UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

In re:	:	Chapter 11
	:	
GREATER SOUTHEAST COMMUNITY HOSPITAL CORP., I, *et al.*,	:	Jointly Administered Case No. 02-2250 Judge S. Martin Teel, Jr.
Debtors.	:	

THE DCHC LIQUIDATING TRUST'S OBJECTION, AND REQUEST TO RECLASSIFY AND DISALLOW DC WASA'S CLAIMS PURSUANT TO 11 U.S.C. §§ 105 AND 502, AND FED. R. BANKR. P. 3007

The DCHC Liquidating Trust (the "Trust"), by and through its undersigned counsel, hereby files this Objection and Request to Reclassify and Disallow District of Columbia Water & Sewer Authority's ("DC WASA") Claims pursuant to sections 105(a), *inter alia,* and 502 of title 11 of United States Code, (the "Bankruptcy Code"), and Rule 3007 of the Federal Rules of Bankruptcy Procedure (collectively, the "Objection"), and respectfully represents as follows:

PRELIMINARY STATEMENT

1. On the Petition Date, DC WASA had on record one alleged secured lien against an entity called "Greater Southeast Cmnty Hosp Co" in the amount of $9,168.99 and one alleged secured lien against entities called "Hadley Pacin Healthcare" and "Hadley Memorial Hospital" in the total amount of $11,926.42 (together, the "Prepetition Liens"). On November 22, 2002, after the Petition Date and without Court authority, DC WASA filed three additional liens against Greater Southeast Community Hospital Corporation (the "Postpetition Liens"). Thereafter, DC WASA filed four secured proofs of claim against Greater Southeast Community Hospital Corporation I seeking $493,729.38 (the "Proofs of Claim").

2. The Proofs of Claim are objectionable for several reasons. First, the Proofs of Claim are improperly classified as secured. These claims are not secured because the Prepetition Liens were not properly filed or recorded, and the Postpetition Liens (not asserted in the Proofs of Claim) were filed in violation of the automatic stay.[1] Second, because DC WASA acted in violation of the automatic stay and has refused to voluntarily reclassify its claim, this Court should disallow the Proofs of Claim in their entirety. Moreover, because DC WASA has acted in violation of the automatic stay, this Court, pursuant to its contempt powers and Bankruptcy Code section 105(a), may award the Trust its fees and expenses associated with this Motion.

JURISDICTION

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Under the Plan, the Trust has jurisdiction to assess and adjudicate the claims that are the subject of the Objection.

BACKGROUND

4. On November 20, 2002 (the "Petition Date"), Doctors Community Healthcare Corporation, Greater Southeast Hospital Corp. I ("GSE"), Michael Reese Medical Center Corporation ("Michael Reese"), Pacifica of the Valley Corporation ("Pacifica"), Pacin Healthcare-Hadley Memorial Hospital Corporation ("Hadley") and Pine Grove Hospital Corporation of Canoga Park, California ("Pine Grove," and referred to collectively with the other debtors as the "Debtors") filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

[1] As discussed *infra*, neither Bankruptcy Code section 362(b)(18) nor 362(b)(3) exempt DC WASA's actions from violating the automatic stay.

5. On April 2, 2004, the Court entered an order approving the Debtors' Second Joint Amended Plan of Reorganization (the "Plan").

6. On April 5, 2004 (the "Effective Date"), the Plan went into effect. Pursuant to the terms of the Plan, on the Effective Date, the Debtors reorganized, the Trust was formed and certain assets, claims and responsibilities were transferred to the Trust.

7. Under the Plan, the Debtors' estates were deemed consolidated for distribution purposes. Plan at § 6.2(a).

8. Under the Plan, the Trust is responsible for allowed prepetition secured claims and unsecured claims. *See* Plan § 4.5 of the Plan (the Trust shall pay all allowed other secured claims, defined as class 5 under the Plan); Plan § 4.10 (the Trust shall pay all allowed general unsecured claims, defined as class 10 under the Plan).

