

SO ORDERED.

SIGNED this 19th day of November, 2021.




LENA MANSORI JAMES
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION**

IN RE:)	
)	
Lent Christopher Carr, II, and)	Chapter 13
Deltarina V. Carr,)	
)	Case No. 18-80386
Debtors.)	
_____)	
)	
Lent Christopher Carr, II,)	
)	
Plaintiff,)	Adv. Pro. No. 20-9020
)	
v.)	
)	
County of Hoke,)	
)	
Defendant.)	
_____)	

**OPINION AND ORDER
GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

THIS ADVERSARY PROCEEDING comes before the Court on the motion for summary judgment filed by County of Hoke ("Defendant" or "Hoke County") and the cross-motion for summary judgment filed by Lent Christopher Carr, II ("Plaintiff").

The Plaintiff objects to the Defendant's secured claim for 2015, 2016, and 2017 real property taxes under 11 U.S.C. § 502(b)(1), arguing that the corresponding tax liens are unenforceable under North Carolina law because the taxes were marked as paid in full through the Defendant's filing of a Certificate of Payment/Satisfaction of Judgment. In its motion for summary judgment, the Defendant counters that the tax liens are permanently enforceable until they are in fact paid in full, which both parties agree has not taken place.

For the reasons set forth below, with respect to the 2015 and 2016 taxes, the Court finds there are no material facts in dispute and concludes the Plaintiff is entitled to judgment as a matter of law. Conversely, the Court finds there are material facts in dispute regarding the 2017 taxes that prevent the granting of either party's motion for summary judgment on this issue.

JURISDICTION

The Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334. Under 28 U.S.C. § 157(a) and Local Civil Rule 83.11, the United States District Court for the Middle District of North Carolina has referred this proceeding to this Court. This proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and (K) in which this Court is statutorily authorized to enter a final judgment, and the parties consent to the entry of a final judgment.

PROCEDURAL HISTORY

The Plaintiff and Deltarina V. Carr (together, the "Debtors") filed a petition for relief under chapter 13 of the Bankruptcy Code on March 20, 2018. The Debtors'

Schedule A/B listed the Plaintiff's ownership interest in the real property located at 3300 Laurinburg Road, Raeford, North Carolina (the "Property"). The Property has been the subject of numerous contested matters in the underlying bankruptcy case (*see* Case No. 18-80386, Docket Nos. 96, 98, 115, 127), stemming largely from the questionable means by which the Plaintiff acquired the Property.

On April 3, 2018, the Hoke County tax collector (the "Tax Collector") filed a proof of claim for unpaid real property taxes levied against the Property in the amount of \$13,314.38, consisting of \$4,660.41 in 2015 taxes, \$4,523.22 in 2016 taxes, and \$4,130.75 in 2017 taxes (inclusive of interest). Several months later, the Court confirmed the Debtors' plan, specifically providing for disbursements by the chapter 13 standing trustee to the Tax Collector for its secured claim at an interest rate of 9% per annum (Case No. 18-80386, Docket Nos. 32, 51).¹

The Plaintiff initiated this adversary proceeding against the Defendant on October 12, 2020, filing a verified complaint (Docket No. 1, the "Complaint")² that objects to the Defendant's secured claim for 2015, 2016, and 2017 taxes and requests the claim be disallowed. The Defendant filed an Answer on November 13, 2020 (Docket No. 5), denying that the taxes were in fact paid and requesting that the objection be overruled.³

¹ Section 8.1(e) of the confirmed plan also provides that, "[n]otwithstanding the allowance of a claim as secured, all rights under Title 11 to avoid liens are reserved and confirmation of the plan is without res judicata effect as to any action to avoid a lien."

² The record citations refer to Adversary Proceeding No. 20-9020, rather than the underlying bankruptcy case, Case No. 18-80386, unless otherwise indicated.

³ The Defendant also asserted several affirmative defenses, including estoppel, fraud, and illegality, relating to the Plaintiff's tender of a check drawn from an account that he allegedly knew had insufficient funds. However, these defenses have been waived for purposes of summary judgment as

The Defendant filed a motion for summary judgment and supporting brief on August 17, 2021 (Docket Nos. 15, 16), and the Plaintiff filed his cross-motion for summary judgment and supporting brief later the same day (Docket Nos. 17, 18). After all response and reply deadlines expired on September 21, 2021, the Court determined a hearing to be unnecessary, and the cross-motions for summary judgment were taken under advisement on September 23, 2021.

APPLICABLE LEGAL STANDARD

Under Rule 56(a) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Bankruptcy Rule 7056, summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In applying this standard, a court will “view all reasonable inferences drawn from the evidence in the light that is most favorable to the non-moving party[.]” *Smith v. Collins*, 964 F.3d 266, 274 (4th Cir. 2020) (quoting *Nader v. Blair*, 549 F.3d 953, 958 (4th Cir. 2008)). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial.” *Shee Atika Languages, LLC v. Glob. Linguist Sols., LLC*, 601 F. App’x 224, 225 (4th Cir. 2015) (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587

they were not argued or raised in either the Defendant’s motion for summary judgment or its responses to the Plaintiff’s motion. *See In re Nw. Child Dev. Ctrs., Inc.*, No. 20-50632, ___ B.R. ___, 2021 WL 2614612, at *13 (Bankr. M.D.N.C. June 24, 2021) (“Where a party pleads an affirmative defense in the answer, but fails to contest a summary judgment motion on those grounds, the Court may deem those defenses abandoned.” (internal quotation omitted)); *see also Oppenheimer v. ACL LLC*, 504 F. Supp. 3d 503, 512 (W.D.N.C. 2020) (finding plaintiff entitled to summary judgment where defendants raised affirmative defenses in the answer but, in their response to the plaintiff’s motion, failed to provide any supporting facts or “any theory whatsoever about why the Court should not grant summary judgment”).

(1986)). But if there clearly exist material, factual issues “that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party,” then summary judgment is inappropriate. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986); *JKC Holding Co. LLC v. Wash. Sports Ventures, Inc.*, 264 F.3d 459, 465 (4th Cir. 2001). In sum, summary judgment “should be granted only where it is perfectly clear that there is no dispute about either the facts of the controversy or the inferences to be drawn from such facts.” *Morrison v. Nissan Co.*, 601 F.2d 139, 141 (4th Cir. 1979) (internal citations omitted).

“[T]he substantive law will identify which facts are material. Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). Though facts are viewed in the light most favorable to the nonmoving party, that party “must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence.” *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 540 (4th Cir. 2015) (citation omitted).

When presented with cross-motions for summary judgment, “the court must review each motion separately on its own merits to determine whether either of the parties deserves judgment as a matter of law ... When considering each individual motion, the court must take care to resolve all factual disputes and any competing, rational inferences in the light most favorable to the party opposing that motion.”

Rossignol v. Voorhaar, 316 F.3d 516, 523 (4th Cir. 2003), *cert. denied*, 540 U.S. 822 (2003) (internal quotation marks omitted). The court must deny both motions if it finds there is a genuine issue of material fact, “[b]ut if there is no genuine issue and one or the other party is entitled to prevail as a matter of law, the court will render judgment.” 10A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE & PROCEDURE* § 2720 (4th ed. 2021). Accordingly, the Court will construe the uncontested material facts in the light most favorable to the Plaintiff for purposes of the Defendant’s motion for summary judgment; for purposes of the Plaintiff’s cross-motion for summary judgment, the facts are viewed in the light most favorable to the Defendant.

UNDISPUTED MATERIAL FACTS

The Court finds the following facts to be undisputed and material to the adjudication of these cross-motions for summary judgment. These facts are taken from the Complaint and the statements of fact and responses thereto submitted in support of the cross-motions for summary judgment (Docket Nos. 16, 18), as well as exhibits offered by the parties that are not challenged. The Court recites only those facts relevant to the claims and defenses at issue.

1. The Defendant asserts a tax lien against the Plaintiff’s real property located at 3300 Laurinburg Road, Raeford, North Carolina. (Docket No. 1, ¶¶ 1,7; Docket No. 16, ¶ 1).
2. The Property was previously owned by Jannetta Jordan. (Docket No. 1, ¶ 8; Docket No. 16, ¶ 2).
3. Real property taxes for 2014, 2015, and 2016 were unpaid as of January 2017. (Docket No. 1, ¶ 9; Docket No. 16, ¶ 3).

