

ENTERED ON

JUL 30 2010

DOCKET

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)
)
MIGNON BOYCE BOWEN,)
a/k/a MIGNON FELECIA BOYCE,)
)
Debtor.)

CHAPTER 13

CASE NO. 09-70395-MHM

IN RE:)
)
JAMES HOWARD BUTLER and)
SHELNETTA MARCHELLE BUTLER,)
)
Debtors.)

CHAPTER 13

CASE NO. 08-85053-MHM

JAMES HOWARD BUTLER and)
SHELNETTA MARCHELLE BUTLER,)
)
Movants,)
)
v.)
)
FORD MOTOR CREDIT COMPANY,)
)
Respondent.)

CONTESTED MATTER

IN RE:)
)
PIERRE R. JEAN-CLAUDE and)
LYNDA JEAN-CLAUDE,)
)
Debtors.)

CHAPTER 13

CASE NO. 09-63291-MHM

PIERRE R. JEAN-CLAUDE and)
 LYNDIA JEAN-CLAUDE,)
)
 Movants,)
 v.)
)
 eCAST SETTLEMENT CORP.,)
 assignee of CAPITAL ONE BANK)
)
 Respondent.)

CONTESTED MATTER

IN RE:)
)
 TIMOTHY THOMPSON, SR.)
)
 Debtor.)

CHAPTER 13
 CASE NO. 08-75589-MHM

TIMOTHY THOMPSON, SR.,)
)
)
 Movant,)
 v.)
)
 EMC MORTGAGE CORP.,)
)
 Respondent.)

CONTESTED MATTER

ORDER ON SHOW CAUSE HEARING

This matter arises upon a Show Cause Order entered June 2, 2010, in each of the above cases requiring Debtors' counsel, Marisa Leeds, to appear and show cause why she should not be sanctioned for failing to present orders memorializing relief granted to her clients for motions or objections to claims filed in each of the above cases. Marisa Leeds is an associate attorney with the firm of Robert J. Semrad & Associates ("Semrad").

Hearing was held July 9, 2010, at which Debtors' counsel, Marissa Leeds, and counsel for the Chapter 13 Trustee appeared. In three of the above cases, Ms. Leeds failed to respond to correspondence from the Court and from the Chapter 13 Trustee regarding her failure to submit orders.¹ Specifically:

- In case number 09-70395, Debtor Mignon Bowen filed a *Motion to Ratify Insurance Settlement* August 25, 2009 (Doc. No. 40) (the "First Motion").² That motion was scheduled for hearing October 1, 2009. At the hearing, Debtor's motion was granted, but no proposed order was presented by Debtor's counsel. Subsequently, Debtor's counsel filed a *Motion to Approve Personal Injury Settlement and to Retain Insurance Proceeds* November 17, 2009 (Doc. No. 50) and then withdrew that motion November 18, 2009 (Doc. No. 51). Then Debtor's counsel filed a *Motion to Approve and Retain Insurance Settlement* November 23, 2009 (Doc. No. 53). The hearing on that motion was reset several times; the Chapter 13 Trustee filed a response February 16, 2010 (Doc. No. 57); Debtor's counsel filed an amended motion February 16, 2010 (Doc. No. 59) and another amended motion February 19, 2010 (Doc. No. 60). An order granting Debtor the relief she sought was entered April 6, 2010. Meanwhile, on March 22, 2010, a letter from the undersigned was sent to Ms. Leeds to correct the order submitted regarding the motion filed August 25, 2009 (Doc. No. 40), which remained pending. Ms. Leeds did not correct and resubmit an order. Finally, after entry of the Show Cause Order, Debtor's counsel withdrew the First Motion.

¹ The show cause order also listed a fourth case, Case No. 09-63291, Pierre and Lynda Jean-Claude, in which Debtors' attorney failed to submit an order on an objection to claim heard and sustained October 1, 2009. Although no order was submitted until after entry of the Show Cause Order, no reminders were sent to Debtors' attorney by the court or the Chapter 13 Trustee.

² That motion was incorrectly docketed as a motion to incur debt.