I. The Proofs of Claim.

9. The Proofs of Claim filed by DC WASA (attached hereto as Exhibit A) are as follows:

- Claim Number 557 against Greater Southeast Community Hospital Corporation I[2] in the amount of $34,274.36 filed on May 21, 2003, apparently based on account number 0104521-0 held with Hadley.
- Claim Number 558 against Greater Southeast Community Hospital Corporation I in the amount of $277,818.03 filed on May 21, 2003, apparently based on account number 0104062-5 held with GSE.
- Claim Number 559 against Greater Southeast Community Hospital Corporation I in the amount of $180,771.56 filed on May 21, 2003, apparently based on account number 0104061-7 held with GSE.
- Claim Number 560 against Greater Southeast Community Hospital Corporation I[3] in the amount of $865.43 filed on May 21, 2003, apparently based on account number 0104954-3 held with Hadley.

[2] Although Claim Number 557 is asserted against GSE, the attached documentation indicates that the amounts are owed by Hadley.

10. The Proofs of Claim are based on alleged outstanding water and sewer charges under two accounts held with GSE, 0104062-5 (Claim No. 558) and 0104061-7 (Claim No. 559), and two accounts held with Hadley, 0104521-0 (Claim No. 557) and 0104954-3 (Claim No. 560). In addition, Claim Numbers 557, 559 and 560 appear to include postpetition amounts that are not payable by the Trust because the water bills attached to these Proofs of Claim were issued on January 2, 2003. *See* Debtors Second Amended Joint Chapter 11 Plan of Reorganization Section 2.1 ("the Allowed Administrative Expense Claims representing obligations incurred in the ordinary course of business of the Debtors as Debtors in Possession . . . shall be assumed and paid in the ordinary course by the Reorganized Debtors").

II. The Certificates of Delinquency.

11. DC WASA contends that the Proofs of Claim are secured based upon the following three certificates of delinquency (the "Certificates of Delinquency") filed with the District of Columbia Recorder of Deeds:

- On March 26, 2001, DC WASA filed a Certificate of Delinquency against "Greater Southeast Cmnty Hosp Co" (the "GSE Certificate of Delinquency") with the D.C. Recorder of Deeds in the amount of $9,168.99.[4]

- On March 27, 2001, DC WASA filed a Certificate of Delinquency against "Hadley Pacin Healthcare" with the Recorded of Deeds in the amount of $11,159.80 (the "First Hadley Certificate of Delinquency").

- On October 1, 2002, DC WASA filed a second Certificate of Delinquency against "Hadley Memorial Hospital" in the amount of $766.62 (the "Second Hadley Certificate of Delinquency").

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[3] Similarly, Claim Number 560 is asserted against GSE, but the attached documentation indicates that the amounts are owed by Hadley.

[4] This is the amount claimed by DC WASA it its Proofs of Claim, but the amount on the GSE Certificate of Delinquency appears unclear.

Although not mentioned in the Proofs of Claim, DC WASA also filed the following postpetition certificates of delinquency (collectively, the "Postpetition Certificates of Delinquency") (attached hereto as Exhibit B) against GSE:

- On November 22, 2002, DC WASA filed a Certificate of Delinquency against "Greater Southeast Community Hospital Corporation" with the D.C. Recorder of Deeds in the amount of $269,406.97.

- On November 22, 2002, DC WASA filed a Certificate of Delinquency against "Greater Southeast Community Hospital Corporation" with the D.C. Recorder of Deeds in the amount of $162,222.77.

- On November 22, 2002, DC WASA filed a Certificate of Delinquency against "Greater Southeast Community Hospital Corporation" with the D.C. Recorder of Deeds in the amount of $30,724.50.

ARGUMENT

I. The Statutory Liens Underlying The Proofs of Claim Were Ineffective And Unperfected As Of The Petition Date.

12. DC WASA failed to properly create and perfect its statutory water and sewer liens because its Certificates of Delinquency (i) did not properly comply with procedures for establishing water and sewer liens set forth in the District of Columbia Code at the time of the Petition Date, (ii) did not correctly identify GSE and Hadley so as to put creditors on notice of the liens and (iii) only included amounts totaling $21,095.41 — not the $493,729.38 included in the Proofs of Claim. Moreover, any contention that these prepetition liens extended to unfiled, additional amounts is not supported by law and is undermined by the Postpetition Certificates of Delinquency filed in violation of the automatic stay.

A. The Certificates of Delinquency Were Not Timely Filed In Accordance The District of Columbia Code In Effect As Of The Petition Date.

13. The Certificates of Delinquency did not create and perfect valid statutory liens under the District of Columbia Code because they were filed significantly *prior* to the issuance

of the DC WASA water bills. Under District of Columbia law that is applicable to the subject time period, a valid lien for DC water and sewer obligations is created only if a certificate of delinquency (otherwise valid) is filed between 60 and 120 days after the relevant water bills are rendered. D.C. Code § 34-2407.02, as in effect on the Petition Date (attached as Exhibit C), states in relevant part:

> [I]f an owner of real property fails to pay District water and sanitary sewer service charges in full in accordance with § 34-2407.01, *on or before the 60th day, but not later than the 120th day, after the bill was rendered, the Mayor shall file a certificate of delinquency with the Recorder of Deeds*. Upon filing, the certificate of delinquency shall constitute a continuing lien against the real property (including a lien for purposes of § 47-1340(c)) and show the amount of unpaid charges for District water and sanitary sewer services. (emphasis added).

14. Although modifications to D.C. Code § 34-2407.02 effective in 2004 have revised this timing requirement, the modifications do not apply retroactively. The modifications apply to the substantive rights of the parties and do not state that they should be applied retroactively. *See, e.g., Friedman v. District of Columbia*, 172 A.2d 562, 564 (D.C. 1961) (refusing to retroactively apply predecessor water lien statute because it was not authorized under the statutory language); *United States of America v. Al Safarini*, 257 F.Supp.2d 191, 196 (D.D.C. 2003) ("A statute 'may not be applied retroactively . . . absent a clear indication from Congress that it intended such a result'") (quoting *INS v. St. Cyr*, 533 U.S. 289, 316 (2001)); *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994) (there is a "presumption against retroactive legislation [that] is deeply rooted in our jurisprudence"); *Mayo v. District of Columbia Dept. of Employment Serv.*, 738 A.2d 807, 811 (D.C. 1999) ("a retrospective application will not be given to a statute . . . unless such be the 'unequivocal and inflexible import of the terms'") (quoting *Greene v. United States*, 376 U.S. 149, 160 (1964)). A copy of the current version of D.C. Code § 34-2407.02 is attached as Exhibit D.

15. Thus, in order for DC WASA to establish water and sewer liens, DC WASA was required to file its Certificates of Delinquency between 60 days and 120 days after the relevant waters bills were rendered. DC WASA did not do this, and therefore none of its asserted liens have effect.

16. The GSE Certificate of Delinquency[5] did not create a lien with respect to the amounts sought in Proof of Claim Nos. 558 and 559 because it was not filed between 60 and 120 days after the pertinent water bills were issued to GSE, as required by D.C. Code § 34-2407.02 in effect as of the Petition Date. The relevant water bills attached to the Proofs of Claim were issued to GSE on November 27, 2002 and January 2, 2003, but the GSE Certificate was filed on March 26, 2001 — at least 20 months *before* the relevant water bills were rendered to GSE.

17. Likewise the First and Second Hadley Certificates of Delinquency did not create a lien with respect to the amounts sought in Proof of Claim Nos. 557 and 560[6] because they were not filed between 60 and 120 days after the pertinent water bills were issued to Hadley, as required by D.C. Code § 34-2407.02 in effect as of the Petition Date. The relevant water bills attached to the Proofs of Claim were issued to Hadley on January 2, 2003, but the First Hadley Certificate of Delinquency was filed on March 27, 2001 and the Second Hadley Certificate of Delinquency was filed on October 1, 2002 — at least twenty-one months and three months before the relevant water bills were rendered to Hadley.

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[5] According to the Proofs Claim, the GSE Certificate of Delinquency purportedly secured both Claim No. 558 in the amount of $277,818.03 and Claim No. 559 in the amount of $180,771.56.

[6] Claim Nos. 557 and 560 are asserted against GSE, but the attached documentation indicates they should have been filed against Hadley.

B. The Certificates of Delinquency Are Ineffective Because They Were Filed Against The Wrong Names And Therefore Did Not Properly Put Creditors On Notice Of DC WASA's Liens.

18. Another reason the Certificates of Delinquency are ineffective is because they did not correctly identify GSE and Hadley.[7]

19. Here, the GSE Certificate of Delinquency was filed against "Greater Southeast Cmnty Hosp Co." In contrast, GSE's correct name is "Greater Southeast Community Hospital Corporation I." As indicated by Exhibit E,[8] if a party searched the District of Columbia Recorder of Deeds' database for "Greater Southeast Community Hospital Corporation" or "Greater Southeast Community Hospital Corp.," the results would be the same and would not include the GSE Certificate of Delinquency.[9]

20. Moreover, the First Hadley Certificate of Delinquency was filed against "Hadley Pacin Healthcare" and the Second Hadley Certificate of Delinquency was filed against "Hadley Memorial Hospital." Hadley's correct name is "Pacin Healthcare-Hadley Memorial Hospital Corporation." As indicated by Exhibit F,[10] if a party searched the District of Columbia Recorder of Deeds' database for "Pacin Healthcare-Hadley Memorial Hospital Corporation," or "Pacin Healthcare-Hadley Memorial Hospital Corp.," the results would be the same and would not include either the First or Second Hadley Certificate of Delinquency.

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[7] In addition, with one exception, the account numbers in the Certificates of Delinquency do not match the pertinent water bills attached to the Proofs of Claim. In the GSE Certificate of Delinquency, DC WASA identifies GSE with account number "DC-01-03-242539-00-0," but identifies accounts numbers "0104061-7" and "0104062-5" in the water bills issued to GSE. Although in the Second Hadley Certificate of Delinquency DC WASA identifies Hadley with account number "0104954 3" and the Claims include a water bill issued to Hadley with the account number "0104954-3," the First Hadley Certificate of Delinquency identifies Hadley with account number "DC-01-04-165601-00-8" and the remaining Hadley water bill identifies account number "0104521-0."

[8] Exhibit E represents the list of liens that result upon a search of the District of Columbia Recorder of Deeds database searching under the names "Greater Southeast Community Hospital Corporation" or "Greater Southeast Community Hospital Corp."

[9] The search, however, does reveal the Postpetition Certificates of Delinquency filed on November 22, 2002 in violation of the automatic stay.

[10] Exhibit F represents the list of liens that result upon a search of the District of Columbia Recorder of Deeds database searching under the names "Pacin Healthcare-Hadley Memorial Hospital Corporation," or "Pacin Healthcare-Hadley Memorial Hospital Corp."

21. The liens purportedly created by the Certificates of Delinquency are ineffective because a party searching the District of Columbia Recorder of Deeds database, using GSE's and Hadley's correct names or a reasonable variation thereof, would not be able to locate any information regarding the Certificates of Delinquency. Indeed, a reasonably prudent party searching the District of Columbia Recorder of Deeds database for water and sewer liens filed against GSE and Hadley would not discover the Certificates of Delinquency purportedly establishing DC WASA's water and sewer liens.

22. The Court may glean guidance from other courts examining whether statutory tax liens are effective and perfected if they were created using an incorrect name. *See, e.g., Reid v. I.R.S.,* 182 B.R. 443 (Bankr. E.D. Va. 1995) (avoiding tax lien because tax lien was filed against "Gary A. Reid" instead of "Cary A. Reid" and lien would not, on reasonable inspection of the judgment lien index, provide constructive notice of a tax lien against the debtor); *Ducote v. U.S.*, 156 B.R. 773 (Bankr. E.D. La. 1993) (tax lien filed against "Hugh es J. de la Vero ne II Payroll Account" was unperfected and avoidable because a reasonable search of the correct name, "Hugu es J. de la Verg ne," would not have revealed the lien). The crux of these cases is whether the description of the debtor on the lien provides constructive notice to alert one to the lienholder's claim against the debtor. *See Ducote*, 156 B.R. at 777. In other words, the test is whether a reasonable prudent search using the debtor's name would reveal the lien. *See Reid*, 182 B.R. at 447. As indicated in Exhibits E and F, the Trust avers that a reasonable prudent search of the District of Columbia Recorder of Deeds database does not reveal the Certificates of Delinquency.

23. The Court should also consider District of Columbia law with respect to the effect of a financing statement filed against an incorrect name. The District of Columbia Code adopted

revised U.C.C. Article 9 which sets a high standard for the accuracy of debtors' names in financing statements: "A financing statement sufficiently provides the name of the debtor: (1) [i]f the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized." D.C. Code § 28:9-503(a)(1) (2001) (emphasis added). Comment 2 to this Section states that "[t]he requirement that a financing statement provide the debtor's name is particularly important" and "reflects the view prevailing under former Article 9 that the actual individual or organizational name of the debtor on a financing statement is both necessary and sufficient." § 28:9-503 cmt. 2 (emphasis added).

24. Section 28:9-506(b) of the District of Columbia Code states that "a financing statement that fails sufficiently to provide the name of the debtor in accordance with § 28:9-503(a) is seriously misleading," which in turn renders the financial statement ineffective. *See* § 28:9-506(a), § 28:9-506 cmt. 2 ("Subsection (b) contains the general rule: a financing statement that fails sufficiently to provide the debtor's name in accordance with Section 9-503(a) is seriously misleading as a matter of law"). Section 28:9-506(c) provides an exception to render effective a financing statement using an otherwise inaccurate debtor's name if "a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 28:9-503(a) . . . ." D.C. Code § 28:9-506(c) (emphasis added). This exception would not be available to DC WASA because, as indicated by Exhibits E and F, a search of the District of Columbia Recorder of Deeds database utilizing GSE's and Hadley's correct names and the database's standard search logic does not reveal the Certificates of Delinquency. As such, if the Certificates of Delinquency were considered

financing statements, they would be considered "seriously misleading" and would be rendered ineffective.

C. Even If Effective, The Certificates of Delinquency Were Only Effective In The Amounts On The Certificates – Not The Amounts In The Proofs of Claim.

25. Even if the Court were to find that the Certificates of Delinquency created valid and perfected liens, such liens would be effective only for the amounts stated on the Certificates of Delinquency ($21,095.41) — not the total amount of the Proofs of Claim ($493,729.38).

26. As stated *supra*, D.C. Code § 34-2407.02, as in effect on the Petition Date, states in relevant part that "[u]pon filing, the certificate of delinquency shall constitute a continuing lien against the real property . . . and *show the amount of unpaid charges for District water and sanitary sewer services*." (emphasis added). Courts should interpret statutes according to their plain meaning. *See Laime v. United States Trustee*, 540 U.S. 526, 534 (2004) ("It is well established that 'when the statute's language is plain, the sole function of the courts . . . is to enforce it according to its terms'") (citations omitted). The plain meaning of D.C. Code § 34-2407.02 indicates that a certificate of delinquency filed with the District of Columbia Recorder of Deeds must include the amount of unpaid charges. It naturally follows that a certificate of delinquency creates a water and sewer lien only to the extent of the unpaid charges that it so states. Indeed, to interpret the statute otherwise would render superfluous the clause requiring the certificate of delinquency to include the amount of unpaid charges, and run afoul of the cannon of statutory interpretation requiring courts to construe statutes so as to provide meaning to each word. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void or insignificant") (citations

omitted). Rendering DC WASA's purported liens effective only as to the amount stated on the Certificates of Delinquency is the only logical interpretation of the statute because even if a party were able to locate the Certificates of Delinquency, such a party would only be on notice of $21,095.41 in liens against GSE and Hadley — not $493,729.38. As such, if this Court were to find that the Certificates of Delinquency were timely filed and sufficiently named GSE and Hadley, the Court should find that such liens only secured a total of $21,095.41 in unpaid water and sewer charges.

D. DC WASA's Actions Implicitly Acknowledge That The Certificates Of Delinquency Could Not Establish A Lien For Any Future Amounts.