4. The Tax Collector filed a Judgment for Taxes (the “Tax Judgment”) on January 10, 2017, regarding the unpaid taxes for 2014, 2015, and 2016 in the amount of \$12,432.21 and it was docketed on the same day. (Docket No. 1, ¶ 9; Docket No. 16, ¶¶ 4–5; Docket No. 18, Ex. A).
5. Jordan conveyed the Property to the Plaintiff on February 3, 2017, by quitclaim deed delivered to the Plaintiff in April 2017. (Docket No. 1, ¶ 8; Docket No. 16, ¶ 6–7). The Plaintiff paid \$10.00 in consideration of this transfer. (Docket No. 1, ¶ 8; Docket No. 22, ¶ 8).
6. The Plaintiff learned about the outstanding taxes on May 1, 2017. (Docket No. 1, ¶ 10; Docket No. 16, ¶ 8).
7. Additional county taxes on the Property became due on September 1, 2017. (Docket No. 1, ¶ 14; Docket No. 16, ¶ 11).
8. On October 3, 2017, the Plaintiff tendered a check to the Tax Collector in the amount of \$9,050.00 (the “NSF Check”), with the check being drawn on an account belonging to Jordan. (Docket No. 1, ¶ 16; Docket No. 16, ¶ 12). However, the parties do not agree whether the amount of \$9,050.00 was sufficient to cover all unpaid taxes, including those for 2017. (*Compare* Docket No. 1, ¶ 16, *with* Docket No. 5, ¶ 16).
9. The Tax Collector issued a tax receipt (the “Tax Receipt”) indicating payment of taxes immediately after the NSF Check was tendered. (Docket No. 1, ¶ 17; Docket No. 16, ¶ 13). However, the parties do not appear to agree on which years were covered by the Tax Receipt. (*Compare* Docket No. 1, ¶ 17, *with* Docket No. 5, ¶ 17).
10. On October 5, 2017, the Tax Collector signed and tendered to the Hoke County Clerk of Superior Court a Certificate of Payment/Satisfaction of Judgment (the “Certificate of Payment”) marking the Tax Judgment as “paid in full and satisfied in full.” (Docket No. 1, ¶ 19; Docket No. 16, ¶ 16; Docket No. 18, Ex. B).
11. The NSF Check was returned to the Tax Collector by the bank without being honored on or around October 6, 2017. (Docket No. 1, ¶ 20; Docket No. 16, ¶ 17).
12. The Tax Collector’s office contacted Jordan on October 17, 2017, to notify her that the NSF Check had not been honored by the bank. (Docket No. 1, ¶ 22; Docket No. 16, ¶ 18). The Tax Collector did not correct its copy of the

Tax Receipt or other appropriate records, including the judgment rolls.⁴ (Docket No. 18, p. 3; Docket No. 24, pp. 6–7).

13. On April 3, 2018, the Tax Collector filed a proof of claim asserting a secured claim for \$13,314.38 representing real property taxes for 2015, 2016, and 2017 (Docket No. 1, ¶ 26; Docket No. 18, pp. 3–4).

DISCUSSION

By way of the Complaint, the Plaintiff seeks to have the Defendant’s secured claim for unpaid taxes from 2015, 2016, and 2017 disallowed by invoking 11 U.S.C. § 502(b)(1). Under this section, after an objection is filed, a court may disallow a claim to the extent that it is “unenforceable against the debtor and property of the debtor, under any agreement *or applicable law* ...” 11 U.S.C. § 502(b)(1) (emphasis added). “[S]tate law can constitute the type of applicable law that would render a claim unenforceable and thus subject to disallowance pursuant to § 502(b)(1) of the Code.” *In re Nussman*, 501 B.R. 297, 302 (Bankr. E.D.N.C. 2013) (internal quotation marks omitted). Here, the Plaintiff asserts that various North Carolina laws render the unpaid taxes and their corresponding tax liens unenforceable against him.

The Court will first summarize the applicable North Carolina laws that affect the enforceability of Hoke County’s tax liens for 2015, 2016, and 2017 against the Plaintiff. The Court will then apply these laws to the facts in this case, addressing

⁴ The Plaintiff acknowledges a potential material fact in dispute: whether the Tax Collector requested a return of the Tax Receipt (Docket No. 23, 1). But this fact is not specifically disputed by the Defendant. Instead, the Defendant stated in its reply, “Hoke County was not required to take any steps to reassert its tax lien against the Property” (Docket No. 24, 6–7). For purposes of evaluating the cross-motions for summary judgment, however, it is enough to note that the Defendant has neither alleged that it requested by certified or registered mail that the Plaintiff return the Tax Receipt nor has the Defendant denied the allegation in the Plaintiff’s response (Docket No. 23, 2) that the copy of the Tax Receipt and other records were not corrected to show nonpayment of taxes.

the 2015 and 2016 taxes separately from the 2017 taxes because of the parties' material and genuine dispute over which tax years are covered by the Tax Receipt. Laws affecting only 2015 and 2016 taxes will be discussed separately from those affecting the 2017 taxes, and vice versa.

1. North Carolina Tax Liens and Judgments

The assessment and collection of real property taxes in North Carolina is governed by chapter 105 of the North Carolina General Statutes. *See* N.C. Gen. Stat. § 105-1 *et seq.* Subchapter I discusses state taxes that are assessed to raise revenue for the state government. N.C. Gen. Stat. § 105-1 (“The purpose of this Subchapter shall be to raise and provide revenue for the necessary uses and purposes of the government and State of North Carolina ...”). Subchapter II provides the “machinery” for counties and municipalities to appraise property and collect property taxes, *see* N.C. Gen. Stat. § 105-272, and is titled the “Machinery Act,” *id.* § 105-271. Of particular relevance to this matter are the sections of subchapter II discussing tax liens and tax judgments such as those asserted against the Plaintiff by Hoke County. As a starting point, § 105-355(a) provides that a county’s tax lien on real property attaches on the date the property is listed for taxation. This lien continues to exist until the underlying tax and any penalties, interest, and other costs are paid. N.C. Gen. Stat. § 105-362(a). Further, this tax lien enjoys a priority that is “superior to all other liens, assessments, charges, *rights, and claims of any and every kind* in and to the real property[,]” even after sale of the subject property. N.C. Gen. Stat. § 105-356(a)(1), -(3) (emphasis added).

This treatment differs from that of taxes levied by the state, as the sale of encumbered real property may render a state tax lien unenforceable against a bona fide purchaser for value unless a “certificate of tax liability or a judgment was first docketed in the office of the clerk of superior court of the county in which the real property is located.” N.C. Gen. Stat. § 105-241(d)(1).⁵

Under § 105-375, a county tax collector may obtain an in rem judgment that docketed unpaid taxes on real property in the records of the superior court, allowing the tax collector to execute on that judgment by foreclosure. *See* N.C. Gen. Stat. § 105-375(a) (as amended by 2021 N.C. Sess. Laws 91 § 3(b)). To obtain this judgment, a tax collector must file a certificate describing the unpaid taxes and the property encumbered by the corresponding tax lien, as well as provide prior notice to the taxpayer and all lienholders of record. N.C. Gen. Stat. § 105-375(b)–(c). The taxes and any unpaid costs then become a judgment against the property described in the certificate, with the same priority provided to tax liens. N.C. Gen. Stat. § 105-375(d). Before the tax collector forecloses on the affected property, a taxpayer can satisfy the judgment by paying it in full along with any accrued interest under the procedures set forth in § 105-357, which allows a tax collector to accept checks or electronic payments in addition to cash. N.C. Gen. Stat. § 105-357(a), -(b). However, a tax collector accepts checks at its “own risk” and is not obligated to issue a tax

⁵ The parties mistakenly believe that § 105-241 applies to Hoke County’s tax liens, *see, e.g.*, Docket No. 16, 1 (citing both § 105-241(d) and § 105-362(a) for the proposition that a county’s tax lien continues until the taxes are paid), but that provision lies within subchapter I and applies only to state tax liens. Even if that provision did apply here, the Property would still be subject to the tax liens because a tax judgment was entered for 2014, 2015, and 2016 taxes on January 10, 2017, before the Property was transferred to Carr (Docket No. 16, 7–8; Docket No. 18, ¶¶ 3, 5).

receipt immediately but may instead withhold the receipt until the check is honored by the issuer. N.C. Gen. Stat. § 105-357(b).

The statute acknowledges that some checks may not be honored and specifically contemplates a scenario in which a tax receipt is promptly issued after a check is tendered, but where that check is later returned unpaid. *See* N.C. Gen. Stat. § 105-357(b). In this event, the taxes are deemed unpaid but may only be collected *after* the tax collector “correct[s] the copy of the tax receipt and other appropriate records to show the fact of nonpayment, and [gives] written notice by certified or registered mail to the person to whom the tax receipt was issued to return it to the tax collector.” N.C. Gen. Stat. § 105-357(b).

The mandatory nature of these conditions to the ability to collect certain unpaid taxes was affirmed by the North Carolina Supreme Court in *Miller v. Neal*, 23 S.E.2d 852 (N.C. 1943), which is the only case the Court has found that directly considers the procedures set forth in § 105-357(b). In *Miller*, the court held that the Ashe County tax collector could not enforce a tax lien and collect unpaid taxes because the tax collector had issued a tax receipt after the taxpayer tendered a check, but the check was later dishonored, and the tax collector failed to correct the tax records. The court noted that the applicable statute then in place—which was in substantially the same form as the current § 105-357(b)⁶—was enacted for the

⁶ The 1939 statute read:

Any collector may, in his discretion and at his own risk, accept checks in payment of taxes, and either issue the tax receipt immediately or withhold said receipt until the check has been collected. In any case in which a collector accepts a check and issues a receipt, and said check is thereafter returned unpaid, without negligence on the part of said collector in presenting said check for payment, the taxes for which said check was given shall be deemed unpaid; and the collector shall

protection of the tax collector, but only if the tax collector complied with the requisite procedures described therein. *See Miller*, 23 S.E.2d at 854–55. Notably, the *Miller* court came to its conclusion despite the seemingly unequivocal language of another statutory provision in effect at the time (almost identical to the current § 105-362(a)), which stated: “The tax lien shall continue until the taxes, plus interest, penalties, and costs as allowed by law, have been fully paid.” 1939 N.C. Pub. Laws 670, ch. 310, § 1704(b). Thus, despite the dearth of caselaw interpreting the effect of the procedures set forth in § 105-357(b), *Miller* represents persuasive authority that complying with these procedures is a condition precedent to the collection of unpaid taxes after a check is returned.

Lastly, even if a tax collector does comply with the procedures set forth in § 105-357(b) and is able to pursue the unpaid taxes, priority over the rights of a subsequent purchaser may be lost. Specifically, the renewed tax lien becomes inferior to the rights of “purchasers for value” if they acquire their rights in good faith and without actual knowledge that the check amount has not been collected. N.C. Gen. Stat. § 105-357(b)(1).

Against this statutory backdrop, and in view of the familiar summary judgment standard, the Court must determine whether the tax liens claimed by the Defendant are unenforceable under North Carolina law and, thus, whether the claim for taxes is deemed allowed under 11 U.S.C. § 502(b)(1).

immediately correct his records and shall proceed to collect said taxes either by civil suit on the check or by the use of any remedy allowed for the collection of taxes ...

1939 N.C. Pub. Laws 670, ch. 310, § 1710.

2. Enforceability of the 2015 and 2016 Taxes

The Plaintiff argues that because 2015 and 2016 tax liens merged with the Tax Judgment, the unrevoked Certificate of Payment noting the Tax Judgment as satisfied extinguished the Defendant's ability to collect the admittedly unpaid taxes. Alternatively, the Plaintiff asserts that even if the Defendant can enforce the tax liens generally, the tax liens are inferior to the Plaintiff's rights as a qualifying purchaser for value protected by N.C. Gen. Stat. § 105-357(b)(1). The Defendant disagrees that North Carolina tax liens merge with their tax judgments, and argues that, even if a tax judgment is satisfied, the underlying tax lien continues indefinitely and can be independently enforced until the taxes are actually paid. The Defendant bases its argument on the explicit language of § 105-362(a): "The tax lien on real property shall continue until the principal amount of the taxes plus penalties, interest, and costs allowed by law have been fully paid." N.C. Gen. Stat. § 105-362(a). This provision does not differentiate between tax liens that exist alone or those that have given rise to a tax judgment.

