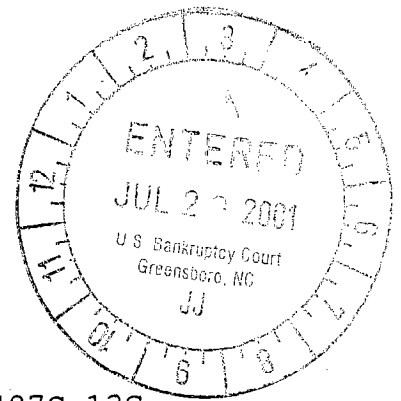


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



IN RE:

Barbara Langley Leviner,  
Debtor.

Case No. 01-10487C-13G

ORDER

This case came before the court on June 12, 2001, for hearing upon a motion by Wells Fargo Financial for relief from the automatic stay in order to exercise its rights with respect to a 1997 Nissan automobile. Michael J. McCrann appeared on behalf of the Debtor, Pamela P. Keenan appeared on behalf of Wells Fargo Financial and Anita Jo Kinlaw Troxler appeared on behalf of the Chapter 13 Trustee.

Under the confirmed plan in this case, Wells Fargo is treated as having a secured claim of \$7,670.00 which is to be paid by monthly payments of \$300.00, with the balance of its \$8,008.45 claim being treated as an unsecured claim. The collateral for Wells Fargo's secured claim is Debtor's 1997 Nissan automobile. The motion by Wells Fargo was filed after Wells Fargo was notified that the collision insurance on the 1997 Nissan had expired. Shortly after the motion was filed, the Debtor procured insurance coverage that was in full force and effect when the motion was heard on June 12, 2001. The matter that remains unresolved is whether Wells Fargo is entitled to recover from the Debtor the attorneys' fees related to the filing of the motion for relief from stay.

The general rule in the federal courts is that, absent specific statutory authority or an enforceable contract, litigants pay their own attorneys' fees. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975). Under the so-called American Rule a prevailing party may not recover attorneys' fees as costs or otherwise. Id. at 245. While recognizing and accepting the general rule of not allowing the recovery of attorneys' fees, Congress has made specific and explicit provisions for the allowance of attorneys' fees under selected statutes granting or protecting federal rights. Id. at 260. Examples of such statutory exceptions to the general rule are found in the antitrust laws (15 U.S.C. § 15), in patent law (35 U.S.C. § 285), under the Civil Rights Act of 1964 (42 U.S.C. § 2000a-3(b)), the Securities Act of 1933 (15 U.S.C. § 77k(e)) and the Fair Labor Standards Act (29 U.S.C. § 216(b)). And, while recognizing that certain judicially fashioned exceptions to the American Rule have survived,<sup>1</sup> the Court cautioned that the federal courts do not have "roving authority . . . to allow counsel fees as costs or otherwise whenever the courts might deem them warranted."

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<sup>1</sup>The judicially created exceptions noted by the Court were: the power of equity to permit the trustee of a fund for the benefit of others in addition to itself, to recover its costs, including attorneys' fees from the fund or property itself or directly from the other parties enjoying the benefit; the power of a court to assess attorneys' fees for the willful disobedience of a court order; and the power of a court to award attorneys' fees when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons. Alyeska, 421 U.S. at 258-59.

Id. at 260.

