

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
at Baltimore**

<b>In re:</b>	*	
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<b>MERRY-GO-ROUND ENTERPRISES, INC.,</b>	*	<b>Case Nos. 94-5-0161-SD</b>
<b>MGR DISTRIBUTION CORPORATION,</b>	*	<b>Through 94-5-0163-SD and</b>
<b>MGRR INC.,</b>	*	<b>94-5-3774-SD et al.</b>
	*	<b>Chapter 7</b>
	*	
<b>Debtors.</b>	*	<b>Jointly Administered Under</b>
	*	<b>Case No. 94-5-0161-SD</b>
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**MEMORANDUM OPINION AND ORDER SUSTAINING TRUSTEE’S FIFTEENTH  
OMNIBUS OBJECTION TO CLAIMS OF THE TEXAS TAX AUTHORITIES**

**I. INTRODUCTION**

Before the court is the Chapter 7 Trustee’s (“Trustee”) objection to the pre-petition, pre-conversion secured claims of tax units from the State of Texas (“Texas Tax Authorities”). The issue presented is whether preservation of a creditor’s pre-petition *ad valorem* tax lien by automatic post-petition attachment to after-acquired property is barred by the automatic stay when the debtor’s case commenced prior to the effective date of 11 U.S.C. §362(b)(18). In order to reach the ultimate issue the court must answer three questions: 1) Do the provisions of the Texas Tax Code alone govern this dispute? 2) Did the tax liens attach pre-petition? and 3) Did the tax liens attach post-petition?

**II. FACTS**

Merry-Go-Round Enterprises, Inc., and certain of its affiliates (“MGRE”) filed a petition to reorganize under Chapter 11 of the Bankruptcy Code on January 11, 1994. The reorganization effort was unsuccessful, however, and this court converted the case to Chapter 7 on March 1, 1996. Prior to the conversion, on February 22, 1996 the court approved a going out of business (GOB) sale of MGRE's inventory. Under the terms of the order approving the GOB sale, whatever liens had attached to the items being sold would continue as liens on the proceeds from the sale. The Texas Tax Authorities claim that their liens for pre-petition personal property taxes continued during MGRE's Chapter 11 case and had attached to items sold at the GOB sale. Therefore, the liens allegedly continued in the GOB sale proceeds.

The Texas Tax Authorities are each units of local government in the State of Texas which possess the authority under the laws of the State to assess and collect *ad valorem* taxes on personal property. At issue are personal property taxes assessed by the Texas Tax Authorities for 1993 and 1994. The parties agreed at a hearing held on July 15, 1999 that the 1994 taxes, although assessed later in the year, attached to property and became an obligation of the estate on January 1, 1994. Consequently, the parties have thus agreed that the taxes at issue are pre-petition obligations. The Trustee also agreed that as to personal property owned by MGRE between January 1, 1994 and January 10, 1994 (the date before the petition was filed), the Texas Tax Authorities liens had attached and been perfected. Therefore, to the extent that any of the personal property owned pre-petition is traceable through the GOB sale, the parties agree that the Texas Tax Authorities are entitled to receive compensation.

The bulk of MGRE's personal property consisted of inventory. The contention between the parties concerns this inventory. The Trustee avers that all inventory owned prior to the petition date (i.e. inventory securing the Texas Tax Authorities pre-petition perfected liens) was sold long before the GOB sale in the

ordinary course of MGRE's business to buyers who took free and clear of the tax liens. The Texas Tax Authorities have accepted this factual assertion for purposes of the court's ruling on the Trustee's objection. According to the Trustee, the Texas Tax Authorities' liens diminished post-petition as the inventory was sold in the ordinary course of business during the more than two years before the GOB sale, leaving the Texas Tax Authorities with an unsecured tax claim by the time of the GOB sale. The Trustee concludes that the automatic stay prevented the automatic post-petition attachment of the Texas Tax Authorities liens to MGRE's after-acquired inventory and other personal property. The Trustee brings this matter before the court in the form of an objection to the claims of the Texas Tax Authorities. While this could have been presented in the form of a timely-filed adversary proceeding, the court concludes that the context of an objection to proof of claim is an appropriate tool for the determination of the legal issues presented here.

