UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
WINCHESTER DIVISION

In re: No. 01-16224

ROBERT LEONARD RAMSEY Chapter 7

Debtor

MEMORANDUM

The debtor filed a motion to avoid a judicial lien in an attempt to avoid a tax lien asserted by the State of Tennessee. After a hearing on the motion, the court denied it. The debtor has filed a renewed motion to avoid the lien, a motion to strike the state's objections to discharge of the lien, and a motion to disqualify (a motion for recusal). The motions do not require a hearing because they raise only legal arguments based on known facts. To deal with these motions, however, the court will give a detailed explanation of why it denied the debtor's motion to avoid the state's tax lien, thereby supplementing the reasons given orally from the bench at the time of the hearing.

Before the debtor filed his motion to avoid the lien, he filed a motion to be allowed access to the property. A hearing on the motion was held before Judge Kelley. The bankruptcy trustee appeared at the hearing and stated that the property appeared not to be property of the bankruptcy estate. 11 U.S.C. § 541. Judge Kelley entered an order denying the motion on the ground that the court lacked jurisdiction because the property was not property of the bankruptcy estate.

The debtor's motion identifies the state's lien as a judicial lien and expressly relies on § 522(f) of the bankruptcy code. Section 522(f)(1)(A) provides that a debtor can avoid a judicial lien on an interest of the debtor in property to the extent the lien impairs an exemption to which the debtor would have been entitled. 11 U.S.C. § 522(f)(1)(A).

The debtor's motion can be summarized as follows: (1) the property in question belongs to a trust, Camots One; (2) Camots One leases the property to another trust, Peanuts Automotive & Machine; (3) the debtor has a contract with the Peanuts Automotive trust under which the debtor operates a business for the trust, and the trust pays him for his labor; (4) the state asserts that the debtor is liable for unpaid sales tax and that he has an interest in the property in question, and as a result, the property can be taken to collect the tax; (5) the debtor is not liable for the tax and has no interest in the property; (6) therefore, the alleged tax lien should be avoided.

Though the debtor's motion relies on a lien avoidance statute, § 522(f), the motion raises the question of whether the debtor is liable for the tax. The court denied the motion to avoid the lien without answering the question of whether the debtor is liable for the tax. The court had good reasons for doing this, as explained below.

This is a chapter 7 bankruptcy case. In a chapter 7 case the debtor generally cannot use the bankruptcy trustee's avoiding powers. *In re Southeast R. R. Contractors, Inc.*, 235 B.R. 619 (Bankr. E. D. Tenn. 1996); *James v. Planters Bank (In re James)*, 257 B.R. 673 (8th Cir. B.A.P. 2001); 11 U.S.C. §§ 542–553, 704 & 724(a). The debtor can use the bankruptcy trustee's avoiding powers only to the extent allowed by § 522(h) of the bankruptcy

code. Section 522(h), however, applies only to property in which the debtor can claim an exemption either before or after the lien is avoided. 11 U.S.C. § 522(h).

According to the debtor's motion, the property in question belongs to a trust that leases it to a second trust that employs the debtor to use the property in carrying out the business of the second trust. These facts do not give the debtor an interest in the property that would allow him to claim an exemption. Indeed, the debtor's motion asserts that he has no interest in the property. It follows that § 522(b) does not allow the debtor to claim an exemption in the property.

Tennessee law also supports this result. The Tennessee exemption statutes apply. 11 U.S.C. § 522(b); Tenn. Code Ann. § 26-2-112. They do not allow the debtor to claim an exemption in property in which he has no interest. Tenn. Code Ann. §§ 26-2-102, 26-2-111(4), 67-1-1405 & 67-1-1407.

Since the debtor has no exemptible interest in the property, according to his own argument, then he cannot use § 522(h) to avoid the state's tax lien for the purpose of unfettering an exemptible interest in the property.

This leaves the question of whether the debtor would have an exemptible interest in the property if the state's tax lien were avoided. Again, the debtor's argument denies that he would have an exemptible interest in the property after avoiding the state's tax lien.

In summary, the debtor cannot use § 522(h) to avoid the state's tax lien because he does not have an exemptible interest in the property *and* he would not have an exemptible interest in the property even if the state's tax lien were avoided.

Assume for the purpose of argument that the debtor has an exemptible interest in the property or that avoiding the state's lien would give him an exemptible interest. The debtor still could not use § 522(h) to avoid the state's tax lien.

The debtor asserts that the tax lien is a judicial lien. For the purposes of bankruptcy law, it is neither a judicial lien nor a security interest; it is a statutory lien. 11 U.S.C. § 101(36), (51), (53); *Newport v. Tennessee (In re Boat Land Co.)*, 169 B.R. 47 (Bankr. M. D. Tenn. 1994).

Section 522(h) allows a debtor to use the bankruptcy trustee's power under § 545 to avoid statutory liens, including tax liens. 11 U.S.C. § 522(g)(1),(h) & § 545. Section 522(c), however, provides that exempt property remains liable for a debt secured by (1) an unavoided lien *or* (2) a tax lien, notice of which is properly filed. 11 U.S.C. § 522(c), (f), (h). The courts have reasoned that § 522(c) protects a tax lien from avoidance under § 522(h) and § 545 when notice of the tax lien was properly filed. *DeMarah v. United States (In re DeMarah)*, 62 F.3d 1248 (9th Cir. 1995); *Wernimont v. Iowa Department of Revenue (In re Wernimont)*, 183 B.R. 181 (Bankr. N. D. Iowa 1994). This raises the question of whether the notice of the tax lien was properly filed before the debtor's bankruptcy.

The state filed a proof of claim on October 11, 2001, long before the hearing on the debtor's motion, which was held on January 7, 2002. The proof of claim includes a copy

of a tax lien notice with a recorder's stamp showing that the notice was recorded in the register's office of Coffee County, Tennessee on August 10, 2001. The debtor's motion states that the property is located in Tullahoma, Tennessee. Tullahoma is located in Coffee County. Thus, according to the debtor's motion, Coffee County was the correct place for the state to file the lien notice. Tenn. Code Ann. § 67-1-1403. The debtor filed his bankruptcy case on September 26, 2001, after the state filed the tax lien notice. Therefore, § 522(c) prevents the debtor from using § 522(h) and § 545 to avoid the tax lien, even if the debtor could claim an exemption in the property.

When the court heard the debtor's motion, it could take judicial notice of the facts relevant to this reasoning. Fed. R. Bankr. P. 9017; Fed. R. Evid. 201; *Slone v. Integra Bank/Pittsburgh (In re International Building Components)*, 159 B.R. 173 (Bankr. W. D. Pa. 1993), *on reconsideration* 161 B.R. 764 (Bankr. W. D. Pa. 1993) (location of Tullahoma in Coffee County); *In re H. E. Graf, Inc.*, 125 B.R. 604 (Bankr. E. D. Cal. 1991) (filing of proof of claim & date of filing); *O'Loughlin v. Brown (In re Brown)*, 37 B.R. 516 (Bankr. E. D. Mo. 1984) (filing dates).

Rule 3001 renders irrelevant any doubt as to whether the court could take judicial notice that notice of the tax lien was actually filed on August 10, 2001. Rule 3001 provides that a filed proof of claim is *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). When a creditor files a claim as secured and attaches

copies of documents to show that a lien notice was filed, the court should treat the proof of claim as *prima facie* evidence that the lien notice was actually filed as shown by the proof of claim, which includes the attached copies. *In re Hudson*, 260 B.R. 421 (Bankr. W. D. Mich. 2001). This puts the burden on the debtor to come forward with evidence that the filing was not done on the date shown or in the place shown by the proof of claim. In this case, the debtor did not present any such evidence. *See Lundell v. Anchor Construction Specialists, Inc. (In re Lundell)*, 223 F.3d 1035 (9th Cir. 2000); *McGee v. O'Connor (In re O'Connor)*, 153 F.3d 258 (5th Cir. 1998); *In re Butcher*, 100 B.R. 363 (Bankr. E. D. Tenn. 1989), *on reconsideration* 109 B.R. 775 (Bankr. E. D. Tenn. 1990). The court was justified in finding that the state filed the tax lien notice in the correct place before the debtor filed his bankruptcy. It followed that the debtor could not possibly avoid the lien under § 522(h).

This brings the court to the section of the bankruptcy code that the debtor expressly relied upon, § 522(f). Section 522(f) is not one of the bankruptcy trustee's avoiding powers. It is an avoiding power for individual debtors. It allows a debtor to avoid a judicial lien that impairs an exemption. 11 U.S.C. § 522(f)(1)(A). The state's tax lien cannot impair the debtor's exemption because, according to the debtor's own argument, he could not claim an exemption in the property either before or after avoidance of the state's tax lien.

Even if the debtor could claim an exemption in the property, § 522(f) would not allow him to avoid the state's tax lien. Section 522(f) applies to judicial liens and certain kinds of security interests – not to statutory liens such as the state's tax lien. Therefore, the debtor could not use § 522(f) to avoid the state's tax lien even if he could claim an exemption in the property.

In summary, the avoiding powers created by the bankruptcy statutes do not allow the debtor to avoid the state's tax lien. The debtor wanted the court to avoid the lien on the ground that he is not liable for the taxes in question. This is not a ground for avoiding the lien under § 522(f) or § 522(h). The court did not need to decide the liability question in order to rule on the motion to avoid the lien. The court had other reasons, explained below, for not addressing the tax liability question.

A decision that the debtor is not liable for the taxes would not necessarily justify an order directing the state to release the lien. The debtor consistently asserted that he has no interest in the property. The court has already held that it is not property of the bankruptcy estate. The court doubts that it has subject matter jurisdiction to order the state to release the lien. *Gardner v. United States (In re Gardner)*, 913 F.2d 1515 (10th Cir. 1990); *In re Dickenson Lines, Inc.*, 47 B.R. 653 (Bankr. D. Minn. 1985); *Holland Industries, Inc. v. United States (In re Holland Industries, Inc.)*, 103 B.R. 461 (Bankr. S. D. N. Y. 1989).

Even if the court has subject matter jurisdiction, the debtor's reasoning is based on a view of the law that is too simplistic. The debtor argues that the court should order the lien released because he is not liable for the tax and has no interest in the property. This argument raises numerous state law issues as to who has an interest in the property and who is liable for the unpaid taxes. The debtor seems to think the answers are clear, but he is not taking into account the established law that a court can ignore the form of a transaction or a relationship for the purpose of correctly imposing a tax according to the substance of the transaction or relationship. *English's Estate v. Crenshaw*, 120 Tenn. 531, 110 S.W. 210 (1908); *Goodman v. Jacob's Packing Co.*, 174 Tenn. 399, 126 S.W.2d 309 (1939); *Odd Fellows Benevolent & Charitable Ass'n v. City of Nashville*, 173 Tenn. 55, 114 S.W.2d 791

(1938); *M. & M. Stamp Co. v. Harris*, 212 Tenn. 158, 368 S.W.2d 752 (1963); *Nashville Clubhouse Inn v. Johnson*, 27 S.W.3d 542 (Tenn. Ct. App. 2000); *Kopsombut-Myint Buddhist Center v. State Board of Equalization*, 728 S.W.2d 327 (Tenn. Ct. App. 1986). Thus, the court could not order the lien released without deciding numerous issues under state tax law, issues that are irrelevant to the administration of the bankruptcy case because the property is not property of the bankruptcy estate and the debtor claims no interest in it.

Even if the court has jurisdiction, the tax liability question is one that this court can leave for the state courts to decide. This requires some explanation in light of the debtor's new argument concerning the effect of a discharge. The debtor asserts that the state should be required to release the lien because his discharge in bankruptcy will discharge the alleged tax debt or the lien.

The court assumes for the purpose of argument that the debtor was liable for the unpaid taxes when he filed his bankruptcy petition. As to discharge, there are generally three kinds of debts: (1) debts that will be discharged without regard to whether anyone files a complaint in the bankruptcy court; (2) debts that will not be discharged without regard to whether anyone files a complaint in the bankruptcy court; (3) debts that will be discharged unless someone files a complaint in the bankruptcy court within the time allowed for filing such complaints. 11 U.S.C. § 523(a), (c); Fed. R. Bankr. P. 4007(b),(c).

The debtor contends the tax debt falls in the third category, and since the state did not file a timely complaint, the debt will be discharged. The court disagrees. Category 3 includes debts that may be excepted from discharge under § 523(a)(2), (a)(4), (a)(6) or (a)(15). 11 U.S.C. § 523(a)(15), (c); Fed. R. Bankr. P. 4007(c). A tax debt, however, may

be excepted from discharge under § 523(a)(1). 11 U.S.C. § 523(a)(1). The bankruptcy law does not impose a time limit on filing a complaint under § 523(a)(1). It can be filed after the debtor has received a discharge. 11 U.S.C. § 362(c), 523(c) & 524(a); Fed. R. Bankr. P. 4007(b), (c).

After the debtor has received a bankruptcy discharge, the state can sue the debtor in state court to collect the alleged tax debt. The state court can then decide whether the debtor is liable for the tax debt and whether it was discharged under § 523(a)(1). In this regard, the state courts have concurrent jurisdiction to decide whether a debt was discharged under § 523(a)(1). *Galbreath v. Illinois Department of Revenue (In re Galbreath)*, 83 B.R. 549 (Bankr. S. D. Ill. 1988); *Rein v. Providian Financial Corp.*, 270 F.3d 895 (9th Cir. 2001); *In re Harrison*, 206 B.R. 910 (Bankr. E. D. Tenn. 1997). This court is not required to decide the liability or the dischargeability question. Those questions will remain open after discharge and can be answered in state court.

Furthermore, discharge of the tax debt would not necessarily require release of the tax lien. To the extent a lien is avoided in bankruptcy, it cannot be enforced afterward. An unavoided lien, however, continues to bind the property after the bankruptcy discharge has released the debtor from personal liability for the debt. In other words, discharge of a debt does not prevent the creditor from collecting all or part of the debt by enforcing its unavoided lien on property. In this case, the debtor cannot avoid the tax lien under the bankruptcy statutes that might apply. If the debtor owes the tax debt and the debt is discharged, the tax lien can still apply to the property. *Dewsnup v. Timm*, 502 U.S. 410, 112 S.Ct. 773, 116 L.Ed.2d 903 (1992); *Warner v. United States (In re Warner)*, 146 B.R. 253 (N.

D. Cal. 1992); *Adams v. Hartconn Associates, Inc. (In re Adams)*, 212 B.R. 703 (Bankr. D. Mass. 1997).

Suppose the debtor did not owe the tax debt. The debtor may be arguing that the lien is essentially a claim against him personally and will be discharged. The law does not agree. The tax lien binds the property, and if not avoided in bankruptcy, it continues to bind the property after discharge. A secured creditor can have a claim in a bankruptcy case even though the debtor is not personally liable on the secured debt, but this rule is irrelevant to the debtor's argument. 11 U.S.C. §§ 101(5), 102(2) & 506(a); *Johnson v. Home State Bank*, 501 U.S. 78, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991).

In summary, a discharge can be entered without requiring this court to decide whether the debtor is liable for the tax debt or whether the tax debt is dischargeable. The court is justified in leaving those questions to the state courts because complete administration of this bankruptcy case does not require a decision by this court, and the state courts are more familiar with state tax law issues.

The court has another reason for not considering the tax liability question – the controversy over whether the United States Constitution prohibits this court from deciding it. *H. J. Wilson Co. v. Commissioner of Revenue (In re Service Merchandise Co.)*, 265 B.R. 917 (M. D. Tenn. 2001).

The debtor did not raise the liability question by the normal method of filing an objection to the state's claim. 11 U.S.C. §§ 501 & 502; Fed. R. Bankr. P. 3001–3004 & 3007. He raised the question by seeking to avoid the state's tax lien under § 522(f). The law clearly did not allow him to avoid the lien under either § 522(f) or § 522(h). The court could have

treated the debtor's motion as an objection to the claim if justice required it, but justice did not. Furthermore, even if the court treated the motion as an objection to the claim, the court had good legal reasons for refusing to decide the liability question. Therefore, the court did not decide the question of whether the debtor is liable for the taxes the state is seeking to collect by attachment of the lien.

The debtor's motion for recusal must be considered against this background. The motion for recusal states:

> The debtor attended a hearing on January 7th, 2002, on his Motion to Avoid the Creditor's Lien before the Honorable Judge R. Thomas Stennett. The Creditor was also present represented by Gina Baker Hantel, Esquire.
>
> During the hearing the Debtor attempted to make argument to the Court in support of his Motion to Avoid the State's Judicial lien on ground that the Creditor had placed the "sales tax lien" upon him individually, instead of the Debtor's Trust Organization, "PEANUTS AUTOMOTIVE & MACHINE", which was the entity with the alleged duty to collect sales tax in the State of Tennessee.
>
> Judge R. Thomas Stennett refused to allow the Debtor any semblance of a meaningful hearing and continually "cut him short" on his argument and refused to allow him to speak whatsoever on other occasions.
>
> The Court prejudicially opined that the Debtor was challenging the legality of the State of Tennessee's sales tax and made comments like, "everyone has to pay their taxes!" and "where would we be if everyone refused to pay their taxes?" and "what if everybody did what your trying to do, [speaking to the Debtor] who would pay the taxes?" The Court's statements to the Debtor were clearly condescending, curt, and sarcastic.
>
> Based upon the Court's misunderstanding and predisposition of the Debtor's position in his argument, even though it was clearly spelled out in his Motion to Avoid the Creditor's lien, it summarily, with extreme bias and prejudice, denied the Debtor's Motion.

In basis of fact, the Debtor's argument in support of his Motion to Avoid the Creditor's Judicial Lien is as follows:

> The Creditor placed a Sales Tax Lien on the Debtor. At all material times relevant to that lien, the Debtor was employed by the Trust, "PEANUTS AUTOMOTIVE & MACHINE", as its manager. Any lien from the Creditor should have been placed upon Trust and not the Debtor, notwithstanding the Debtor's objection to the lien on other grounds. As the Manager of the Trust, the Debtor is not responsible for Sales Taxes in the State of Tennessee and if anyone whatsoever is responsible it would be the Trust, therefore the lien by the Creditor is improperly upon the Debtor and the Debtor is moving to Avoid it.
>
> The debtor has a real fear that he cannot get a fair trial from Judge Stennett because of his prejudice and bias against him and that Judge Stennett will do everything in his power to see that the Debtor is denied any semblance of due process of law as Judge Stennett is adversarial as opposed to being neutral.
>
> Judge Stennett's irresponsible and improper conduct has eroded the Debtor's confidence in him and the judicial system. Moreover, Judge Stennett has failed to maintain the prestige of judicial office which is essential to a system of government in which the judiciary functions independently of the executive and legislative branches.
>
> The Debtor believes that he cannot receive a fair and impartial trial from Judge Stennett and as has already been experienced, cannot even receive a meaningful hearing or due process to which every citizen is entitled.
>
> Judge Stennett's behavior in this matter is a classic example of the Elitism in its ugliest form and one that the Citizens of this Country should not long have to endure. In that vein the Debtor this day has begun the process of filing a Complaint with the Judicial Qualifications Commission against Judge Stennett, in hopes of his eventual removal from the high office he holds with such little respect.

The gist of the debtor's motion is that the court did not allow him to pursue the argument that he is not liable for the tax. The court did not allow it because the argument was

not relevant to avoidance of the lien under § 522, and justice did not require the court to decide the question.

The debtor's other major complaint is that the court was unkind when it cut off his argument. A judge can be impatient, curt, sarcastic, or condescending when cutting off an irrelevant, unripe, or legally wrong argument; that does not necessarily show bias or prejudice of the kind that requires recusal. When the judge has made clear that he will not rule on a particular question, a litigant should not continue to press the point.

> [J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible. . . . *Not* establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration — even a stern and short-tempered judge's ordinary efforts at courtroom administration — remain immune.

Liteky v. United States, 510 U.S. 540, 114 S.Ct. 1147, 1155, 127 L.Ed.2d 474 (1994).

"Extrajudicial source" means a favorable or unfavorable attitude toward the litigant that is wrongful or inappropriate because (1) it is not deserved as a result of the litigant's actions in the judicial proceedings; or (2) it is based on information the judge ought not to possess; or (3) it is excessive in degree. *Liteky v. United States*, 114 S.Ct. 1147, 1155.

The court may have seemed impatient with the debtor because § 522 obviously did not support his attempt to avoid the lien, and the court had sound legal reasons for refusing to decide whether the debtor is liable for the tax. The court's reasoned opinion of the

debtor's legal arguments is not an extrajudicial source. *Liteky v. United States*, 114 S.Ct. 1147, 1157.

The debtor also complains that the court prejudged the motion. The prejudgment allegation is irrelevant if it means only that the court already knew the debtor could not win under § 522. The debtor's argument in the motion left little doubt of that result, and at the hearing he presented no new arguments that were on point. The court is not required to remain ignorant of the contents of a motion and the parties' arguments until the motion comes up for hearing. The court followed its normal course of reviewing the matters to be heard before the hearing day. The prejudgment allegation is relevant only if the debtor means the court pre-judged the case unfavorably to the debtor for some reason other than the weakness of his legal arguments as shown by the motion.

The debtor points to the court's comments about paying or avoiding the payment of taxes. The court understood the debtor's argument against liability for the taxes. The argument suggested that he was attempting to avoid paying taxes by old, tried and false methods that have never worked in Tennessee or any other state. The debtor wanted to argue his methods, but the court did not allow it because the court did not need to decide the tax liability question. Now the debtor wants to recast the facts to show that the court stopped his argument as the result of a wrongful or inappropriate prejudice against him as a possible tax evader.

The court must point out that the transcript reveals much less than Mr. Ramsey alleges. The only exchange that comes close to his allegations took place at the very end of the hearing:

> THE COURT: Well, first of all, Mr. Ramsey the Section 522 doesn't allow an avoidance of a lien for taxes. So, even if you own this, the lien is still good, you can't avoid a lien for taxes.
>
> MR. RAMSEY: Well, first of all the taxes don't apply to this type of Trust.
>
> THE COURT: They may not but I wish you luck on that. The motion be denied. If you win none of us will have to pay any taxes, we'll just all go broke. Thank you very much.

This statement shows very little, if any, irritation or impatience with the debtor for insisting on arguing the liability question. The statement is nothing more than a comment on the probable futility of Mr. Ramsey's arguments against liability after ruling that he would have to pursue them elsewhere. The statement does not show that the court had an excessive predisposition against the debtor or an undeserved, adverse opinion of the debtor. The statement was not based on knowledge the court should not have had. It was based on the debtor's own argument. Finally, the statement does not come close to showing such a

high degree of antagonism as to make fair judgment impossible. The debtor's motion for recusal generally confuses justifiable disdain for his legal arguments with bias or prejudice against him.

In summary, a reasonable person would not conclude from these facts that this judge should recuse himself because he has, or appears to have, a wrongful or inappropriate bias or prejudice against the debtor. 28 U.S.C. § 455(a), (b)(1); *see United States v. Bertoli*, 40 F.3d 1384 (3rd Cir. 1994); *Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273 (3rd Cir. 2000).

Finally, the court must deal with a minor legal point raised by the debtor at the beginning of the hearing. He asserted that he was proceeding *in propria persona*, instead of *pro se*. The courts once followed the rule that an appearance by an attorney gave the court personal jurisdiction of the client, but the client's appearance *in propria persona* did not. *Bank of Tennessee v. Anderson*, 35 Tenn. 669 (1856); *Black's Law Dictionary* 712 (5th ed. 1979). This rule no longer exists, and "*in propria persona*" and "*pro se*" have come to mean the same thing – that the litigant is not represented by an attorney. *Savage v. Estelle*, 924 F.2d 1459, note 1 (9th Cir. 1990), *cert. den.* 501 U.S. 1255, 111 S.Ct. 2900, 115 L.Ed.2d 1064 (1991); *cf. State v. Burkhart*, 541 S.W.2d 365 (Tenn. 1976); *Ballentine's Law Dictionary* 633 (3d ed. 1969). The designation "*in propria persona*" may be used by an attorney representing himself, instead of his client, in an attempt to recover attorney's fees. *Trope v. Katz*, 902 P.2d 259 (Cal. 1995). The designation appears to be unnecessary even in that situation. Certainly, there is no distinction in this case between "*in propria pesona*" and "*pro se*." It was the debtor who invoked the jurisdiction of this court by filing a voluntary petition. He cannot now be

heard to deny that he is subject to that jurisdiction, if that is his intent by claiming that his appearance is *in propria persona*.

Accordingly, the court will enter an order denying the debtor's renewed motion to avoid the state's tax lien. The court has explained that the debtor has no grounds for avoiding the lien under § 522(f) or § 522(h) of the bankruptcy code. The motion can be denied on other grounds. If the renewed motion comes under bankruptcy rule 9023, then it was untimely because filed more than ten days after entry of the order denying the motion to avoid the lien. Fed. R. Bankr. P. 9023 & 9006(b)(2); Fed. R. Civ. P. 59(e). If the motion comes under bankruptcy rule 9024, then it fails to state any ground for relief from the judgment. Fed. R. Bankr. P. 9024; Fed. R. Civ. P. 60(b).

Second, the court will deny the debtor's Motion to Strike Objections by Creditor, State of Tennessee, to Debtor's Discharge of Lien. The court has explained that the debtor's discharge cannot possibly require removal of the tax lien.

Third, the court will deny the debtor's motion to disqualify for the reasons stated in this memorandum.

This Memorandum constitutes findings of fact and conclusions of law as required by Fed. R. Bankr. P. 7052.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

[entered 3/28/02]