

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
MYRON & VIRGINIA JACOBSON,)
) CASE NO. BK84-82119
Debtor(s).)
A01-8048
MICHAEL JACOBSON on behalf of)
Myron & Virginia Jacobson,)
)
Plaintiff,) CH. 11
)
vs.)
)
FARM CREDIT SERVICES OF AMERICA,)
)
Defendant.)

MEMORANDUM

This matter is before the court on cross-motions for summary judgment. Joe Hawbaker represents the plaintiff, and James Worden represents the defendant. This memorandum contains findings of fact and conclusions of law required by Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A).

The plaintiff, who is prosecuting this action on behalf of and with the consent of the debtors, alleges that Farm Credit Services ("FCS") has not abided by the terms of a stipulation in the bankruptcy case. Specifically, the dispute has to do with the application of \$3,356 in insurance proceeds, arising from property damage caused by a hail storm and in the possession of FCS since 1985, that the debtors believe could have and should have been applied to FCS's claim at the debtors' request. The plaintiff alleges that FCS's retention and application of the proceeds without the debtors' agreement amounts to violation of the automatic stay, violation of court orders, conversion, unjust enrichment, and a deprivation of debtors' civil rights under color of law, and that FCS should be held in contempt of court for its actions.

FCS seeks summary judgment on all of the plaintiff's claims, primarily on statute of limitations grounds, as well as failure to state a claim, laches, waiver, and estoppel. The plaintiff has moved for partial summary judgment on his allegations of violation of the automatic stay and of court orders, and that FCS be found in contempt for such violations.

The plaintiff's motion is denied. The defendant's motion is denied.

I. Jurisdiction

As a general rule, the Bankruptcy Court's post-confirmation jurisdiction is limited to matters concerning the implementation or execution of a confirmed plan. Official Comm. of Unsecured Creditors v. Welsh (In re Phelps Tech., Inc.), 238 B.R. 819, 825 (Bankr. W.D. Mo. 1999) (citing Cunningham v. Pension Benefit Guaranty Corp., 235 B.R. 609, 617 (N.D. Ohio 1999)).

Here, the parties' stipulation regarding the use of the insurance proceeds was made a part of the confirmed Chapter 11 plan of reorganization. The parties cannot agree on how that plan provision should be interpreted and executed, so this court may exercise jurisdiction over this adversary proceeding.

II. Summary Judgment Standard

Summary judgment is appropriate only if the record, when viewed in the light most favorable to the non-moving party, shows there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c) (made applicable to adversary proceedings in bankruptcy by Fed. R. Bankr. P. 7056); see, e.g., Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-50 (1986); Morgan v. Rabun, 128 F.3d 694, 696 (8th Cir. 1997), cert. denied, 523 U.S. 1124 (1998); Get Away Club, Inc. v. Coleman, 969 F.2d 664, 666 (8th Cir. 1992); St. Paul Fire & Marine Ins. Co. v. FDIC, 968 F.2d 695, 699 (8th Cir. 1992).

In ruling on a motion for summary judgment, the court must view the facts in the light most favorable to the party opposing the motion and give that party the benefit of all reasonable inferences to be drawn from the record. Widoe v. District No. 111 Otoe County Sch., 147 F.3d 726, 728 (8th Cir. 1998); Ghane v. West, 148 F.3d 979, 981 (8th Cir. 1998).

Essentially, the test is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. at 251-52. Moreover, although under Federal Rule of Civil Procedure 56 due deference must be given to the rights of litigants to have their claims adjudicated by the appropriate finder of fact, equal deference must be given under Rule 56 to the rights of those defending against such claims to have a just, speedy and inexpensive determination of the action where the claims have no factual basis. Celotex Corp. v. Catrett, 477 U.S. at 327.

The court's role is simply to determine whether the evidence in the case presents a sufficient dispute to place before the trier of fact.

At the summary judgment stage, the court should not weigh the evidence, make credibility determinations, or attempt to determine the truth of the matter. Rather, the court's function is to determine whether a dispute about a material fact is genuine. . . . If reasonable minds could differ as to the import of the evidence, summary judgment is inappropriate.

Quick v. Donaldson Co., Inc., 90 F.3d 1372, 1376-77 (8th Cir. 1996) (internal citations omitted). See also Bell v. Conopco, Inc., 186 F.3d 1099, 1101 (8th Cir. 1999) (on summary judgment, court's function is not to weigh evidence to determine truth of any factual issue); Mathews v. Trilogy Communications, Inc., 143 F.3d 1160, 1163 (8th Cir. 1998) ("When evaluating a motion for summary judgment, we must . . . refrain from assessing credibility.").

