposition that the Debtor’s right of redemption expired on July 5, 2016—sixty days after the Debtor petitioned for relief under Chapter 7—and therefore the automatic stay no longer operated to bar recording of the deed, as the Debtor no longer retained an interest in the Property.

II. DISCUSSION

To determine whether a post-petition transfer and recording of a tax collector deed violates the automatic stay in the context of a Chapter 13 case, the Court must confront “[t]wo opposing views which have emerged in the national case law regarding the nature of the relationship between the debtor/former record owner and the tax sale purchaser and the manner in which a bankruptcy debtor may pay the [r]edemption [a]mount and regain full ownership of

³ The Court heard briefly from respective counsel for the parties regarding the Debtor’s removal from the Property during a telephonic status conference held on March 24, 2017. The parties have not entered a written stipulation regarding the circumstances surrounding the removal of the Debtor from the Property. Neither has the Court made any findings on this subject, as it has yet to hold an evidentiary hearing to adduce the necessary information.

his or her property.” *In re Gonzalez*, 550 B.R. 711, 719 (Bankr. E.D. Pa. 2016). If the tax sale purchaser holds a claim, within the meaning of the meaning of 11 U.S.C. § 101(5), then a Chapter 13 debtor has the power to modify or cure the claim under 11 U.S.C. § 1322. *See, e.g., id.* at 713 (holding that tax sale purchaser, under Pennsylvania law, held secured claim subject to modification in Chapter 13 plan pursuant to § 1322(b)(2) and 1325(a)(5)); *In re LaMont*, 740 F.3d 397, 409 (7th Cir. 2014) (holding that tax purchaser, under Illinois law, held a claim that can be treated by a debtor under § 1322(b)(2)); *In re Martin*, 496 B.R. 323, 329 (Bankr. S.D.N.Y. 2013) (holding that tax purchaser, under New York law, held a claim subject to modification by a debtor under § 1322(b)(2)). In this scenario, the post-petition transfer and recording of a tax deed violates the automatic stay, and is thus void. *Martin*, 496 B.R. at 329.

If, on the other hand, a tax sale purchaser does not hold a claim, then a debtor has nothing to treat and provide for in a Chapter 13 plan under § 1322. *See, e.g., In re Young*, 396 B.R. 257, 262 (Bankr. D. Conn. 2008) (Dabrowski, J.) (holding that municipality which conducted tax sale, under C.G.S. § 12–157, did not hold a claim against debtor); *In re Richter*, 525 B.R. 735, 748 (Bankr. C.D. Cal. 2015) (holding that tax purchaser, under California law, does not hold a claim). On this reading, the automatic stay extends only so far as to protect the debtor’s state law right of redemption during the redemption period, extended only by 11 U.S.C. § 108(b). *Young*, 396 B.R. at 264 (“Section 362(a) constitutes a stay of *creditor activity*, not *debtor opportunity*.”) (emphasis in original).

As explained below, the Court disagrees with the rationale advanced in *Young* and embraces the reasoning of a growing number of bankruptcy courts across the country in holding that a tax sale purchaser, under Conn. Gen. Stat. § 12–157, holds a claim, which a Chapter 13 debtor may modify pursuant to 11 U.S.C. § 1322(b)(2). Accordingly, the Court finds that the

City's post-petition transfer and recording of the tax collector deed violated the automatic stay, and thus is void.

A. Connecticut Law Makes Clear That A Tax Sale Purchaser Holds A Claim, Which May Be Modified Pursuant to § 1322

In determining the nature of the relationship between the debtor/former record owner and the tax sale purchaser, the Court begins with the principle that “[p]roperty interests are created and defined by state law.” *In re Canney*, 284 F.3d 362, 370 (2d Cir. 2002) (quoting *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979)).

Pursuant to Conn. Gen. Stat. § 12–155, *et seq.*, a municipal collector may enforce by levy and sale any warrant upon real estate for unpaid taxes. C.G.S. § 12-155(b)(2). After affording notice to interested parties, a collector may conduct a public auction or “tax sale” of real estate subject to a warrant for unpaid taxes. C.G.S. § 12-157(c). At such a sale, the collector may either sell the property to the highest bidder or may sell the property to his municipality “if there has been no bidder or the amount bid is insufficient to pay the amount due.” *Id.* “Within two weeks after such sale,” as provided by subsection 12-157(e), “the collector shall execute a deed thereof to the purchaser or to the municipality conducting the sale and shall lodge the same in the office of the town clerk of such town, where it shall remain unrecorded six months from the date of such sale.” C.G.S. § 12-157(e).

If the delinquent taxpayer pays the collector the amount of taxes, interest and charges due at the time of the sale (the “Redemption Amount”) within six months after the date of sale, absent certain exceptions not applicable here, (the “Redemption Period”), then the tax collector deed executed pursuant to subsection 12-157(e) “shall be delivered to the collector by the town clerk for cancellation” C.G.S. § 12-157(f). If the Redemption Amount is not paid within the Redemption Period, “the deed shall be recorded and have full effect.” *Id.*

Under this statutory framework, upon execution of a tax collector's deed, the tax sale purchaser obtains a fee simple interest, subject to complete defeasance by payment of the Redemption Amount within the Redemption Period. *In re Young*, 396 B.R. 257, 263 (Bankr. D. Conn. 2008) (citing C.G.S. § 12–157(e)-(f)). Stated another way, the execution of a tax collector's deed conveys legal title to a delinquent taxpayer's real property, subject to the taxpayer's equitable right of redemption.

In a “title theory” state such as Connecticut, therefore, the relationship between a tax sale purchaser and delinquent taxpayer is practically identical to that of the conventional mortgagee/mortgagor relationship:

Connecticut follows the title theory of mortgages, which provides that on the execution of a mortgage on real property, the mortgagee holds legal title and the mortgagor holds equitable title to the property. . . . In a title theory state such as Connecticut, a mortgage is a vested fee simple interest subject to complete defeasance by the timely payment of the mortgage debt The mortgagee's legal title is a defeasible fee subject to an equitable right of redemption that persists until it is foreclosed.

Mortg. Elec. Registration Sys., Inc. v. White, 278 Conn. 219, 231, 896 A.2d 797, 806 (2006) (citations and internal quotation marks omitted). In Connecticut, timely satisfaction of mortgage debt effects a reconveyance of legal title to the mortgagor just as payment of the Redemption Amount within the Redemption Period restores title to the delinquent taxpayer under C.G.S. § 12–157(f).

Though the particular terminology and timing of a delinquent taxpayer's redemption may be “unique to a Connecticut tax sale”, *Young*, 396 B.R. at 264, n. 5, the respective rights of a tax sale purchaser and delinquent taxpayer to the subject real property are functionally equivalent to those enjoyed in the conventional mortgagee/mortgagor context. Consequently, just as a mortgagee has a claim against property owned by a debtor in a bankruptcy, “[a] tax purchaser

has an in rem right against property owned by a debtor in a bankruptcy, which gives the tax purchaser a ‘claim’ in the bankruptcy case.” *Martin*, 496 B.R. at 329; *accord LaMont*, 740 F.3d at 409; *In re Jimerson*, 564 B.R. 430, 437-38 (Bankr. N.D. Ga. 2017); *In re Pittman*, 549 B.R. 614, 628 (Bankr. E.D. Pa. 2016); *Gonzalez*, 550 B.R. at 725–26; *In re Francis*, 489 B.R. 262, 269 (Bankr. N.D. Ga. 2013); *In re Terry*, 505 B.R. 660, 666 (Bankr. E.D. Pa. 2014); *In re Hammond*, 420 B.R. 633, 636 (Bankr. W.D. Pa. 2009).

Such a claim may be modified, like any other, pursuant to § 1322(b)(2)⁴. *Martin*, 496 B.R. at 329; *LaMont*, 740 F.3d at 409. “This [modification of a claim] is distinguishable from a redemption under applicable state law, and the Debtor therefore does not need to take any action under state law to redeem the Property.” *Pittman*, 549 B.R. at 631 (citing *LaMont*, 740 F.3d at 409).

B. Where § 1322 Applies, Transfer of a Deed Violates the Automatic Stay

It is undisputed that the Debtor entered bankruptcy with the right to redeem the Property and that the City recorded the tax collector deed to the Property post-petition, even after the case was converted to Chapter 13 and the Debtor had filed a plan purporting to treat the outstanding taxes due to the City as a priority claim. “Therefore, the transfer of the deed was in violation of the automatic stay and should be vacated.” *Martin*, 496 B.R. at 329. Accordingly, the transfer is adjudged and decreed void and without legal force or effect. *See id.*

The Debtor also seeks to hold the City in contempt for its violation of the automatic stay. While the Court is generally disinclined to do so, to the extent that the City acted in accordance

⁴ The limitation set forth by § 1322(b)(2), which prevents a debtor from modifying a security interests in real property that is the debtor’s principal residence, does not apply in this case. The City’s claim is not a security interest, as it was not created by agreement. *See LaMont*, 740 F.3d at 409 (citing 11 U.S.C. § 101(51)); *Gonzalez*, 550 B.R. at 722, n. 29 (same).

with *Young* and related decisions, which dispute the application of § 1322 in this context, it will, upon supplemental motion of the Debtor, hear and determine what further redress in the form of money damages and/or legal fees may be appropriate.

Finally, as the City may have inflicted further injury, in violation of the automatic stay, in connection with the alleged removal of the Debtor and the boarding of the Property since the filing of the instant Motion, acts, if proven, may entitle the Debtor to an award of additional monetary damages.

III. CONCLUSION

For the foregoing reasons, the motion to nullify the tax collector deed is granted. The Court reserves decision regarding further or appropriate sanctions. Wherefore, the Debtor shall submit, within twenty (20) days of the date hereof, a supplemental motion regarding any harms the City visited upon her following the transfer of the deed and her claims for damages. The Court will forthwith enter a separate order on the nullification of the transfer, which the Debtor shall promptly record upon the land records of the City of Norwich, Connecticut.

IT IS SO ORDERED at Hartford, Connecticut this 25th day of May 2017.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut