

ENTERED ON DOCKET

UNITED STATES BANKRUPTCY COURT 6-13-06
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN THE MATTER OF:	:	CASE NUMBER: R04-43220-PWB
	:	
JOANN CARSON,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
Debtor.	:	BANKRUPTCY CODE
_____	:	
	:	
JOANN CARSON,	:	
	:	ADVERSARY PROCEEDING
Plaintiff	:	NO. 05-4018
	:	
v.	:	
	:	
HENRY J. RHODES,	:	JUDGE BONAPFEL
	:	
Defendant.	:	

ORDER GRANTING AMENDED MOTION FOR DEFAULT JUDGMENT

The Debtor seeks a declaratory judgment that an assignment to the Defendant of the Debtor's interest in proceeds from a lawsuit is invalid under Georgia law and unenforceable in this bankruptcy case. On November 9, 2005, the Court denied the Debtor's first motion for default judgment because the complaint did not allege sufficient facts to determine whether the Defendant's interest in proceeds via the assignment is invalid because it does not comply with the requirements of Georgia law. The Debtor has filed an amended complaint and now seeks entry of default judgment based on the Defendant's failure to file a response.

Prior to filing this bankruptcy case, the Debtor executed an "Assignment of Proceeds" in favor of the Defendant. The Assignment purported to assign the Debtor's interest in proceeds from a lawsuit involving the death of her spouse, *Joann Carson v. Timothy Farmer, M.D.* It appears the assignment of proceeds was an attempt to secure the Debtor's payment of a promissory note to Defendant in the amount of \$37,752.77 with interest of 10 % per year. Judgment has been

entered in favor of the Debtor in the lawsuit. The Debtor will receive net proceeds of \$10,000 which she proposes to exempt, after payment of attorney's fees and expenses. In order to retain the proceeds, the Debtor seeks a declaratory judgment that the assignment is invalid under Georgia law and unenforceable in this bankruptcy case.

In the November 9, 2005 Order, the Court rejected the Debtor's reliance on O.C.G.A. § 44-12-24 which provides that a "right of action for personal torts or for injuries arising from fraud to the assignor may not be assigned" because the Debtor did not assign her right of action, but instead assigned the future proceeds of the action. The Debtor now alleges in her amended complaint that the purported assignment was not valid because, at the time the document was executed, she did not relinquish control over her right of recovery and because further action was required by her in order to obtain recovery against the tortfeasor.

The Debtor relies on *Klosinski v. Southeastern Neurologic Associates, P.C. (In re Oglesby)*, 2000 WL 33943203 (Bankr. S.D. Ga. Sept. 27, 2000) for the proposition that the purported assignment is unenforceable. In *Oglesby*, Judge Dalis examined whether a debtor's purported assignment and/or subrogation of proceeds from a future lawsuit was valid. Judge Dalis found that the purported assignment was ineffective because the documents did "not meet the essential elements for an assignment: intent to assign and immediately to relinquish control over the property." *Oglesby*, 2000 WL at *4. The court further cited the Restatement (Second) of Contracts for the proposition that a "contract to make a future assignment of a right, or to transfer proceeds to be received in the future by the promisor, is not an assignment." *Id.* (quoting RESTATEMENT (SECOND) OF CONTRACTS § 330 (1979)).

The Debtor asserts that because her contract was for the assignment of proceeds to be received in the future, it was not a valid, enforceable assignment under Georgia law. The Debtor further asserts that the Defendant otherwise holds no lien or perfected security interest under

Georgia law in the proceeds. *See* O.C.G.A. § 44-14-320. If there is no valid assignment and if the Defendant does not have a valid, perfected security interest under Georgia law, then the Defendant is an unsecured creditor with a claim based upon the Debtor's breach of her promise to pay. The Defendant has not controverted these assertions and as a result, his default constitutes an admission of the complaint's material facts under Rule 8(d) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure. Based on the foregoing, it is

ORDERED that the Debtor's motion for default judgment is granted. A separate judgment shall be entered contemporaneously herewith.

The Clerk is directed to serve copies of this Order on the persons on the attached Distribution List.

At Rome, Georgia, this 12 day of June, 2006.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

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