A genuine issue of material fact exists if: (1) there is a dispute of fact; (2) the disputed fact is material to the outcome of the case; and (3) the dispute is genuine, meaning a reasonable jury could return a verdict for either party. RSBI Aerospace, Inc. v. Affiliated FM Ins. Co., 49 F.3d 399, 401 (8th Cir. 1995).

III. Background

FCS, formerly known as the Federal Land Bank of Omaha, had been the debtors' lender since the late 1970s, with a security interest in collateral that included debtors' real property. In

the summer of 1985, debtors' house was damaged in a hail storm. The insurance company paid approximately \$6,500 to the debtors and FCS jointly. The funds were held by FCS in an account on the debtors' behalf. As repairs were made, funds were disbursed from the account for labor and materials. The evidence indicates that \$3,152.95 was disbursed in late 1985, leaving a balance of \$3,356.65 in FCS's possession.

That \$3,356.65, which is roughly one percent of what the debtors owed FCS when they filed bankruptcy, has been the focal point of a sometimes contentious difference of opinion between the debtors and the FCS during the past 17 years. In September 1987, the debtors and FCS settled an appeal regarding FCS's claim in the bankruptcy case with a stipulation setting the amount of FCS's claim at \$290,000 with interest accruing at 10 percent post-confirmation. The claim was secured by first liens on certain real estate. The terms of the settlement provided for the claim to be paid through 30 annual installments, beginning in December 1987. The agreement also specifically provided that "all insurance proceeds (and any accrued interest thereon), which the FLB is presently holding shall be applied as agreed by and between the Debtors and the FLB[.]" That stipulation was subsequently incorporated into the debtors' Chapter 11 plan of reorganization as the "First Modification."

From the time the first plan payment to FCS was due, the debtors asked to be allowed to apply the \$3,365 to their annual payment. FCS refused, taking the position that the funds had already been applied to the Jacobsons' debt. In January 1988, FCS offered to compromise on the issue by giving the debtors credit on their next payment for one-half of the proceeds. The debtors rejected that offer in 1989. The debtors completed their plan payments to FCS in March 2000; however, the appropriate application of the insurance funds continues to be disputed.

IV. Discussion

Based on the evidence before the court, although summary judgment is not appropriate, it appears that the debtors are entitled to the insurance proceeds. The insurance proceeds came into FCS's hands because FCS had a lien on debtors' real estate, and was a co-beneficiary of any insurance to protect that interest from loss. It could be argued that FCS had a right to those funds as security on the debt until the debt was paid. The debt, as modified by the terms of the Bankruptcy Code and provided for in the plan, was paid in full in March 2000. Any

right FCS may have had to the insurance proceeds ended at that point. The funds should have been released to the debtors then, if not earlier.

The record is clear that the debtors repeatedly made overtures to FCS to settle the matter of the insurance proceeds by applying them to the debtors' annual plan payments to FCS. FCS initially was unclear as to whether the funds had already been applied to debtors' outstanding loan balance, but by the time the parties entered into the agreement at issue here in September 1987, FCS was aware the funds were or should have been in a suspense account awaiting a decision as to their application.

V. Conclusion

Because the facts and the law are in plaintiff's favor, FCS's motion for summary judgment must be denied. However, because the plaintiff has moved for summary judgment only on his § 362 and violation of court orders causes of action, his motion must be denied as well.

The plaintiff has requested interest, costs, attorneys' fees, sanctions, and actual and punitive damages. These damage issues, as well as a final determination of the rights to the insurance proceeds, are factual issues that must be set for trial.

IT IS ORDERED the motion for summary judgment by Farm Credit Services of America (Fil. #46) is denied.

IT IS FURTHER ORDERED the cross-motion for partial summary judgment by Michael Jacobson (Fil. #52) is denied.

IT IS FURTHER ORDERED the parties shall file a joint preliminary pretrial statement on or before March 12, 2003.

DATED: February 11, 2003

BY THE COURT:

/s/Timothy J. Mahoney
Chief Judge

Notice given by the court to:

*Joe Hawbaker
*James Worden
U.S. Trustee

Movant (*) is responsible for giving notice of this order to all other parties not listed above if required by rule or statute.