The foregoing principles regarding the recovery of attorneys' fees are applicable in the bankruptcy court. As in other federal forums, a party to a bankruptcy proceeding is entitled to attorneys' fees only if provided for by statute or contract. In re Coast Trading Co., Inc., 744 F.2d 686, 693 (9<sup>th</sup> Cir. 1984). There is no general right under the Bankruptcy Code to recover attorneys' fees incurred during bankruptcy proceedings. In re Baroff, 105 F.3d 439, 441 (9<sup>th</sup> Cir. 1997); Harris v. Margaretten & Co., Inc., 100 F.3d 950, 1996 WL \*659434 (4<sup>th</sup> Cir.). However, as with other federal legislation, the Bankruptcy Code contains specific statutory provisions which permit the recovery of attorneys' fees. These provisions include § 506(b) which permits an oversecured creditor to include attorneys' fees in its allowed claim, § 303(i)(1)(B) which permits the imposition of attorneys' fees against a petitioner in an unsuccessful involuntary bankruptcy filing, § 362(h) which allows the award of attorneys' fees for willful violations of the automatic stay and § 523(d) which permits the recovery of attorneys' fees by a debtor who successfully defends a proceeding seeking to have a consumer debt adjudged nondischargeable in a proceeding that was not substantially justified. Thus, in bankruptcy proceedings involving only bankruptcy law, attorneys' fees are not recoverable absent a specific statutory basis or aggravated conduct justifying

imposition of attorneys' fees. In re McDonald, 177 B.R. 212, 218 (Bankr. E.D. Pa. 1995); In re Luce, 109 B.R. 202, 209-10 (Bankr. N.D. Tex. 1989); In re Iaquinta, 95 B.R. 576, 582 (Bankr. N.D. Ill. 1989); In re Tashjian, 72 B.R. 968, 975 (Bankr. E.D. Pa. 1987).

A prevailing party in bankruptcy court also may be entitled to recover attorneys' fees in accordance with state law if state law governs the substantive issues involved in the proceeding. In re Baroff, 105 F.3d 439, 441 (9<sup>th</sup> Cir. 1997); In re DiSalvo, 221 B.R. 769, 775 (9<sup>th</sup> Cir. BAP 1998). For example, in a bankruptcy matter based on a contract, state law is controlling and attorneys' fees may be recovered if the contract provides for an award of fees and state law authorizes fee shifting agreements. In re Shangra-La, Inc., 167 F.3d 843 (4<sup>th</sup> Cir. 1999); In re Johnson, 756 F.2d 738, 741 (9<sup>th</sup> Cir. 1985).

Because the recovery of attorneys' fees may be treated differently under state law than under bankruptcy law, the nature of the substantive law involved may be decisive. If the bankruptcy court is determining a state law issue it should look to state law to determine whether attorneys' fees may be awarded. If the proceeding involves solely bankruptcy law, then bankruptcy law rather than state law will be controlling on whether attorneys' fees may be awarded. In re Sokolowski, 203 F.3d 532, 535 (2<sup>nd</sup> Cir. 2000) (proceeding to determine whether debtor who was current on payment could retain vehicle without reaffirming involved

bankruptcy law and no fees were recoverable); In re Shangra-La, Inc., 167 F.3d 843, 849 (4<sup>th</sup> Cir. 1999) (where debtor is curing default and assuming lease, the amount of attorneys' fees that must be paid under § 365(b)(1)(B) as part of lessor's pecuniary loss involves a contract issue to be determined under applicable state law); In re Johnson, 756 F.2d 738, 741-42 (9<sup>th</sup> Cir. 1985) (a motion for relief from the automatic stay pursuant to § 362(d) is an action on a federal statute to be decided according to federal law which does not provide for attorneys' fees for such actions); In re Gifford, 236 B.R. 661, 663-64 (Bankr. D. Conn. 2000) (matter arising from debtor's objection to proof of claim involving the types and amounts of various charges that could be included in claim was a contract matter controlled by state law and attorneys' fees were recoverable).

In the present case, the record reflects no basis upon which fees may be awarded to Wells Fargo. No provision in the Bankruptcy Code permits the award of attorneys' fees with respect to the motion for relief from the automatic stay filed by Wells Fargo, nor has Wells Fargo shown any other grounds for the award of attorneys' fees. Accordingly, the prayer for attorneys' fees will be denied.

IT IS SO ORDERED.

This 20<sup>th</sup> day of July, 2001.

William L. Stocks

WILLIAM L. STOCKS  
United States Bankruptcy Judge