

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

ENTERED ON DOCKET
11/9/05

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

ORDER DENYING MOTION FOR DEFAULT JUDGMENT

Prior to filing this bankruptcy case, the Debtor/Plaintiff executed an "Assignment of Proceeds" in favor of 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. Based on Defendant's failure to file an answer, the Debtor now seeks entry of default judgment.

The Debtor cites O.C.G.A. § 44-12-24 and § 44-14-320(b) in support of her contention that the assignment is invalid. O.C.G.A. § 44-12-24 provides that a "right of action for personal torts

or for injuries arising from fraud to the assignor may not be assigned.” See *Peoples v. Consolidated Freightways, Inc.*, 226 Ga.App. 265 (1997); *Southern Railway Co. v. Malone Freight Lines, Inc.*, 174 Ga.App. 405 (1985). The Debtor, however, did not assign her right of action, but instead assigned “the sum of \$37,752.77 plus 10% interest (if any) compounded annually from January 30, 2003, to be paid from the proceeds of the legal action resulting from the death of her husband, filed on her behalf by the firm of Vaughan & Evans, and instructs said law firm to make payment to [Defendant] in the manner described in this contract.” (Complaint, Exhibit B, Assignment). Thus, O.C.G.A. § 44-12-24 is not applicable.

O.C.G.A. § 44-14-320 is likewise inapplicable. Section 44-14-320 recognizes various liens established by the state of Georgia, such as liens for taxes, judgment creditors, and mechanics. Section 44-14-320(b) provides that all liens not set forth in § 44-14-320 or by other statute or ordinance “shall be defined as nonconforming liens and shall not be eligible for filing and recording.” The Debtor, however, has not alleged whether the Plaintiff has a lien and, if so, whether it is unperfected under Georgia law. Because the complaint does 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 and, therefore, may be set aside, the motion for default judgment must be denied. It is

ORDERED that the Debtor’s motion for default judgment is DENIED. The Debtor may file an amended complaint within thirty days of the entry date of this Order.

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

At Rome, Georgia, this 9 day of November, 2005.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

Brian R. Cahn
102 North Bartow Street
Cartersville, GA 30120

Joann Carson
101 Jones Street
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Henry Rhodes
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Mary Ida Townson
Chapter 13 Trustee
100 Peachtree St., Ste. 300
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