UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
JOHN J. JAECKSCH,	)	CASE NO. 02-92612-MHM
PAMELA J. JAECKSCH,	)	
	)	
Debtors.	)	
	)	
JOHN J. JAECKSCH,	)	
PAMELA J. JAECKSCH,	)	
	)	
Plaintiffs,	)	
v.	)	**ADVERSARY PROCEEDING NO. 06-6256**
	)	
GENERAL MOTORS ACCEPTANCE CORPORATION,	)	
	)	
Defendant.	)	

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Debtors filed this adversary proceeding seeking reconsideration of the allowance of Defendant's claim and seeking to recover funds paid Defendant by the Chapter 13 Trustee. The parties have filed cross-motions for summary judgment. The facts are undisputed.

On July 8, 1999,[1] Defendant filed a lawsuit in state court against Debtors to recover a deficiency on a promissory note secured by an automobile Defendant had repossessed. Mrs. Jaecksch was properly served. Mr. Jaecksch was not. On February 28, 2002,

[1] Defendant states in its Statement of Undisputed Facts that two bankruptcy cases filed by Mr. Jaecksch in 1997 "stayed" the state court action against Debtors. The second of those two cases, however, was dismissed in 1998. As that dismissal predates the date the state court action was filed, the automatic stay would not have been in effect when the state court action was filed. Nevertheless, the prior cases Debtors have filed have no relevance to the issues before the court in this adversary proceeding and have received no weight in the court's deliberations.

Defendant obtained a default judgment against Mrs. Jaecksch in the amount of $7,026.83. On March 6, 2002, Defendant requested a writ of *fieri facias* ("*fi fa*") from the state court. On March 8, 2002, Debtors filed their Chapter 13 bankruptcy case. Debtors' attorney did not file a Plea of Stay in the state court. On March 20, 2002, the *fi fa* was issued and recorded on the General Execution Docket ("GED").

On March 20, 2002, Defendant filed a proof of claim showing its claim as secured and attaching a copy of the state court judgment to the proof of claim. Defendant alleges that at the §341 meeting of creditors, "it was announced" that Defendant's claim would be allowed as filed.[2] On June 13, 2002, an order was entered granting Debtors' unopposed motion to avoid Defendant's judicial lien. On June 18, 2002, Debtor's Chapter 13 plan was confirmed and disbursement pursuant to that plan began shortly thereafter. Defendant received payment on its "secured" claim of $4,010.35. If Defendant's claim had been paid as an unsecured claim, Defendant would have been entitled to have received only $333.79.

On May 28, 2003, Debtors filed an objection to Defendant's proof of claim. A consent order sustaining Debtors' objection and reclassifying Defendant's claim as unsecured was entered February 20, 2004.

Debtors seek the return of the funds Defendant received in excess of the amount it would have received as an unsecured creditor. Additionally, Debtors seek payment by

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[2] Defendant did not provide a transcript of the §341 meeting of creditors and did not present an affidavit on personal knowledge from a person present at the §341 meeting. Defendant's attorney alleges that his firm's notes indicate an announcement was made, presumably by the Chapter 13 Trustee, that the claim would be allowed as filed. The effect of such an announcement is simply a disclosure that the Chapter 13 Trustee will not file an objection to the claim and, pursuant to 11 U.S.C. §502(a), will treat the claim as deemed allowed unless Debtors' attorney, on behalf of Debtors in the proper discharge of debtor duties, files such an objection. Such an announcement does not constitute a holding that the claim is unobjectionable.

Defendant of Debtors' attorneys fees in this action under 11 U.S.C. §362(h), 28 U.S.C. §1927, or Bankruptcy Rule 9011.

DISCUSSION

When Defendant's attorney was informed March 8, 2002, that Debtors had filed a bankruptcy petition, Defendant's affirmative duty to discontinue Defendant's collection actions was engaged; accordingly, Defendant should have notified the state court of Debtors' bankruptcy filing or by withdrawing the request for a *fi fa*. *Eskanos & Adler, PC v. Leetien,* 309 F.3d 1210 (9th Cir. 2002) (Creditors have affirmative duty under Bankruptcy Code to discontinue all state collection actions against a debtor). The issuance of the *fi fa* and recordation on the GED perfecting Defendant's judgment lien postpetition was void, as it violated the automatic stay. 11 U.S.C. §362(a)(4). *Roberts v. C.I.R.*, 175 F. 3d 889 (11th Cir. 1999); *Borg-Warner Acceptance Corp. v. Hall,* 685 F.2d 1306 (11th Cir. 1982).

When Defendant's judgment lien was avoided under 11 U.S.C. §522(f), Defendant's claim, filed as a secured claim, was no longer supported by a claim of lien. At that point, Defendant should have filed an amended claim. Alternatively, Debtors should have filed an objection to the claim. In the absence of either action, as to the Chapter 13 Trustee, the claim remained "deemed allowed as filed"; therefore, as to the Chapter 13 Trustee, disbursements to Defendant were proper. Defendant, however, knew or should have known it was not entitled to the disbursements it received from the Chapter 13 Trustee. Debtors' attorney knew or should have known an objection to Defendant's proof of claim would be sustained if filed. However, neither Defendant's attorney nor Debtors' attorney

took the action allowed by the Bankruptcy Code and Rules which would have avoided the predicament that has now arisen.

The bankruptcy court is a court of equity. "Equity" has been defined as the spirit and habit of fairness, justness, and right dealing that should regulate the affairs of individuals. *Gilles v. Department of Human Resources Development,* 113 Cal. Rptr 374, 380, 11 Cal. 3d 313, 323, 521 P. 2d 110, 116 (Cal. 1974). Defendant's acceptance of payment from the Chapter 13 Trustee when it knew its lien was unperfected *and* when it knew an order avoiding its lien had been entered was wrong and its intransigence in acceding to Debtors' request to return the funds it received improperly was without justification. The Bankruptcy Code, however, is not a game with rules that can be used to pervert the bankruptcy process. Defendant received money that it was not legally justified to receive, and subsequently stubbornly refused to return it.

Debtors' attorney, however, has behaved with less than competent efficiency. If, after entry of the order avoiding Defendant's lien or immediately following confirmation of Debtors' plan, Debtors' attorney had promptly filed an objection to Defendant's claim, the funds Debtors now seek to recover would not have been paid. Therefore, assessment of attorneys fees against neither Defendant nor Debtors will be allowed. Accordingly, it is hereby

ORDERED that, within 15 days of the date of entry of this order, Defendant shall pay to the Chapter 13 Trustee, in good funds,[3] the sum of $3,676.56, and within 3 days of making said payment, shall file an affidavit certifying such payment.

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[3] Certified check or money order.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 4th day of April, 2007.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE