

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: :

GORDON DAVIGNON and JOYCE DAVIGNON : BK No. 96-12769
Debtors Chapter 13

:
GORDON DAVIGNON and JOYCE DAVIGNON :
Plaintiffs :

v. : A.P. No. 02-1021

TOWN OF WEST WARWICK, and :
DIANE DeROUSI, in her capacity as :
Tax Collector for the Town of :
West Warwick :
Defendants

- - - - - x

DECISION AND ORDER

APPEARANCES:

Russell D. Raskin, Esq.
Attorney for Debtors/Plaintiffs
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Providence, Rhode Island 02906

Timothy A. Williamson, Esq.
Attorney for Defendants
INMAN & TOURGEE
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John Boyajian, Esq.
Chapter 13 Trustee
BOYAJIAN, HARRINGTON & RICHARDSON
182 Waterman Street
Providence, Rhode Island 02906

BEFORE ARTHUR N. VOTOLATO, United States Bankruptcy Judge

Heard on April 10 and 11, 2003, on the Debtors' Complaint against the Town of West Warwick (the Town). At issue is the interpretation of the terms of a consent order entered into between the parties on September 30, 1998, in Adversary Proceeding No. 97-1199.

The Debtors have recently completed their regular Chapter 13 plan payments, and taxes owed to the Town under the Consent Order are now due. The Debtors argue that \$7,752.34 is the amount owed, payable in twelve equal installments, *without interest*. The Town argues that interest is due on all taxes, including the \$7,752 accrued post petition.

The disputed part of the Consent Order provides:

The parties have reached a mutually acceptable resolution of all claims in the Complaint which establishes the amount of the Town's claim, how the claim is to be paid, and the fair market value of the Properties for purposes of assessing municipal taxes by the Town subsequent to the filing of the case as follows:

1. The Town of West Warwick shall have a nondischargeable priority claim, secured by the Properties, for all municipal taxes due as of August 13, 1996 (the "Filing Date") in the amount of \$7,752.34 (the "Town Claim").

2. The Town Claim shall be paid outside of the Plan, in 12 equal monthly installments of \$646.02, commencing on the earlier of the following:
 - a. Failure to pay post-filing (i.e. current) municipal taxes when due, which default is not cured within 10 days after written notice of such default by the Town;
 - b. Upon the completion of payments into the Debtors' Chapter 13 Plan.

...

4. Interest on all municipal taxes due subsequent to the Filing Date shall accrue at the interest rate normally assessed by the Town.

A.P. No. 97-1199, Consent Order, Document No. 11.

At one point during these proceedings, and for reasons that escape me now, I thought that the Consent Order was ambiguous as to interest, and allowed the parties to introduce evidence on that issue. The Town of West Warwick provided several documents, Exhibits 1-5, and the testimony of Peter J. Cerilli, Esq., the Town Solicitor at the time the Consent Order was negotiated. The Debtor called the Tax Collector, Diane DeRuosi, and also made an offer of proof that the Debtors understood that the amount of \$7,752 would not accrue interest. Attorney

Raskin's offer of proof is accepted for purposes of this decision.

Attorney Cerilli testified that he was involved in the negotiations, which were extensive, and that Mr. Raskin drafted the documents. Cerilli stated that in the original draft presented by Raskin, Paragraph 4 was not included, and that Paragraph 4 was added at the Town's request "to make it very clear that interest was due and not being waived by the Town," and he volunteered that "the Town never waives interest." He also stressed the importance of Exhibits 2 through 4 where the parties acknowledge in letters subsequent to the Consent Order that interest was to accrue on the \$7,752.

In retrospect, I wonder what the ambiguity was, and why this dispute was not decided straightaway, at the conclusion of the evidence, i.e., there is no ambiguity and the Debtors have not met their burden of whatever it was they were trying to prove. It would have been an easy matter for the Debtors to include language in Paragraph 1 of the Consent Order saying: "This sum shall not accrue interest," if that were the agreement. The Town, on the other hand, concerned about interest, saw to it

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that Paragraph 4 was added, which plainly states that interest should accrue on *all* taxes due subsequent to the Filing Date, and I agree. (Emphasis added.)

Enter Judgment consistent with this opinion.

Dated at Providence, Rhode Island, this 1st day of
May, 2003.

A handwritten signature in black ink, reading "Arthur N. Votolato". The signature is written in a cursive style. To the right of the signature, there is a vertical line that extends downwards to a horizontal line below the signature.

Arthur N. Votolato
U.S. Bankruptcy Judge