The Trustee's objection is not leveled at the portion of the Texas tax claim that was supported by the pre-petition property of MGRE. The Trustee admits that the Texas Tax Authorities are entitled to secured claims in the total amount of not more than \$15,000, which is the amount received from the sale of pre-petition property at the sale of furniture, fixtures and equipment in Texas. The Trustee maintains that the Texas Tax Authorities' pre-petition claim to the extent unsupported by pre-petition property is unsecured.

In discussing these issues, the court distinguishes between the pre-petition tax liens that attached to pre-petition property and the pre-petition liens that allegedly attached to property acquired post-petition. As the Trustee acknowledges the existence of some tax liens that attached to pre-petition property, the court will only discuss these liens in the context of the possible continuation of the existing pre-petition liens. The bulk of the discussion will center around the pre-petition liens that allegedly attached to property acquired post-petition.

### III. CONCLUSIONS OF LAW

#### A. The Provisions of the Texas Tax Code Must be Read in Light of 11 U.S.C. § 362

The court is confronted with a determination of whether state law or federal law governs the issue presented. If Texas law is controlling, then the provisions of the Texas Tax Code will define when the liens attached. Should federal law govern, then to the extent that Texas law diverges from federal law, Texas law will be disregarded.

It is a well-settled principle of bankruptcy law that property interests are created and governed by state law. The Supreme Court has confirmed that we should look to state laws to define property rights. In Butner v. United States 440 U.S. 48, 55 (1979) the Supreme Court held:

Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.

The Supreme Court more recently reiterated the Butner approach in Barnhill v. Johnson, 503 U.S. 393, 397-98 (1992) (In the absence of any controlling federal law, ‘property’ and ‘interests in property’ are creatures of state law.).

In keeping with Butner the Fourth Circuit has recognized that there may be overriding federal interests that compel a result different than that reached under state law with respect to property interests.<sup>1</sup> Here, the

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In re Dameron, 155 F.3d 718 (4<sup>th</sup> Cir. 1998); American Bankers Insurance Company of Florida v. Maness, 101 F.3d 358 (4<sup>th</sup> Cir. 1996).

Trustee advances the federal interest of observing the automatic stay in 11 U.S.C. §362(a)(5)<sup>2</sup> as the countervailing federal interest that requires the court to determine property interests here in a way different from that mandated by Texas law. The court accepts the Trustee’s argument.

The Fourth Circuit has consistently recognized enforcement of the automatic stay as a compelling federal interest. In In re Avis, 178 F.3d 178, 721 (1999), the Court of Appeals considered the interrelation of state and federal law while ruling on the effect of the post-petition attachment of an IRS tax lien. In Avis, the Court of Appeals held that the automatic stay prevented the IRS’ unperfected lien from attaching to property inherited during the bankruptcy, and it opined as follows:

Property of a bankruptcy estate receives various levels of protection from the post-petition reach of creditors and third parties through the automatic stay provisions of the Bankruptcy Code. Specifically, §362 of the Bankruptcy Code provides that a bankruptcy petition “operates as a stay” of any litigation, lien enforcement, or other efforts by creditors or third parties to enforce or collect pre-petition claims, except as specifically exempted. 11 U.S.C. § 362(a). This stay serves to “protect[ ] the relative position of creditors [and] to shield the debtor from financial pressure during the pendency of the bankruptcy proceeding.” Winters v. George Mason Bank, 94 F.3d 130, 133 (4th Cir.1996) (citations omitted). . .Indeed, the automatic stay represents “one of the fundamental debtor protections provided by the bankruptcy laws.” Midlantic Nat’l Bank v. New Jersey Dep’t of Env’tl. Protection, 474 U.S. 494, 503 (1986) (quoting legislative history of the Bankruptcy Code).

The Fourth Circuit has specifically affirmed the interest of compelling states to respect the importance and the function of the automatic stay. In Maryland v. Antonelli Creditors’ Liquidating Trust, 123 F.3d 777 (4<sup>th</sup> Cir. 1997) the Court of Appeals discussed the supremacy of federal bankruptcy law over state taxing

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362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title

provisions. Antonelli concerned certain post-confirmation tax liabilities and the effect of 11 U.S.C. §1146 (exempting plan transfers from state stamp tax or similar tax). The Court of Appeals affirmed a summary judgment ruling against the Taxing Authorities and upholding the effect of the federal tax exemption. The Court of Appeals explained that states are bound by the preeminence of federal law. It stated:

[t]hey are so bound neither solely nor primarily because the bankruptcy court entered an order incorporating the tax exemption provision, but because the federal government has power under the Bankruptcy Clause of the Constitution, ART. I, §8, CL. 4, to enact such a provision, and any bankruptcy provision enacted within constitutional authority applies directly to a bankruptcy estate and takes precedence over conflicting state provisions by reason of the Supremacy Clause, U.S. CONST. ART. VI, § 2. The provision for tax exemption at issue here operates against the states in a fashion similar to, for example, the automatic stay provision, 11 U.S.C. § 362. The force of such legislative enactments is not derived from a court order or prior adjudication, but from the legislative enactments themselves.

123 F.3d at 781.

In keeping with the law of the Fourth Circuit and because of the supremacy of federal bankruptcy law, the court accepts the Trustee's argument that the mandate of the automatic stay warrants a determination of property rights in a manner at variance with state law. Accordingly, Texas law is used for the purpose of determining the nature and extent of the liens of the Texas Tax Authorities. However, to the extent that Texas law conflicts with the principles of the automatic stay, the overriding federal interest of enforcing the automatic stay prevails.

**B. The Texas Tax Liens did not Attach Pre-Petition**

The tax liens of the Texas Tax Authorities are created and defined by Section 32.01 of the Texas Property Tax Code. Section 32.01 provides:

- a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties and interest ultimately imposed for the year on the property,

whether or not the taxes are imposed in the year the lien attaches. The lien exists in favor of each taxing unit having power to tax the property.

- b) A tax lien on inventory, furniture, equipment, or other personal property is a lien *in solido* and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.
- c) The lien under this section is perfected on attachment and, except as provided by Section 32.03(b), perfection requires no further action by the taxing unit.

TEX. TAX CODE §32.01. Section 32.01 of the Texas Tax Code creates a lien on property to secure the payment of taxes. This lien is superior to the interests of all other lien holders. *See* TEX. TAX CODE §32.05(b). However, the tax liens are not absolutely enforceable. For example, a tax lien may not be enforced against personal property transferred to a buyer in ordinary course of business. In re Winn's Stores, Inc., 177 B.R. 253 (Bankr.W.D. Tex. 1995).

Under Texas law, taxes for a particular year generally are not assessed against the taxpayer until approximately October 1 of that year. *See, e.g., Shaw v. Phillips Crane & Rigging, Inc.*, 636 S.W.2d 186, 188 (Tex.1982) (noting tax rolls are required to be filed no later than October 1). Therefore, under Texas law a personal property tax lien that is created when the taxes are assessed in October is deemed to have attached and been perfected as of January 1 of that tax year. The statute as written provides for a “floating lien” in property such as inventory acquired after January 1. *See City of Dallas v. Cornerstone Bank, B.A.*, 879 S.W.2d 264 (Tex. App. 1994). It is notable that the Texas statute does not provide for a lien on proceeds. Thus, the property a taxpayer owns on January 1 may be later sold without the tax lien attaching to the proceeds of the sale. Should the taxpayer use the proceeds to purchase new property, however, Texas tax law provides that the new property is automatically subject to a lien deemed to have attached as of January 1 of that year.

The Texas Tax Authorities argue that attachment occurred on January 1 of 1993 and 1994 per the Texas Statute. In support of this argument, the Texas Tax Authorities cite to City of Dallas v. Cornerstone Bank, 879 S.W.2d 264 (Texas App. 1994) for the proposition that a floating tax lien attaches to the taxpayer's personal property as a category on January 1 of each tax year. Cornerstone Bank's specific holding was that an individual piece of property secures not only a lien for the taxes due on that particular piece of property but the complete tax due. Therefore, a particular item of MGRE's inventory purchased on January 7, 1994 would secure the tax lien that attached pursuant to the Texas Statute on January 1, 1994. The Trustee does not dispute this contention nor the specific holding of Cornerstone Bank. As pointed out by the Trustee, neither Cornerstone Bank nor the statute itself address the question of precisely when the *ad valorem* tax liens attach to after-acquired property.