- In case number 08-75589, Debtor Timothy Thompson filed an objection to claim (Doc. No. 41), which was sustained at a hearing held April 16, 2009. No order was presented resolving the objection. A letter was sent to Ms. Leeds October 16, 2009, regarding the objection that remained pending. Ms. Leeds did not respond to the letter. Between June 10, 2009, and May 25, 2010, Trustee sent seven letters to Debtor's counsel regarding Debtor Thompson's objection to claim. Debtor's counsel failed to respond. After entry of the Show Cause Order, Debtor's counsel presented a proposed order, which was entered June 9, 2010 (Doc. No. 91).
- In case number 08-85053, Debtors James and Shelnetta Butler filed an objection to claim August 26, 2009 (Doc. No. 39), which was sustained at a hearing held October 1, 2009. Debtors' counsel failed to submit an order resolving the objection. A letter was sent to Ms. Leeds October 16, 2009, regarding the objection that remained pending. Ms. Leeds did not respond to the letter. Between January 25, 2010, and May 25, 2010, Trustee sent four letters to Debtors' counsel regarding Debtors' pending objection. Debtors' counsel failed to respond. After entry of the Show Cause Order, Debtors' counsel presented a proposed order, which was entered June 9, 2010 (Doc. No. 47).

BLR 9013-2(a) provides:

All proposed orders (including findings of fact and conclusions of law or other rulings orally announced by the Bankruptcy Judge and orders submitted following the call of a matter at a scheduled hearing as to which there is no opposition) shall: (1) be prepared in writing and signed by the attorney for the prevailing party, unless the Bankruptcy Court directs otherwise; (2) include the scheduled hearing date, if applicable; and (3) be submitted to the Bankruptcy Judge within seven days from the date of pronouncement or scheduled hearing, if applicable. A copy shall be provided to each party. An attorney's signature as preparer of a proposed order constitutes a certification that the contents of the proposed order accurately reflect the Bankruptcy Judge's oral ruling or the proceedings at the call of the matter, as applicable.

Under BLR 7041-1, Debtors' counsel's failure to submit proposed orders subjected their clients to denial of the motions or objections for want of prosecution. Pursuant to 11 U.S.C. §329, the bankruptcy court may review and determine whether compensation paid or to be paid to a debtor's attorney exceeds the reasonable value of the services provided. In the matters described above, Marisa Leeds and Semrad ignored reminders from both the court and the Chapter 13 Trustee and thereby subjected their clients to the risk of denial of the requested relief as a result of the failure to act in accordance with the local rules, their ethical obligations, and their contractual obligations to these Debtors. Accordingly, it is hereby

ORDERED that the office of Robert J. Semrad & Associates shall pay \$1,025.00 to Trustee as sanctions.³ These funds shall distributed as follows:

- Trustee shall apply \$575.00 to the case of Timothy Thompson, Sr., case number 08-75589, as found money to be distributed to creditors pursuant to the terms of the confirmed plan. Attorney fees for Debtor's counsel have been paid in full in the amount of \$3,500.00; accordingly, the attorney fees shall be reduced to \$2,925.00.
- Trustee shall apply \$350.00 to the case of James Howard Butler and Shelnetta Michelle Butler, case number 08-85053, as found money to be distributed to creditors pursuant to the terms of the confirmed plan. Attorney fees for Debtor's counsel have been paid in full in the amount of \$3,500.00; the attorney fees shall be reduced to \$3,150.00.

³ Trustee acknowledges that Craig Black, managing partner with Semrad, tendered to Trustee a check in the amount of \$1,025.00 July 9, 2010.

- Trustee shall apply \$100.00 to the case of Mignon Boyce Bowen, case number 09-70395, as found money to be distributed to creditors pursuant to the terms of the confirmed plan. Debtor's counsel has received \$2,030.90 in attorney fees and was scheduled to receive an additional \$1,869.10 for a total fee of \$3,900.00. The attorney fees shall be reduced to \$3,800.00 total, with \$1,769.10 to be disbursed pursuant to the Plan.

It is further

ORDERED that these payments will not increase the plan base⁴ to be paid in any of these three cases.

The Clerk of Court is *directed* to serve notice of this Order upon Debtor, Debtor's counsel, and Chapter 13 Trustee.

IT IS SO ORDERED, this the 30th day of July, 2010.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

Draft Prepared and Presented by:

/s/
Mandy K. Campbell
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Consented to as to form:

/s/ (signed with express permission)
Marisa G. Leeds
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⁴ The "plan base" is the *applicable commitment period* multiplied by payments designated in the Plan, plus such other amounts as may be added to *disposable income* during the life of the Plan (such as tax refunds and other sums designated by the Plan or by order of the Court). 11 U.S.C. §1322 (d), §1325(b)(1)(B) and §1325(b)(4). These funds shall not be considered additional disposable income, and shall not increase the obligations of Debtors.