

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

| | | |
|----------------------------|---|-----------------------------|
| IN RE: |) | Chapter 11 |
| |) | |
| UNITED COMPANIES FINANCIAL |) | Case No. 99-450 (MFW) |
| CORPORATION, et al., |) | through 99-461 (MFW) |
| |) | |
| Debtor. |) | (Jointly Administered Under |
| |) | Case No. 99-451 (MFW)) |

MEMORANDUM OPINION¹

This matter is before the Court on the Debtors' objection to the proof of claim filed on behalf of Rebecca Jean Peters Smith. For the reasons set forth below, we sustain the Objection and disallow the claim.

I. FACTUAL BACKGROUND

United Companies Financial Corporation and its affiliates (collectively "the Debtors") filed voluntary petitions under chapter 11 on March 1, 1999. All of the Debtor's assets were sold, and a liquidating plan of reorganization was confirmed on October 31, 2000.

On May 8, 2000, the Debtors filed their Sixth Omnibus Objection to Proofs of Claim asserting no amount was due on claims filed against them by borrowers. One of the borrowers was Rebecca Jean Peters Smith ("the Claimant") who responded to the

¹ This Opinion constitutes the findings of fact and conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052, which is made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014.

Objection through her daughter-in-law, Valerie Smith. The Claimant had filed a proof of claim against the Debtors in the amount of \$30,000 for "services performed for the Debtors." The claim was later amended to seek \$2.5 million for services performed for the Debtors, fraud and misrepresentation, and personal injury. No documentation was attached to the claims. However, in a response to the Objection received on December 12, Ms. Valerie Smith attached numerous documents purporting to support the claim.

At the conclusion of the hearing held on December 12, 2000, we permitted the Debtors to file an updated loan history and the Claimant to file and serve any additional relevant evidence. In response to the loan history submitted by the Debtors, the Claimant submitted a report from her chapter 13 trustee.

II. JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B) and (O).

III. DISCUSSION

A. Burden of Proof

Initially, a claimant must allege facts sufficient to support a legal basis for the claim. If the assertions in the

filed claim meet this standard of sufficiency, the claim is prima facie valid pursuant to Bankruptcy Rule 3001(f). See, e.g., In re Allegheny International, Inc., 954 F.2d 167, 173 (3d Cir. 1992). If no party in interest objects to such a claim, it is deemed allowed. 11 U.S.C. § 502(a). Where an objection has been filed, the objecting party bears the initial burden of presenting sufficient evidence to overcome the presumed validity and amount of the claim. See, e.g., Smith v. Sprayberry Square Holdings, Inc. (In re Smith), 249 B.R. 328, 332-33 (Bankr. S.D. Ga. 2000)(citations omitted). "If the objecting party overcomes the prima facie validity of the claim, then the burden shifts to the claimant to prove its claim by a preponderance of the evidence." Id.

B. The Debtors' Evidence

In support of their Objection, the Debtors presented affidavits of Gary Wolfe, Michael C. Barron and Brian S. Tatum. Those affidavits stated that the Claimant had been a borrower from United Companies Lending Corporation ("UCLC") and defaulted on her mortgage. UCLC had provided the Claimant notice of default, and when the default was not cured, a foreclosure sale was held on March 30, 1999. UCLC was the successful bidder at the foreclosure sale, and \$31,500 was credited against the Claimant's indebtedness. Thereafter, a complaint for ejectment

was filed on August 17, 1999, and a default judgment entered on November 16, 1999.

When the writ of execution was served, Ms. Valerie Smith identified herself as the occupant. The Debtors thereupon filed a complaint in ejectment against Ms. Valerie Smith and obtained a default judgment and writ of execution. The eviction was completed on September 6, 2000, and the property was subsequently sold by the Debtors to a third party. The Debtors' Affidavits assert they are aware of no valid claim which the Claimant may have against them.

We conclude that the Debtors have met their initial burden of presenting evidence to overcome the prima facie validity of the Claimant's proof of claim.

C. The Claimant's Response

At the hearing, we permitted Ms. Valerie Smith to appear telephonically. She asserted three bases for the claim against the Debtors: (1) the Debtors' loan against the Claimant had been reduced to \$5,638.82 pursuant to the Claimant's chapter 13 case; (2) the Debtors had acted in bad faith by foreclosing and evicting the Claimant and Ms. Valerie Smith despite the offers by them to purchase the property; and (3) the Debtors had failed to credit all payments made against the loan.

1. Effect of Chapter 13

At the hearing, Ms. Valerie Smith testified that the Claimant had filed a chapter 13 petition and plan. She asserted that as a result of the chapter 13 case, the Claimant only owed the Debtors approximately \$6,000.

However, the documents submitted by her on December 12, 2000, do not support this assertion. Those documents evidence that the Claimant filed a chapter 13 case on March 30, 1995. That case was dismissed by order dated December 12, 1996, for failure to make plan payments. A subsequent chapter 13 case was filed on December 23, 1996. After the Claimant failed to make her post-petition mortgage payments in the second case, UCLC obtained relief from the automatic stay.

It is true that in submitting her chapter 13 plans, the Claimant asserted that the arrears due to the Debtors was approximately \$6,000. The Claimant apparently mistakes this for a determination that \$6,000 was the entire amount due to the Debtors. The chapter 13 cases did not affect the total amount due to the Debtors. Chapter 13 permits a debtor such as the Claimant to cure any defaults on a mortgage within a reasonable time, but the debtor must continue to pay ongoing mortgage payments. In re Sensabaugh, 88 B.R. 95, 96 (Bankr. E.D. Va. 1988). Thus, the chapter 13 cases did not reduce the mortgage amount to \$6,000 as the Claimant asserts. Furthermore, since the

Claimant did not consummate either of her chapter 13 plans, the filing of her chapter 13 cases did not affect in any way the loan balance due the Debtors.

2. Bad Faith Foreclosure

The Claimant asserts that the Debtors acted in bad faith by foreclosing on the property and evicting her and her family. Specifically, she asserts that the Debtors acted in bad faith by failing to consider offers she made to purchase the property from them. Ms. Valerie Smith testified that she made two offers to buy the property (\$15,000 and \$24,000) which were supported by loan commitment letters from other financial institutions. (Copies of the commitment letters were submitted by Ms. Smith in support of her position.) UCLC rejected both offers, foreclosed on the property, evicted the Smiths, and sold the property to another party.

While Ms. Valerie Smith argues that the Debtors did not act in good faith in refusing her offers to buy the property, she acknowledged at the hearing that they had no legal obligation to accept those offers. She presented no evidence that the offers were for the fair market value of the property. To the extent the Claimant's argument is premised on a belief that the Debtors were obligated to satisfy the mortgage upon the payment of \$6,000

(the amount of arrears per the Claimant's chapter 13 plan), we reject that argument for the reasons stated above.

The Debtors' affidavits also evidence that UCLC credit bid for the property at the foreclosure sale and credited the Debtors' account in the amount of \$31,500. Further, they note that the property was ultimately sold on October 31, 2000, and the account marked satisfied.² The Debtors' loan history showed no payments were made by the Claimant on the mortgage since the chapter 13 case was dismissed in 1997.³ There is no evidence the Debtors acted in bad faith in rejecting the Claimants' offers and selling the property to a third party.

We conclude that the Claimant has not sustained her burden of proof in establishing that the Debtors breached any obligation they had to sell the property to her or to accept anything less than the full balance of the mortgage in satisfaction thereof.

² It is not clear from the loan history supplied by the Debtors what the purchase price was.

³ The Claimant presented evidence that she failed to make the mortgage payments after suffering a stroke and her son, who had a power of attorney to handle her affairs, failed to make the mortgage payments because he was incapacitated. While we are sympathetic to the Claimant's plight, she sought bankruptcy relief on two occasions and was unable to complete her chapter 13 plans. We cannot afford her any relief in this case.

3. Accounting of Payments Made

The Claimant also asserts that the Debtors have failed to credit properly payments she made on the mortgage. The Debtors submitted the detailed loan history which evidences the payments received. In response the Claimant presented no evidence of payments made that were not recorded. In fact, the only thing presented by the Claimant in her latest submission were additional copies of the chapter 13 pleadings showing payments to the Debtors by the chapter 13 trustee totaling \$957.17. Those payments are, in fact, reflected on the loan history presented by the Debtors.

Again, the Claimant apparently believes that the effect of the chapter 13 cases was to reduce the principal balance on the mortgage to approximately \$6,000. This is not correct. The chapter 13 cases (even if they had been completed, which they were not) would only have allowed the Claimant to pay the arrears over a reasonable period. It would not reduce the principal of the mortgage (then in excess \$30,000) to \$6,000.

The Claimant was unable to identify any other error in the loan history provided by UCLC.

IV. CONCLUSION

The Claimant has presented no legal or factual basis to sustain her claim. It will be disallowed.

An appropriate Order is attached.

BY THE COURT:

Dated: February 1, 2001

Mary F. Walrath
United States Bankruptcy Judge

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O R D E R

AND NOW, this **1ST** day of **FEBRUARY, 2001**, upon consideration of the Debtor's Sixth Omnibus Objection to Claims and the Response of Ms. Valerie Smith on behalf of Rebecca Jean Peters Smith thereto, and after a hearing, for the reasons set forth in the accompanying Opinion, it is hereby

ORDERED that the claim of Ms. Rebecca Jean Peters Smith filed by Ms. Valerie Smith, is hereby **DISALLOWED**.

BY THE COURT:

Mary F. Walrath
United States Bankruptcy Judge

cc: See attached

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