27. In apparent recognition that the Certificates of Delinquency could only create a lien for those amounts actually stated on the Certificates of Delinquency, on November 22, 2002 — two days after the November 20, 2002 petition, DC WASA filed the Postpetition Certificates of Delinquency against GSE for a total amount of $462,354.24.

28. Indeed, there is no other explanation for DC WASA filing the Postpetition Certificates of Delinquency other than DC WASA's acknowledgement that it failed to properly establish and perfect water and sewer liens for the amounts asserted in the Proofs of Claim. In other words, if DC WASA believed the amounts asserted in the Proofs of Claim were truly secured, DC WASA would have no reason to file the Postpetition Certificates of Delinquency.

II. DC WASA's Statutory Liens Are "Avoidable" Under Bankruptcy Code Section 545(2) And Therefore The Proofs Of Claim Should Be Disallowed Pursuant To Bankruptcy Code Section 502(d).

29. As discussed *supra*, the purported statutory liens underlying the Proofs of Claim were not effective or perfected as of the Petition Date, and therefore, are "avoidable" pursuant to Bankruptcy Code section 545(2). The Trust has contacted DC WASA and requested that DC WASA relinquish its avoidable water and sewer liens, to the extent they exist. Despite the

Trust's request, DC WASA has refused to relinquish its liens. As such, the Proofs of Claim should be disallowed pursuant to Bankruptcy Code section 502(d) because DC WASA is a transferee of an avoidable transfer under Bankruptcy Code section 545(2).

30. Bankruptcy Code section 545(2) states in relevant part that "[t]he trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien- . . . (2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser . . . ." Bankruptcy Code section 502(d) states in pertinent part that "the court shall disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 545 . . ." (emphasis added). Therefore, Bankruptcy Code section 502(d) disallows any claim of a party that received a transfer that is avoidable under Bankruptcy Code section 545(2).[11]

31. Several courts have disallowed the claims of a party that is a transferee of an "avoidable" transfer. In an analogous case, the U.S. Court of Appeals for the Ninth Circuit disallowed a creditor's tax claim pursuant to Bankruptcy Code section 502(d) because the creditor's tax lien was avoidable under Bankruptcy Code section 545. *See El Paso City of Texas v. America West Airlines, Inc.*, 217 F.3d 1161, 1168 (9th Cir. 2000) ("El Paso's tax lien was avoidable under § 545, and it has not relinquished its lien. Section 502(d) therefore operates to disallow its claim, and the disallowance is not barred by the limitations period of § 546"); *see also In re Consolidated Capital Equities Corp.*, 157 B.R. 280, 290 (Bankr. N.D. Tex. 1993) (disallowing a creditor's claim under Bankruptcy Code section 502(d) because the creditor's

[11] Bankruptcy Code section 502(d) also disallows any claim a party that receives a transfer that is avoided. *See Pasteurized Eggs Corp. v. Bon Dente Joint Venture (In re Pasteurized Eggs Corp.)*, 296 B.R. 283, 292 (Bankr. D.N.H. 2003) ("Under section 502(d), a secured claim that is avoided under section 544 is disallowed"); *Hirsh v. Harper (In re Colonial Reality Corp.)*, 168 B.R. 512, 514 n.2 (Bankr. D. Conn. 1994) ("Section 502(d) authorizes the court to disallow any claim of an entity that is a transferee of an avoided transfer unless the entity has returned the avoided transfer").

claim was based on a guaranty that was "avoidable" under the section 544(b) and California fraudulent conveyance law); *In re Octogon Roofing d/b/a Western Modified Roofing*, 156 B.R. 214, 220 (Bankr. N.D. Ill. 1993) (the creditor's "asserted lien is voidable under § 544. Thus, [the creditor's] proof of claim, if it exists, must be disallowed under § 502(d)"). These cases make clear that the objecting party need not initiate an adversary proceeding, nor actually avoid the transfer, to disallow the claim of a transferee of an avoidable transfer. Rather, all that is necessary to disallow the Proofs of Claim is a determination that DC WASA received a transfer (its purported statutory liens) that is "avoidable" under Bankruptcy Code section 545(2).