While North Carolina statutes and case law do not yield a clear answer,⁷ the question of merger need not be resolved here. The 2015 and 2016 tax liens are unenforceable against the Plaintiff for purposes of 11 U.S.C. § 502(b)(1) regardless

⁷ The relevant statutes are silent on the issue of merger, and the parties have not pointed to any North Carolina cases discussing merger in the context of taxes. For example, neither of the property tax judgment provisions, § 105-374 (tax foreclosure in the nature of a mortgage foreclosure) and § 105-375 (in rem tax judgment), discuss merger. Two North Carolina cases cited by the Plaintiff do state the general rule that a judgment merges with the debt upon which it was rendered, but these cases reference simple contractual debts, not statutorily defined tax liens that continue until paid. See *Sanders v. Boykin*, 134 S.E. 643, 645 (N.C. 1926); *Unifund CCR Partners v. Hoke*, 848 S.E.2d 508, 510 (N.C. Ct. App. 2020); cf. § 105-362(a).

of whether the tax liens merged with the Tax Judgment because, in either case, the Tax Collector failed to take the required steps in order to re-enforce the tax liens and pursue the unpaid taxes.

If the tax liens did merge with the Tax Judgment, then the Tax Collector was required to correct the record in the judgment rolls by reversing or revoking the satisfaction of the Tax Judgment. Without reversal of the satisfaction, the Tax Judgment remained in fact “cancelled” under N.C. Gen. Stat. § 105-375(g).⁸ Here, the Defendant failed to seek relief under either N.C. Rule of Civil Procedure 60(b) (relief from final judgment, order, or proceeding), N.C. Gen Stat. § 1-239(6) (dispute over satisfaction due to unpaid debt), or any other applicable provision. As the Tax Judgment remains satisfied of record, the Defendant is precluded from further enforcement efforts thereon.

Conversely, if no merger occurred, the Defendant is relying solely on the tax liens to collect the taxes as a secured debt, and such collection is conditioned upon following the procedures set forth in § 105-357(b). The Tax Collector accepted the NSF Check at its own risk—and was permitted to minimize this risk by withholding issuance of the Tax Receipt until after the check cleared—and chose to issue the Tax Receipt immediately. The undisputed issuance of the Tax Receipt in reference to full payment of the 2015 and 2016 taxes subjected the Tax Collector to the procedures of § 105-357(b) when the NSF Check was later returned. As discussed

⁸ **Cancellation upon Payment.** Upon payment in full of any judgment docketed under this section, together with interest and costs accrued to the date of payment, the tax collector receiving payment shall certify the fact of the payment to the clerk of superior court and cancel the judgment. N.C. Gen. Stat. § 105-375(g).

earlier, the Tax Collector and the Defendant must comply with these procedures prior to resuming collection of the unpaid taxes. *See Miller v. Neal*, 23 S.E.2d 852, 853–54 (N.C. 1943). While the parties may dispute whether the Tax Collector explicitly requested return of the Tax Receipt, the Defendant has not disputed the Plaintiff's numerous assertions that the tax records were not corrected promptly to show nonpayment, *see, e.g.*, Docket No. 24, pp. 6–7, and the automatic stay now prevents the Defendant from taking any corrective action outside of the bankruptcy case.⁹ As such, the Defendant cannot enforce its lien or collect on the unpaid taxes.

Having found that the Defendant cannot enforce its tax lien or collect on the unpaid taxes, the Court need not reach the Plaintiff's purchaser for value defense under § 105-357(b)(1) as it relates to the 2015 and 2016 taxes.

For these reasons, the Court grants summary judgment in favor of the Plaintiff with respect to the 2015 and 2016 taxes.

3. Enforceability of the 2017 Taxes

Determining the enforceability of the 2017 taxes is a more straightforward endeavor because these taxes did not give rise to a tax judgment before being paid. Instead, these taxes were only supported by a statutory tax lien. But the parties dispute the material fact of whether the Tax Receipt referenced full payment of the 2017 taxes, which if so, would have required the Defendant to comply with N.C. Gen. Stat. § 105-357(b) before resuming collection. Specifically, the Plaintiff states that the Tax Receipt indicated payment of the “foregoing taxes,” including the 2017

⁹ The automatic stay was imposed when the bankruptcy petition was filed on March 20, 2018, over five months after the NSF Check was returned.

taxes (Docket No. 1, ¶ 17), while the Defendant alleges that the amount of the NSF Check, \$9,050.00, was insufficient to satisfy all unpaid taxes (Docket No. 5, ¶ 16). These competing assertions create doubt as to the contents of the Tax Receipt that cannot be resolved by the Court because—unlike the Certificate of Payment and Tax Judgment exhibits, which do not reference 2017 taxes—neither party has provided a copy of the document. *See Morrison v. Nissan Co.*, 601 F.2d 139, 141 (4th Cir. 1979) (holding that summary judgment is only appropriate “where it is perfectly clear that there is no dispute about either the facts of the controversy or the inferences to be drawn from such facts”).

Notwithstanding this dispute, the Plaintiff argues that he is protected under § 105-357(b)(1) as a good faith purchaser for value even if the Defendant was not obligated to comply with the § 105-357(b) procedures. A good faith purchaser for value acquires his rights “without notice, actual or constructive, of any infirmity, and pays valuable consideration and acts in good faith.” *In re George*, 856 S.E.2d 483, 491 (N.C. 2021) (quoting *Morehead v. Harris*, 137 S.E. 2d 174, 182 (N.C. 1964)). While the Defendant contends that the Plaintiff is not a good faith purchaser for value because his payment of \$10.00 cannot be considered valuable consideration, the Court need not make that determination because it is clear that the Plaintiff had notice of the upcoming 2017 taxes and the corresponding tax lien. By operation of § 105-348, upon conveyance of the Property in February 2017, the Plaintiff was charged with notice that taxes would be assessed later in the year, and that the

Defendant could act to collect those taxes and enforce its liens.¹⁰ *See, e.g., In re Joan Fabrics Corp.*, 619 F. App'x 62, 65 n.5 (3d Cir. 2015) (noting that North Carolina law presumes purchaser has notice of upcoming taxes). Thus, the Plaintiff was charged with constructive notice under § 105-348 of the upcoming 2017 taxes and any liens he might incur if those taxes remained unpaid, had actual notice of the 2017 taxes once they were assessed months after the conveyance (and one month before he tendered the NSF Check), and had actual knowledge that the NSF Check was returned and that the tax payment was not in fact collected.

In light of the unavailability of the good faith purchaser for value defense and the material factual dispute regarding the Tax Receipt's reference to payment of the 2017 taxes, the Court will deny both motions for summary judgment with respect to the 2017 taxes.

CONCLUSION

Accordingly, it is hereby ORDERED that the Plaintiff's motion for summary judgment is GRANTED IN PART, such that judgment is granted with respect to the 2015 and 2016 taxes and the Defendant's claim is disallowed to the extent of those taxes.

¹⁰ **All interested persons charged with notice of taxes.** All persons who have or who may acquire any interest in any real or personal property that may be or may become subject to a lien for taxes are hereby charged with notice that such property is or should be listed for taxation, that taxes are or may become a lien thereon, and that if taxes are not paid the proceedings allowed by law may be taken against such property. This notice shall be conclusively presumed, whether or not such persons have actual notice. N.C. Gen. Stat. § 105-348.

IT IS FURTHER ORDERED that the remainder of the Plaintiff's motion for summary judgment is DENIED as to the amount allegedly owed on the 2017 taxes.

IT IS FURTHER ORDERED that the Defendant's motion for summary judgment is DENIED in its entirety.

END OF DOCUMENT

PARTIES TO BE SERVED

Carr, II v. County of Hoke

AP 20-9020

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via cm/ecf

Richard Wyatt Andrews, II

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