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ORDERED PUBLISHED

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-14-1429-TaKuD
)		
MAINLINE EQUIPMENT, INC.,)	Bk. No.	2:12-bk-39746-WB
)		
Debtor.)	Adv. No.	2:13-ap-01705-WB
)		
_____ LOS ANGELES COUNTY TREASURER)		
AND TAX COLLECTOR,)		
)		
Appellant,)		
)		
v.)	O P I N I O N	
)		
MAINLINE EQUIPMENT, INC.,)		
)		
Appellee.)		
_____)		

Argued and Submitted on June 18, 2015
at Pasadena, California

Filed - September 30, 2015

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Julia W. Brand, Bankruptcy Judge, Presiding

Appearances: Barry S. Glaser of Steckbauer Weinhart Jaffe, LLP
argued for appellant; Vanessa Marie Haberbush of
Haberbush & Associates, LLP argued for appellee.

Before: TAYLOR, KURTZ, and DUNN, Bankruptcy Judges.

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1 TAYLOR, Bankruptcy Judge:

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3 The Los Angeles County Treasurer and Tax Collector
4 ("County") appeals from a bankruptcy court order setting aside
5 its tax liens on personal property located in Los Angeles
6 County. We AFFIRM.

7 **FACTS**¹

8 Debtor-in-possession Mainline Equipment, Inc., dba
9 Consolidated Repair Group, failed to pay property taxes assessed
10 by Los Angeles County. As a result, the County recorded
11 certificates of tax liens with the Los Angeles County Recorder
12 in 1993, 2010, and 2012. The filings created broad liens on all
13 personal property owned by Mainline and located in Los Angeles
14 County. See Cal. Rev. & T. Code § 2191.4 ("RTC § 2191.4").²
15 The County did not otherwise take action to assert its claims or
16 to obtain liens.

17 Mainline eventually initiated a chapter 11 case.³ It
18 scheduled the County as an unsecured creditor and initiated an
19 adversary proceeding seeking to set aside the County's personal
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21
22 ¹ We exercise our discretion to take judicial notice of
23 documents electronically filed in the adversary proceeding and
24 in the underlying bankruptcy case. See Atwood v. Chase
Manhattan Mortg. Co. (In re Atwood), 293 B.R. 227, 233 n.9 (9th
Cir. BAP 2003).

25 ² RTC § 2191.4 also creates a broad lien on real property
26 located in a county. Mainline, however, did not schedule real
property in its bankruptcy case.

27 ³ Unless otherwise indicated, all chapter and section
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

1 property tax liens under § 544(a)(1) and, as reflected in an
2 amended complaint, § 545(2). Mainline argued that the personal
3 property liens were not perfected against a bona fide purchaser
4 for value, that as a debtor-in-possession it was entitled to
5 assert the rights of a trustee to set aside such liens, and that
6 judgment in its favor was appropriate.

7 The parties filed cross-motions for summary judgment.
8 Ultimately, the bankruptcy court agreed with Mainline on its
9 § 545(2) claim. On August 19, 2014, it entered a judgment in
10 favor of Mainline and avoided the tax liens under § 545(2).⁴
11 The County timely appealed.

12 JURISDICTION

13 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
14 §§ 1334 and 157(b)(2)(K). We have jurisdiction under 28 U.S.C.
15 § 158.

16 ISSUE

17 Whether the bankruptcy court erred when it avoided the
18 County's liens pursuant to § 545(2).

19 STANDARD OF REVIEW

20 We review the bankruptcy court's legal conclusions,
21 including its interpretation of the Bankruptcy Code, de novo.
22 See Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi), 764 F.3d
23 1168, 1173 (9th Cir. 2014).

24 ///

25 ///

27 ⁴ The bankruptcy court also granted judgment to the County
28 on Mainline's § 544(a)(1) claim.

1 Thus, RTC § 2191.4 unambiguously provides that the County's
2 tax lien, while valid against Mainline, was not valid as to a
3 third party who subsequently purchased Mainline's personal
4 property in good faith for value.⁷

5 The relevant statute under the Bankruptcy Code is equally
6 clear. Section 545(2) allows a trustee to set aside a lien that
7 is not properly perfected as to a bona fide purchaser. As a
8 debtor-in-possession who enjoys the rights of a trustee,
9 Mainline could utilize § 545(2). See 11 U.S.C. § 1107. Thus,
10 the unambiguous language of the relevant statutes supports
11 affirmance.