32. Here, the burden is met because, as discussed *supra*, DC WASA's statutory liens are avoidable under Bankruptcy Code section 545(2) because they were unenforceable and unperfected as of the Petition Date due to DC WASA's failure to timely file its Certificates of Delinquency and to correctly identify GSE and Hadley. *See, e.g., Aikens v. City of Philadelphia, Water Revenue Bureau (In re Aikens)*, 94 B.R. 869, 874-75 (Bankr. E.D. Pa. 1989) (holding that city's improper indexing of water liens rendered the liens unperfected and avoidable by a bona fide purchaser as of the petition date). Because DC WASA is the transferee of these avoidable statutory liens, the Proofs of Claim must be disallowed under Bankruptcy Code section 502(d).

III. The Filing Of The Postpetition Certificates Of Delinquency Violated The Automatic Stay And Is Ineffective As Void

33. The filing of the Postpetition Certificates of Delinquency constitutes a violation of the automatic stay established under Bankruptcy Code section 362(a) and is sanctionable by the Court under its contempt power. *See In re Franklin Mortgage & Investment Co, Inc.*, 143 B.R. 295, 303 (Bankr. D.D.C. 1992) (sanctioning creditor under court's contempt power for sending a notice of sale of debtor's property to the circuit court clerk and noting that willfulness is not an element of civil contempt). The Trust avers that such sanctions should include the disallowance

of the Proofs of Claim and an award of the Trust's expenses in bringing this Motion. Moreover, by acting in violation the automatic stay, the Postpetition Certificates of Delinquency are void. *See Rothenberg v. Ralph D. Kaiser Co. (In re Rothenberg)*, 173 B.R. 4, 14 (Bankr. D.D.C. 1994) ("This court agrees with the approach taken in *Siciliano* and holds that *actions taken in violation of the automatic stay are void* unless the court grants an annulment of the stay under section 362(d)") (emphasis added).

34. The filing of the Postpetition Certificates of Delinquency is not excepted from the automatic stay under Bankruptcy Code section 362(b)(18), which permits post-petition perfection of statutory liens under certain circumstances, because that section is limited to "property taxes" that come due post-petition. Here, DC WASA is asserting a statutory lien based on unpaid pre-petition water and sewer charges – not post-petition property taxes. Thus, Bankruptcy Code section 362(b)(18) is not applicable.

35. Likewise, Bankruptcy Code section 362(b)(3), which excepts from the automatic stay any act to perfect an interest in property to the extent the trustee's rights are subject to such perfection under Bankruptcy Code section 546(b), does not apply because DC WASA's post-petition perfection would not relate back to a pre-petition date. *See, e.g., Equibank, N.A. v. Wheeling-Pittsburgh Steel Corp.*, 884 F.2d 80 (3d Cir. 1989) (automatic stay precluded county from perfecting tax lien where, under West Virginia law, lien would not relate back to a pre-petition date); *Quigley v. General Electric Co. (In re Electric City, Inc.)*, 43 B.R. 336 (Bankr. W.D. Wash. 1984) (county could not rely on Bankruptcy Code section 362(b)(3) to perfect its tax lien post-petition where perfection did not relate back to a pre-petition occurrence). As set forth in D.C. Code § 34-2407.02, perfection of a water and sewer lien is effective only from the date of filing of a certificate of delinquency with the District of Columbia Recorder of Deeds. In

other words, under D.C. Code § 34-2407.02, the post-petition filing of the Postpetition Certificates of Delinquency would not relate back to the date the water bills were unpaid and prime a lien filed in the interim. As such, Bankruptcy Code section 362(b)(3) is not applicable.

NO PREVIOUS REQUEST

36. No previous request for the relief set forth herein has been made to this or any other Court.

WHEREFORE, the Trust respectfully requests that the Court enter an order disallowing the Proofs of Claim, or alternatively, reclassifying the Proofs of Claim to Class 10 (general unsecured status) and any further relief as is just and proper.

Dated: July 19, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 19th, 2005, a copy of the foregoing pleading was sent by First Class Mail to the parties listed below.

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