This court concludes that the portions of the Texas Tax Code that subject property acquired by a debtor during bankruptcy to a pre-petition tax lien are contrary to the purpose and mandate of 11 U.S.C. §362(a)(5). Section 362(a)(5) specifically prohibits "any act to create, perfect, or enforce against property any lien". Thus the process under Texas law of automatically deeming property acquired post-petition to be subject to a lien is an act to enforce the *ad valorem* tax liens against property of the debtor and is contrary to federal law. To the extent that Texas law provides that the floating tax liens attach to any personal property of the debtor regardless of when obtained, the state law must be disregarded. Consistent with this conclusion, the court also finds that the Texas *ad valorem* tax liens did not attach pre-petition to property acquired post-petition.

This court sees no compelling reason to depart from the commonly accepted principle of commercial law that a creditor may only have a lien attach when the debtor acquires an interest in the subject property.<sup>3</sup> Therefore, the court reads the Texas statute to state that no further action is required to perfect liens arising after January 1 of the year in question as the liens automatically attach as debtors gain an interest in after-acquired property. As applied to the present case, while it is clear that under Texas law the *ad valorem* tax liens attached on January 1 of 1993 and 1994 respectively to personal property then owned by MGRE, attachment as to property acquired after January 1 of those years did not occur until the MGRE acquired rights in the property. Therefore, as to any property obtained by MGRE post-petition, attachment could only occur post-petition in violation of the automatic stay.

### **C. The Texas Tax Liens did not Attach Post-Petition**

11 U.S.C. §362(a)(5) provides an automatic stay that prohibits creditors from undertaking action to enforce or collect pre-petition claims.<sup>4</sup> The relevant section reads:

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Tex. Bus. & Com. Code Ann. §9.203 states in relevant part (emphasis added):

9.203. Attachment and Enforceability of Security Interest; Proceeds, Formal Requisites

(a) Subject to the provisions of Section 4.210 on the security interest of a collecting bank, Sections 9.115 and 9.116 on security interests in investment property, and Section 9.113 on a security interest arising under the chapter on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

- (1) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;
- (2) value has been given; and
- (3) the debtor has rights in the collateral.

<sup>4</sup> The Bankruptcy Reform Act of 1994 added a provision to 11 U.S.C. §362(b) that provides that the automatic stay does not apply to the creation or perfection of a statutory lien for *ad valorem* property taxes imposed by political subdivisions of a State. See 11 U.S.C. §362(b)(18), Bankruptcy Reform Act of 1994, Pub.L. No. 103-394, S 116, 108 Stat. 4106, 4119 (1994). However, this amendment became effective only for cases commenced after October 22, 1994, and it is therefore not applicable to the instant objection.

362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of--

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title

On the issue of whether automatic perfection occurring post-petition is an act in violation of the automatic stay, the Fourth Circuit Avis *supra* case is dispositive. The holding of Avis was recently restated in In re Birney, 200 F.3d 225, 227 (4<sup>th</sup> Cir.1999).

In Avis, we held that the attachment of a tax lien, arising by operation of law to property acquired post-petition, is an act within the meaning of §362(a) and is therefore prohibited during the time that the automatic stay is in effect. Id at 723-24. We rejected a narrow interpretation of the term “act” and concluded that the attachment of a lien is itself an “act” that is prohibited by §362(a)(5), even when the attachment occurs automatically by operation of law. Id. At 722-23.

In Birney, a judgment creditor sought to proceed against property owned by the debtor prior to the filing of the bankruptcy case as tenants by the entirety with his wife, who died during the course of the bankruptcy. The creditor argued as here that his lien was perfected pre-petition and that it automatically attached to property acquired by the debtor post-petition. In rendering a decision in the Birney case, the Fourth Circuit stated in dicta that “11 U.S.C. §362(a)(5) prohibits any lien on a pre-petition debt from attaching.” Birney at 228. The Fourth Circuit rejected a narrow interpretation of the term “act” and held that the attachment of a lien is itself an “act” that is prohibited by §362(a)(5), even when the attachment occurs automatically by operation of law. Therefore, it is clear that in the Fourth Circuit, automatic post-perfection is to be considered an “act” in the context of the automatic stay.