12 **B. Ninth Circuit authority is consistent with a plain language**
13 **interpretation of the relevant statutes and supports**
14 **affirmance.**

15 In County of Humboldt v. Grover (In re Cummins), 656 F.2d
16 1262 (9th Cir. 1981), the Ninth Circuit considered the interplay
17 between RTC § 2191.4 and a provision of the Bankruptcy Act
18 analogous to § 545(2). It determined that Humboldt County's
19 personal property tax lien was subject to set aside. Id. at
20 1265. The facts in Cummins and in the case at hand are
21 virtually identical.

22 That Cummins was a Bankruptcy Act case is of no moment; the
23 antecedent statutory language is substantively the same as
24 § 545. See Cummins, 656 F.2d at 1263 ("The substance of
25 [§ 67c(1)(B) of the Act] has been carried forward into sections
26

27 ⁷ For ease of reference we use the shortened term "bona
28 fide purchaser" hereafter.

1 545(2) and 546(b) of the new Bankruptcy Code.”). In such
2 instances, the case law construing a provision of the Bankruptcy
3 Act remains authoritative in interpreting the corollary statute
4 under the Bankruptcy Code. See Lovell v. Stanifer (In re
5 Stanifer), 236 B.R. 709, 713 n.4 (9th Cir. BAP 1999). And, RTC
6 § 2191.4 remains unchanged. Thus, the statutes primarily at
7 issue in Cummins either mirror or are the same as those we
8 consider on appeal, and the Cummins plain language analysis
9 supports affirmance.

10 **C. Changes in California judgment lien law do not compel**
11 **reversal.**

12 The County argues, notwithstanding the plain language of
13 the statutes and the Ninth Circuit authority, that we must
14 determine that proper perfection as to a bona fide purchaser
15 existed or that Mainline, as a debtor-in-possession, was not
16 entitled to rely on § 545(2). We disagree with the County’s
17 arguments.

18 The County does not argue that the transition from the
19 Bankruptcy Act to the Bankruptcy Code is a basis for
20 disregarding Cummins. As previously noted, the statutory
21 language in § 545(2) mirrors the Bankruptcy Act provision
22 considered by the Cummins court.

23 And the County does not argue that the California statute
24 squarely at issue, RTC § 2191.4, has been modified since the
25 Cummins decision. The California statute analyzed in Cummins
26 remains exactly the same; it continues to state that a recording
27 with a county recorder does not create a lien that is valid
28 against a bona fide purchaser of personal property.

1 Instead, the County argues that because the California
2 legislature enacted a tangentially related statute, California
3 Code of Civil Procedure ("CCP") § 697.510, this necessarily
4 undercuts the Ninth Circuit's decision in Cummins and requires
5 that we disregard the limits on the RTC § 2191.4 lien imposed by
6 the statute itself. Again, we strongly disagree.

7 **1. The California legislature expanded the ability to**
8 **obtain a judgment lien on personal property but did**
9 **not modify RTC § 2191.4.**

10 In 1982, the California legislature enacted CCP § 697.510
11 and allowed the creation and perfection of judgment liens on
12 personal property through a filing with the Secretary of State
13 and without levy.⁸ See Cal. Code Civ. P. § 697.510(a). This
14 was a logical expansion of judgment creditor rights; under the
15 California Commercial Code, a secured creditor typically
16 perfects a security interest in personal property by filing a
17 document with the Secretary of State, and priority is based on
18 the time of such filings. See Tentative Recommendation
19 Proposing The Enforcement of Judgment Law, 15 Cal. L. Revision
20

21 ⁸ The California legislature, however, did not totally do
22 away with the concept of levy. CCP § 699.010, et seq. continue
23 to provide for execution of a judgment through levy. See Cal.
24 Code Civ. P. §§ 697.520 and 699.010, et seq. Further, while a
25 county recording creates a lien on all personal property located
26 within the county, the Secretary of State filing arguably is not
27 so broad. See Cal. Code Civ. P. § 697.530(d) (listing
28 exceptions to attachment). And finally, recordation is not a
perfection option available in all instances. A judgment lien
may not be created through a Secretary of State filing where the
judgment is payable in installments in the future. See Cal.
Code Civ. P. § 697.510.

1 Comm'n Reports 2001, 2007, 2045-48 (1980).

2 The County, however, points to nothing in either case law
3 or relevant legislative history stating or even suggesting any
4 legislative intent to tie enactment of CCP § 697.510 to a change
5 in the interpretation of RTC § 2191.4. Certainly, there was no
6 modification to RTC § 2191.4 itself. Since this is the case,
7 there is nothing to suggest that the plain language analysis in
8 Cummins or the express limitations of RTC § 2191.4 are in any
9 way impacted by this later legislative enactment.

10 **2. This legislative change does not undercut the binding**
11 **impact of Cummins.**

12 The County does not directly challenge the Cummins plain
13 language discussion; it cannot do so as the plain language has
14 not changed. Instead, it focuses on a second aspect of the
15 Cummins decision. The Cummins court found Franchise Tax Board
16 v. Danning (In re Perry), 487 F.2d 84 (9th Cir. 1973), to be
17 controlling on an issue relating to the portion of § 67c(1)(B)
18 now contained in § 546(b). 656 F.2d at 1266. The County argues
19 that as a result of the enactment of CCP § 697.510, the Perry
20 analysis is now questionable and that Cummins, thus, no longer
21 controls. We reject both suggestions.

22 In Perry, the Ninth Circuit considered California tax
23 statutes that allowed creation of a lien following a failure to
24 pay personal income taxes. The statutes at issue, RTC §§ 18881
25 and 18882,⁹ provided that recordation of a certificate of non-

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27 ⁹ RTC §§ 18881 and 18882 were subsequently repealed by
28 Stats. 1977, ch. 481, p. 1580, § 45, p. 1583, § 47, operative
(continued...)

1 payment with the county recorder created a broad lien on all
2 assets of the taxpayer located in the county. 487 F.2d at 85.
3 It further provided that the lien had the "force, effect, and
4 priority of a judgment lien." Id. These statutes, however, did
5 not expressly discuss the impact of the statutory lien on the
6 claim of a bona fide purchaser of personal property. See id.

7 The Franchise Tax Board argued that the absence of an
8 express reservation of the rights of bona fide purchasers
9 required a determination that its RTC §§ 18881 and 18882 lien
10 was senior to the claims of a bona fide purchaser and not
11 subject to set aside in bankruptcy. Id. at 86. The Ninth
12 Circuit disagreed; it focused on the fact that, at that time, a
13 personal property judgment lien was not good against a bona fide
14 purchaser in the absence of enforcement by levy. Id. Thus, the
15 county filing created a lien vulnerable to a bona fide purchaser
16 even absent express language in the statute. Id.

17 The Cummins court did not find Perry controlling on the
18 issue of whether the RTC § 2191.4 lien defeated a bona fide
19 purchaser on the bankruptcy petition date; Humboldt County
20 conceded this issue, and the plain language of the statute
21 compelled this conclusion. 656 F.2d at 1265. Instead, it
22 relied on Perry in determining that Humboldt County could not
23 perfect its lien post-petition through notice to the bankruptcy
24 court. Id. at 1265-66. This issue arose under a portion of the
25 Bankruptcy Act now included in § 546(b). As a result, this

26
27 ⁹(...continued)
28 July 1, 1978.

1 portion of the Cummins decision is not relevant to the
2 determinations we reach here.

3 The County did not raise a § 546(b) defense in the summary
4 judgment proceedings and did not raise such a defense in its
5 arguments on appeal. And a review of § 546(b) makes clear that
6 such a defense is not available to the County. RTC § 2191.4
7 does not create a lien that is effective against a bona fide
8 purchaser who acquired Mainline's assets prior to recordation of
9 the County's tax lien. Thus, § 546(b) (1) (A) does not provide a
10 defense. And this is not a situation involving the maintenance
11 or continuation of a lien, so § 546(b) (1) (B) is also
12 inapplicable. Thus, even if Perry lacks vitality, a
13 determination we do not make, Cummins remains controlling.

14 **3. Contrary to the County's argument, there are**
15 **compelling reasons to determine that a filing with the**
16 **Secretary of State defeats a bona fide purchaser while**
17 **a filing with a county recorder does not.**

18 CCP § 697.530, unlike RTC § 2191.4, has no language
19 limiting perfection against a bona fide purchaser. Thus, as the
20 County suggests, a notice of judgment lien filed with the
21 Secretary of State, just like a notice of security interest
22 filed with the Secretary of State, imparts constructive notice
23 of a lien and defeats a bankruptcy trustee's claim based on
24 alleged bona fide purchaser status. The County misses the mark,
25 however, when it then argues that a county recording has or
26 should be deemed to have the same effect.

27 First, we note, yet again, that the plain language of RTC
28 § 2191.4 states to the contrary. We acknowledge that the

1 statute also has a general statement that it has the force,
2 effect, and priority of a judgment lien, but the express
3 exception to this broad statement is in the narrow circumstance
4 of a bona fide purchaser of personal property. In analyzing a
5 statute, this specific limitation must control over the broader
6 general statement. See San Francisco Taxpayers Ass'n v. Bd. of
7 Supervisors, 2 Cal. 4th 571, 577 (1992).

8 Second, we emphasize that this plain language
9 interpretation is reasonable. Real property liens of all types
10 are perfected through filings at the county level. Such a
11 filing provides constructive notice of the existence of the
12 lien; purchasers or encumbrancers of real property must search
13 the county records to ascertain whether real property liens
14 exist.

15 In connection with personal property, however, the
16 situation is completely the opposite. A purchaser (or
17 encumbrancer) of personal property must look to Secretary of
18 State records because it is there that one perfects security
19 interests in personal property through filing. See, e.g., Cal.
20 Com. Code §§ 9310(a), 9501.

21 Apparently, the California legislature, recognizing that
22 personal property liens were not typically recorded at the
23 county level, determined that it was inappropriate to infer
24 notice to third parties from a county level filing. Here, the
25 statutory language is clear, and the logic behind the statutory
26 scheme is sound.

27 Finally, we note that a bedrock fact considered in Cummins
28 has not changed; more than a county filing is necessary for

1 perfection that defeats the claims of a bona fide purchaser. At
2 the time of Cummins, it was levy. At this time it is either
3 levy or a Secretary of State filing. Put bluntly, the analysis
4 in Cummins remains sound and continues to control here.

5 **4. To the extent there is unfairness or difficulty as a**
6 **result of the RTC § 2191.4 exception for bona fide**
7 **purchasers, the California legislature must resolve**
8 **the problem.**

9 We acknowledge that a county must obtain a money judgment
10 prior to utilizing CCP § 697.510. We take no position regarding
11 the burden litigation would place on the County but note that by
12 virtue of RTC § 3101, et seq., a streamlined procedure appears
13 to be in place to acquire such a judgment. Once a Secretary of
14 State filing is available, such filing would not be unduly
15 oppressive to counties. Filing the notice of judgment lien
16 requires nothing more than filling out a form and mailing it
17 (with a nominal payment) to the Secretary of State. See
18 <http://www.sos.ca.gov/business-programs/ucc/forms>, Notice of
19 Judgment Lien & Addendum (Form JL1, rev. 06/2001).

20 We also acknowledge that the current statutory scheme
21 allows the filing of tax liens held at the state level to be
22 filed directly with the Secretary of State. Cal. Gov. Code
23 §§ 7171, 7220. The fact that the California legislature has not
24 allowed counties to take this route may be unfair, but
25 California statutes govern the priority and status of tax liens.
26 See In re Cummins, 656 F.2d at 1264. It is for the California
27 legislature, not the courts, to address any perceived or real
28 unfairness in the statutory scheme.

1 **D. The legislative history of RTC § 2191.4 does not suggest a**
2 **different result.**

3 The County asks that we review the legislative history of
4 RTC § 2191.4 and focus on the fact that it was intended to
5 provide counties with a broad and easily attainable lien.
6 First, where the statutory language is clear and does not lead
7 to an absurd result, we do not look to legislative history. See
8 Lamie v. U.S. Tr., 540 U.S. 526, 536 (2004). Here, the
9 statutory language expressly states that the statute creates a
10 lien on personal property that is not enforceable against a bona
11 fide purchaser; nothing could be clearer and, as noted, this
12 plain language interpretation does not lead to an absurd result.

13 Even if we consult legislative history, however, it would
14 not compel or even suggest a reversal. RTC § 2191.4 provided
15 the County with an easy way to create a broad lien on both
16 Mainline's real and personal property. The only exception is
17 narrow; only a bona fide purchaser – not the taxpayer itself –
18 can defeat the personal property lien. We do not find the cited
19 legislative history problematic.

20 **CONCLUSION**

21 Based on the foregoing, we determine that the bankruptcy
22 court correctly set aside the lien, and we AFFIRM.