

PUBLICATIONS

Secured Lender Primes Earlier Federal Tax Lien

February 2015

The U.S. Court of Appeals for the Fourth Circuit, on Oct. 31, 2014, held in a split decision that a lender's unrecorded lien primed an earlier unrecorded federal tax lien on a Chapter 11 debtor's real property. *In re RestivoAuto Body, Inc.*, 2014 WL 5488166 (4th Cir. Oct. 31, 2014) (2-1). Relying on "Maryland[']s common law ... doctrine of equitable conversion," the court reasoned that the lender was entitled "to the same protections as a [good faith] purchaser for value who takes title free and clear of all subsequent liens regardless of recordation." *Id.* at *2. The dissent, however, argued that federal law governs "the priority of federal tax liens"; the debtor taxpayer had no "unencumbered title to ... give" the lender; and that the majority erred by applying "state law to determine the priority of the IRS's tax lien to the property," an issue to be "determined solely by federal law." *Id.* The *Restivo* case reassures secured lenders unaware of a borrower's preexisting tax lien, however, as it protects them against the government's nondisclosure. In this article, SRZ partner Michael L. Cook discusses the Fourth Circuit's decision.

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