



**IT IS ORDERED as set forth below:**

**Date: December 12, 2007**

A handwritten signature in black ink, appearing to read "W. H. Drake", is written over a horizontal line.

**W. H. Drake  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
JAMES ANTHONY NORSWORTHY,	:	NO. 05-15098-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Objection to the Claim of Southern Horizon Bank (hereinafter "SHB"), filed by James Anthony Norsworthy (hereinafter the "Debtor"). This matter constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(B); 1334.

**FINDINGS OF FACT**

On November 23, 2005, the Debtor filed a voluntary petition under Chapter 13 of the

Bankruptcy Code. At the time of the filing, the Debtor owned real property located at 152 Hamm Road, Jackson, Georgia (hereinafter the "Property") and 3445 Bill Gardner Parkway, Locust Grove, Georgia (hereinafter the "Residence"). The Debtor had previously borrowed approximately \$152,000 from SHB to purchase the Residence. At that time, the Debtor granted SHB a second mortgage in the Residence and a first priority security interest in the Property pursuant to a security deed (hereinafter the "Security Deed") dated December 30, 2004. The Security Deed was filed for recordation with the Clerk of the Superior Court of Butts County on November 21, 2005.

The Debtor had previously filed in the instant case a plan that did not propose to pay SHB as a secured creditor, either directly or through the plan. The plan did provide for the direct payment of a mortgage on the Property to Willie Norsworthy and for the payment of a 40% dividend to holders of allowed unsecured claims, the total amount of which the Debtor estimated to be \$72,416. On January 13, 2006, SHB filed a secured claim in the amount of \$154,336.32 and objected to confirmation of the Debtor's plan on the basis that the plan did not provide for the proper treatment of SHB's secured claim. On January 27, 2006, the Debtor filed an amended plan that provided for the surrender of SHB's collateral (the Residence) and raised the dividend to unsecured creditors to 48%. The plan continued to anticipate the retention of the Property without payment to SHB as a secured creditor.

On April 7, 2006, SHB filed a motion for relief from the automatic stay to permit SHB to exercise its rights with regard to the Property. Adam Goodman (hereinafter the

"Trustee"), in his capacity as the trustee of the Debtor's estate, opposed the motion on the basis that either the property had substantial equity or SHB's lien was not valid. On April 14, 2006, the Debtor filed an objection to SHB's secured claim on the basis that the collateral securing the claim (the Residence) had been surrendered. The Debtor disputed the fact that the claim was also secured by the Property.

On June 1, 2006, the Trustee filed a complaint against SHB seeking to avoid the transfer of the security interest in the Property as a preferential transfer. Both parties filed motions for summary judgment, and, on September 4, 2007, the Court granted judgment in favor of the Trustee and avoided the transfer of the security interest pursuant to section 547(b) of the Code.<sup>1</sup>

On October 3, 2007, SHB amended its proof of claim to assert an unsecured claim for \$154,336.32. On September 21, 2007, the Debtor renewed his objection to SHB's claim. In the renewed objection, the Debtor originally asserted that the claim should be disallowed because SHB is party to pending litigation and may recover amounts under either a title insurance policy or a closing attorney's errors and omissions policy. The Debtor now asserts that SHB's claim is contingent and unliquidated and that the Court should estimate the claim to be zero until SHB's claim against these insurers is resolved. SHB opposes the Debtor's objection.

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<sup>1</sup> The Trustee also filed a complaint to avoid the transfer of a second priority mortgage held on the Property by the Debtor's mother, and that transfer was avoided by the Court, leaving the Property unencumbered.

## CONCLUSIONS OF LAW

The Debtor's proposed plan provides for payment of a dividend to allowed unsecured claims. Section 501 of the Code provides that a "creditor . . . may file a proof of claim." "Claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or . . . [a] right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured." 11 U.S.C. § 101 (5). Pursuant to section 502(a) of the Code, "a claim or interest, proof of which is filed under section 501 . . . , is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Upon objection to a claim, "the court, after notice and a hearing, shall determine the amount of such claim . . . as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that": 1) "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;" 2) "such claim is for unmatured interest;" 3) "if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;" 4) "if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services"; 5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under

section 523(a)(5) of this title"; 6) such claim is a claim of a lessor for damages resulting from the termination of a certain leases of real property; 7) such claim is a claim for certain damages resulting from the termination of an employment contract; 8) such claim results from a reduction in certain tax credits; or 9) the proof of such claim is not timely filed. 11 U.S.C. § 502(b). With regard to contingent or unliquidated claims, the Code provides that such claims "shall be estimated for purposes of allowance" under section 502 if the "fixing or liquidation" of the claim "would unduly delay the administration of the case." 11 U.S.C. § 502(c).

A claim is not contingent if all events giving rise to the debtor's liability occurred pre-petition. *See United States v. Verdunn*, 89 F.3d 799 (11th Cir. 1996) (citing *In re Knight*, 55 F.3d 231 (7th Cir. 1995)); *see also In re Jordan*, 166 B.R. 201 (Bankr. D. Me. 1994) ("A claim is contingent if 'the debtor's legal duty to pay does not come into existence until triggered by the occurrence of a future event. . . ."). A claim is "liquidated if the amount due can be readily ascertained either by reference to an agreement or by simple mathematics." *In re Jordan*, 166 B.R. 201 (Bankr. D. Me. 1994).

The Debtor asserts that the Court must estimate SHB's claim because it is both contingent and unliquidated. The Court disagrees. The Debtor borrowed money from SHB and signed a promissory note, under which he agreed to repay the borrowed funds to SHB. As of the petition date, all events necessary to establish the Debtor's liability to SHB were established. Accordingly, SHB's claim is not contingent.

Additionally, at the time of the petition, SHB's claim was not unliquidated because the amount of the Debtor's liability was known. The debt owed to SHB became fixed and liquidated at that time because the Debtor's liability for and the amount of the debt were established. The fact that SHB's security interest was later avoided, resulting in SHB having a claim for damages against its attorney or its insurers, does not change this result. If anything, SHB's claim against its attorneys would be contingent upon a determination that SHB has in fact suffered a loss as a result of the attorneys' failure to record the deed timely. *See Rogers v. Norvell*, 330 S.E2d 392 (Ga. App. 1985). In other words, because a malpractice claim requires the plaintiff to establish actual injury as a result of the attorney's negligence, SHB's damages would be limited to the amount of its claim against the Debtor that it was not able to recover from the Debtor as a result of its unsecured status.

The Debtor urges this Court to step into the shoes of the state court and estimate the claim now, rather than permitting the matter to continue until the state court can resolve the issue of whether SHB should receive any compensation from its attorneys. The Court is at a loss, however, as to how the state court would make this determination without knowing what portion of SHB's claim could be paid by the Debtor or paid from the property of the Debtor's bankruptcy estate. This circular conundrum lends support to the Court's conclusion that SHB's claim is neither contingent nor unliquidated. Instead, it is SHB's claim against its attorneys that is contingent and unliquidated. That, however, is of no concern to this Court. SHB's unsecured claim is a valid obligation against the Debtor's bankruptcy estate

and should receive equal treatment with the Debtor's other unsecured creditors, either through a plan of reorganization or by converting this case to one under Chapter 7 and liquidating the Property.

#### **CONCLUSION**

For the reasons stated above, the Court finds that the Debtor's Objection to the Claim of Southern Horizon Bank should be, and hereby is, **OVERRULED**.

**END OF DOCUMENT**

**Distribution List****James Anthony Norsworthy**

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