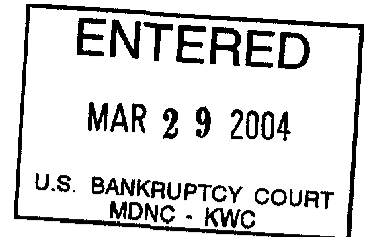


UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION



IN RE:)
)
Jesse Ed Carter, Jr.,) Case No. 03-13874C-13G
)
Debtor.)
)

ORDER

This case came before the court on February 17 and March 9, 2004, for hearing upon a motion for relief from stay filed on behalf of Peggy S. Willis ("Movant"). William O. Moseley, Jr. appeared on behalf of the Movant, Jeffrey P. Farran appeared on behalf of the Debtor and Anita Jo Kinlaw Troxler appeared as Chapter 13 Trustee. Having considered the motion and supporting memorandum and the evidence offered by the parties, and having heard the arguments of counsel, the court finds and concludes as follows:

1. This Chapter 13 case was filed by the Debtor on November 20, 2003.

2. When this case was filed, the Debtor owned residential real property located at 6 Rehoboth Court, Greensboro, North Carolina ("the Rehoboth Court Property").

3. The Rehoboth Court Property is subject to a deed of trust which secures a promissory note held by the Movant in the original amount of \$16,000.00 and which has a substantial unpaid balance.

4. The motion for relief from stay was filed on January 2, 2004. In the motion, the Movant sought relief from the automatic

stay on the grounds that Movant was "informed and believes that Debtor does not have and has not provided insurance, for Movant's benefit as required under the terms of the Deed of Trust."

5. The initial hearing on the motion for relief from stay was held on February 17, 2004, at which time evidence was received from both the Movant and the Debtor. The Debtor's evidence included an insurance binder reflecting that insurance coverage was in force with respect to the Rehoboth Court Property. The hearing was carried over to March 9, 2002, so that Debtor's counsel could obtain a full copy of the policy and furnish the same to Movant's counsel. When this case was called for hearing on March 9, 2004, counsel confirmed that the full policy had been provided and that insurance coverage on the Rehoboth Court Property had been confirmed. Since it is undisputed that the Rehoboth Court Property is covered by appropriate insurance, the motion for relief from the automatic stay will be denied.

6. On March 9, 2004, the Movant filed a Memorandum in Support of Movant's Request for Allowance of Attorney's Fees in which the Movant requested that the Movant be awarded attorney's fees of \$2,048.10 pursuant to § 506(b) of the Bankruptcy Code on the grounds that "[d]ue to Debtor's repeated refusals and failures to provide credible evidence that he has adequate insurance on the property for Movant's benefit, Movant has incurred attorney fees and expenses in the amount of \$2,042.10 in her efforts to obtain

adequate assurance that her interest in the property is protected."

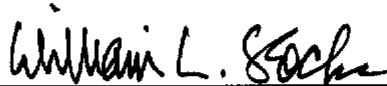
7. Pursuant to § 506(b) of the Bankruptcy Code, an oversecured creditor is entitled to collect reasonable fees, costs or charges from the assets of the bankruptcy estate if those fees or charges are expressly provided for in the loan and security agreements. To substantiate a claim for fees under § 506(b), the creditor must show that: (a) the creditor is oversecured; (b) the underlying documents provide for such fees and costs; and (c) the fees and costs are reasonable and necessary. In re Gwyn, 150 B.R. 150, 154 (Bankr. M.D.N.C. 1993). It is not disputed that the Movant's note and deed of trust provide for attorney's fees and that Movant is oversecured. The dispute is whether the fees sought by the Movant are reasonable and necessary.

8. In order to protect the assets of bankruptcy estates, the applicable rule is that if the services rendered by a creditor's attorney are not necessary to protect the creditor's interests, the fees of the attorney may not be charged to the Debtor notwithstanding the terms of the underlying contractual documents. See In re Villa Capri of Georgia Assoc. Ltd. P'ship, 141 B.R. 257, 263 (Bankr. N.D. Ga. 1992). The Movant contends that the fees sought in this case were necessary because of a failure of the Debtor to provide insurance on the Rehoboth Court Property. The Debtor, on the other hand, contends that in pursuing this matter the Movant was motivated by ill will left over from a romantic

relationship with the Debtor that went sour rather than a legitimate concern regarding insurance coverage. The evidence regarding the status of the insurance and whether coverage was provided was disputed. According to the Debtor's evidence, insurance coverage on the property was maintained even though on one occasion the Movant called Debtor's insurance agent and caused Debtor's policy to be cancelled, requiring the Debtor to replace that policy with the insurance binder and subsequent policy produced at the hearing. Movant's evidence was to the contrary, although it was undisputed that extensive state court domestic proceedings not involving the insurance situation preceded the filing of the motion now before this court. As the applicant under § 506(b), the Movant had the burden of proof to establish entitlement to the fees sought, including a showing that the services were necessary to protect her interests. See Gwyn, 150 B.R. at 154. In order to do so, the Movant was required to show by a preponderance of the evidence that the Debtor failed to maintain insurance coverage on the Rehoboth Court Property. Having weighed the conflicting evidence and having considered the credibility of the witnesses, the court has concluded that the Movant failed to carry her burden of proof and, as a result, failed to show that the services performed by her attorney were necessary. The Movant therefore is not entitled to an award of attorney's fees pursuant to § 506(b).

It is, therefore, ORDERED, ADJUDGED AND DECREED that Movant's motion for relief from the automatic stay, including her request for attorney's fees, shall be and hereby is overruled and denied.

This 25 day of March, 2004.



WILLIAM L. STOCKS
United States Bankruptcy Judge