The Texas Tax Authorities raise the question of whether an action taken in violation of the automatic stay is properly characterized as “void” or “voidable”. Acts that are void are without effect, i.e. legal nullities, whereas acts merely voidable are effective unless and until voided by the bankruptcy court. The Texas Tax Authorities argue that actions taken in violation of the stay are merely voidable and not void and that the limitations period for bringing an action to avoid the transfers under 11 U.S.C. §549 has passed. The Texas Tax Authorities conclude that because the Trustee cannot avoid the tax liens under 11 U.S.C. §§545 and 546 and she has not filed an adversary proceeding seeking avoidance, the attachment of the tax liens, if viewed as an act in violation of the stay, is a transfer impervious to attack. The trustee avers that acts taken in violation of 11 U.S.C. §362 are void not voidable.

There is a split among the Circuits as to whether acts violating the automatic stay are void or voidable. Within the Fourth Circuit there is a split of authority and the Fourth Circuit Court of Appeals has not spoken on the subject.<sup>5</sup> Still, the majority of courts within the Fourth Circuit and all Maryland courts examining the issue have held that an act taken in violation of the automatic stay is void.<sup>6</sup> The First, Second, Ninth, Tenth and Eleventh Circuits hold that acts violating the stay are void.<sup>7</sup> The Third, Fifth, and Federal Circuits

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Winters v. George Mason Bank, 94 F.3d 130 (4<sup>th</sup> Cir. 1996) (declining to decide issue).

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Anglemyer v. U.S., 115 B.R. 510 (D.Md. 1990) (tax assessment made while the automatic stay was in effect was null and void ab initio); In re Harris, 203 B.R. 46 (Bankr.E.D.Va. 1994); In re Smith, 155 B.R. 145 (Bankr. S.D.W.Va. 1993); In re Walt Robbins, Inc., 129 B.R. 452 (Bankr.E.D.Va. 1991); In re Lampkin, 116 B.R. 450 (Bankr.D.Md.1990); In re Burns, 112 B.R. 763 (Bankr.E.D.Va.1990); In re Miller, 10 B.R. 778 (Bankr.D.Md. 1981). *But see* Wills v. Bank, 226 B.R. 369 (Bankr. E.D.Va. 1998); Khozai v. Resulting Trust, 177 B.R. 524 (Bankr.E.D.Va. 1995).

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Soares v. Brockton Credit Union, 107 F.3d 969 (1<sup>st</sup> Cir. 1997); Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522(2d Cir. 1994); In re Schwartz, 954 F.2d 569 (9<sup>th</sup> Cir. 1992); Ellis v. Consolidated Diesel Electric Corp., 894 F.2d 371 (10<sup>th</sup> Cir. 1990); Roberts v. C.I.R. 175 F.3d 889 (11<sup>th</sup> Cir. 1999).

hold that such acts are voidable.<sup>8</sup> The Sixth Circuit doesn't clearly come down on either side of the fence<sup>9</sup>. In accordance with the predominant Fourth Circuit authority and the law in the majority of other Circuits, this court reaffirms its prior holdings and holds that to the extent the Texas Tax Authorities took any action in violation of the automatic stay, the acts are void *ab initio*.

The Texas Tax Authorities cite to the Winn case *supra* and point out the ways in which the ability to avoid the tax liens under Texas law are circumscribed by the specific provisions of the Bankruptcy Code. The Texas Tax Authorities note that under Texas law, only a buyer in the ordinary course of business may avoid a tax creditor's liens. As discussed in the Winn case, 11 U.S.C. §545 bestows upon the trustee only the properties and powers of a bona fide purchaser. The Winn court concluded that the Texas tax liens were not avoidable under 11 U.S.C. §545(2) because of the deficiencies in the hypothetical bona fide purchaser status as provided by the Bankruptcy code. The Texas Tax Authorities urge this court to adopt the rationale of the Winn court in order to conclude that the Trustee here is precluded from avoiding the tax liens under §545(2).

As the court has concluded that the automatic post-petition attachment is void rather than voidable, it does not reach the question of the avoidability of the liens under 11 U.S.C. §545(2). Still, this court will adopt the rationale of the Winn court insofar as it recognizes the limitations on an entity's ability to act given

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In re Siciliano, 13 F.3d 748 (3d Cir. 1994); Picco v. Global Marine Drilling Co., 900 F.2d 846 (5<sup>th</sup> Cir. 1990); Bronson v. U.S., 46 F.3d 1573 (Fed. Cir. 1995).

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Easley v. Pettibone Mich. Corp., 990 F.2d 905 (6<sup>th</sup> Cir. 1993) (acts taken in violation of the stay are best characterized as "invalid" as opposed to "void" or "voidable" because they are without legal force but can be effective under certain circumstances).

the interrelation of specific state statutes and the Bankruptcy Code. Just as the trustee in the Winn case was precluded from avoiding the tax liens under Texas law because of the limitations of the Bankruptcy Code, the liens of the Texas Tax Authorities here are prevented from attaching as they would under state law because of the limitation of the Bankruptcy Code as expressed in 11 U.S.C. §362. Here, the long arm of the Bankruptcy Code's automatic stay extends to prevent the pre-petition liens of the Texas Taxing Authorities from attaching post-petition to MGRE's after-acquired property.

The Texas Tax Authorities make much of the fact that they held secured claims pre-petition and rely heavily on the maxim that liens pass through bankruptcy unaffected. Dewsnup v. Timm, 502 U.S. 410 (1992). This proposition is cited in the context of an assertion that automatic attachment to property acquired post-petition should be allowed in order to preserve the Texas Taxing Authorities' secured position on the date of filing.

The fact that the Texas Tax Authorities were fully secured as of the petition date is not wholly dispositive of the issue at hand. Contrary to the assertions of the Texas Tax Authorities, the Bankruptcy Code does not ensure that a creditor's secured position is automatically unassailable. Rather, the Code provides various mechanisms by which a secured creditor may protect its interest. This is evidenced for example, by 11 U.S.C. §362(d) that permits an interested, secured creditor to file for relief from the stay; 11 U.S.C. §363(e) that allows a creditor to seek adequate protection in connection with the use, sale or lease of property of the estate; 11 U.S.C. § 547(b)(5) that excludes prepetition payments on a fully secured debt from avoidance as a preferential transfer; and 11 U.S.C. §524 that allows a creditor to seek reaffirmation or abandonment. In the present case, the Texas Tax Authorities could have filed a motion seeking adequate protection in the form of a replacement lien in MGRE's post-petition inventory to protect its secured status.

They did not. Equity assists the vigilant and diligent, not those who sleep on their rights. As the inventory was sold by MGRE post-petition, the personal property of MGRE that supported the pre-petition liens was converted to proceeds. The category “proceeds” is not included in the list of items that secure tax liens under the Texas Property Tax Code. TEX. TAX. CODE §32.01 (b). Therefore, as the property was sold, the value of the pre-petition tax liens supported by pre-petition property diminished accordingly. Further, the proceeds lost their identity as proceeds as they were commingled and spent. Contrary to the assertions of the Texas Tax Authorities, it is not the filing of MGRE’s bankruptcy petition which defeats the Texas *ad valorem* liens, but the failure of the Texas Tax Authorities to protect their secured interests in collateral that existed on MGRE’s petition date. The mandate of the automatic stay should not be relaxed to compensate.

Therefore, upon consideration of Trustee’s Fifteenth Omnibus Objection to Claims of the Texas Tax Authorities and the accompanying and opposing memoranda, for the reasons stated, it is this \_\_\_\_\_ day of March, 2000, by the United States Bankruptcy Court for the District of Maryland,

DECLARED, that the Automatic Stay prevented the liens of the Texas Tax Authorities from attaching to MGRE’s post-petition property; and it is further

DECLARED, that the automatic post-petition attachment of liens of the Texas Tax Authorities is void *ab initio* as an act in violation of the automatic stay; and it is further

ORDERED, that the Trustee’s Fifteenth Omnibus Objection to Claims of the Texas Tax Authorities is SUSTAINED.

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E. Stephen Derby

Judge

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