

IN THE UNITED STATES BANKRUPTCY COURT

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FOR THE DISTRICT OF UTAH

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In re) Bankruptcy Case No. 80C-02417
)
ANTHONY ESCOBAR and)
RANDI ESCOBAR,)
)
Debtors.) MEMORANDUM OPINION

Appearances: Lowell V. Summerhays, attorney for debtors;
Wynn E. Bartholomew, attorney for creditors R. Craig and
Ramona S. Stirling.

Debtors' motion for an order to deem judgment satisfied came on for hearing before the above-captioned court on June 7, 1983. An understanding of debtors' motion and the court's ruling thereon requires a knowledge of the background of this matter. On November 23, 1981 debtors' objection to Claim #14 of R. Craig and Ramona S. Stirling (the Stirlings) was heard by this court, the Honorable Ralph R. Mabey presiding. The parties stipulated that the claim of \$8,200.00 would be reduced by the release of any liens that were filed within 30 days. The court was to allow the claim in that final amount after any lien releases have been produced. The court required that debtors give notice to the unsecured creditors committee and, absent objection, the court agreed to approve the settlement. It does not appear from the record that any notice was given to the unsecured creditors committee nor were any lien releases filed. On September 9, 1982, the Stirlings came before the court for an order fixing the

amount of their claim. This court, the Honorable Ralph R. Mabey presiding, entered an order on September 22, 1982 fixing the amount of the Stirlings' claim at \$8,200.00.

On November 19, 1982, the Stirlings moved for conversion or dismissal of the chapter 11 case for failure to comply with debtors' chapter 11 plan by paying the Stirlings the amount of their claim within one year of the date of confirmation. On December 1, 1982, a hearing on the Stirlings' motion was held before this court. Wynn E. Barthlomew, Esq., appeared on behalf of the Stirlings; neither debtors nor any other creditors appeared. On December 13, 1982, an order of conversion and appointment of trustee was entered by this court and a meeting of creditors was subsequently scheduled by this court. On December 17, 1982, debtors filed a motion for relief which asked the court to vacate and set aside the order of conversion and appointment of trustee on the ground that the failure of debtors' attorney to attend the hearing on the motion was due to mistake and inadvertence of the secretarial staff of debtors' attorney's law firm. At the hearing of that motion on January 20, 1983, counsel for the debtors and the Stirlings advised the court that they would stipulate to the setting aside of the order of conversion and that the debtor would pay according to his plan of reorganization. Accordingly, on February 4, 1983, the court entered its order vacating the order of conversion.

On January 26, 1983, debtors filed a motion for determination of amount of claim and method by which the claim should be paid. On February 8, 1983 a hearing was held. The parties agreed to try to work the matter out on their own and the matter was continued. On February 25, 1983 the court issued its order fixing the amount of claim at \$8,200.00 minus the value of any expired liens and providing that the creditors may petition the court for attorney's fees incurred in defending against any lien foreclosure actions and in pursuing their claim against debtors.

On March 21, 1983 the Stirlings filed a motion for an order directing payment of creditors' claim by debtors together with an affidavit in support of the motion by creditors' attorney which stated that litigation had been commenced upon three of the liens against creditors' home and that the creditors have incurred attorney's fees in the Escobar matter in the amount of \$5,551.00. A hearing was held on that motion on March 29, 1983. The Stirlings' attorney appeared at that hearing; no one appeared on behalf of debtors. Pursuant to that hearing on April 7, 1983, the court issued its order fixing the amount of the claim at \$7,103.51 and awarding attorney's fees to the Stirlings in the amount of \$1,981.00. The court's order provided that the debtors shall pay the claim and attorney's fees within ten days and that upon their failure to pay, the court would appoint a special liquidating trustee. On April 6, 1983 debtors filed their motion for relief and objections to the order. The attorneys for

debtors asserted that they had had no notice of the March 29 hearing. The attorney for the Stirlings represented that he personally delivered the notice to the office of the debtors' attorneys. A hearing on debtors' motion was held April 7, 1983. On that day the court issued its order directing payment of creditors' claim and noted that the matter had long been resolved by the order of Judge Mabey. On May 17, 1983 debtors filed an amended motion for order to deem judgment satisfied. Attached to the original motion was a photocopy of an order for dismissal of the claim of one of the lien claimants against the creditors' home dated April 17, 1981 and a release of another lien against debtors' home in the amount of \$2,050.00 which was recorded May 11, 1983.

It is not clear from the motion for an order to deem judgment satisfied and the amended motion to which of the several judgments the motions refer. The original motion refers to a judgment in the amount of \$7,500.00 and the amended motion refers to a judgment in the amount of \$6,063.00. The court assumes that debtors have reference to the court's order directing payment of creditors' claim dated April 7, 1983. That order was entered only for the purpose of enforcing prior orders of the court. The only events to occur since the date of that order were the filing on March 11, 1983 of a release of lien in the amount of \$2,050.00 and the payment of attorney's fees in the amount of \$1,981.00.

Accordingly, the amount now due the Stirlings by the debtor is reduced by eliminating the attorney's fees previously awarded and subtracting \$2,050.00 together with interest at the rate of 12% per annum from October 26, 1981 from \$7,103.51 together with the interest from April 1, 1983 at 12% per annum.

From November 23, 1981 debtors have shown a substantial disregard for the directions and orders of this court. Debtors now assert that they could now show that they are responsible for no liens upon the home of the Stirlings. The court finds that it has given debtors numerous opportunities to make such a showing and that they have failed to do so. This failure is inexcusable.

Counsel for the Stirlings is directed to prepare an order consistent with this memorandum opinion which constitutes the findings of fact and conclusions of law of the court.

DATED this 24 day of June, 1983.

BY THE COURT:



GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE