

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:

William Edward Waterloo

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Case No. 00-51639-C7

Order Determining Claims filed by Deanna K. Waterloo

This matter came on for hearing before the undersigned Bankruptcy Judge upon the Trustee's objections to the following claims: Claim no. 1 in the amount of \$20,000.00, Claim no. 2 in the amount of \$30,000.00 and Claim no. 4 in the amount of \$5,841.00 all filed by Deanna K. Waterloo. Each claim was filed as a priority claim under 11 U.S.C. § 507(a)(7), but failed to attach documentation supporting the claims. Accordingly, the Trustee objected. Appearing before the Court were John A. Meadows, Attorney for Claimant, and C. Edwin Allman, III, Chapter 7 Trustee. The Court, after hearing the testimony of the witness and reviewing the exhibits presented, makes the following findings of fact and conclusions of law:

Deanna K. Waterloo and William E. Waterloo were previously married and have two children who are still minors. William E. Waterloo filed a Chapter 7 petition on August 22, 2000, and C. Edwin Allman is the duly appointed Trustee. Creditors were noticed to file claims and Deanna K. Waterloo filed four claims. The Trustee has no objection to one of her claims but has objected to three claims to wit: Claim no. 1 Claim no. 2 Claim no. 4

The Claimant contends that each of the three claims should be afforded priority under 11 U.S.C. § 507(a)(7) as they arise as claims for debts to a spouse, former spouse, or child of the

debtor, for alimony to, maintenance for or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record.

Claim no.1 is in the amount of \$20,000.00. This claim is based upon a second mortgage that Deanna K. Waterloo took out on her residence. Pursuant to the property settlement agreement, the parties were to continue to jointly own the former marital home. At some point subsequent to the execution of the property settlement, the Debtor executed a Quit Claim Deed in favor of Deanna Waterloo. At a time when Deanna Waterloo was the sole owner of the real estate, the Debtor requested that she place a second mortgage on the property and that he be allowed to use the monies advanced under the second mortgage. Deanna Waterloo consented to the Debtor's request and on or about March 1999 executed a Note and Deed of Trust in favor of Centura Bank. The sum of \$40,000.00 was advanced under the Deed of Trust and the Debtor executed the Promissory Note. The monies were used by the Debtor. At the time of the filing of the petition, the Debtor and Deanna Waterloo owed Centura Bank the sum of \$39,899.88. This claim does not arise as a claim to a spouse, former spouse, or child of the Debtor, for alimony to, maintenance for or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of the court. The Court finds that Deanna K. Waterloo is entitled to a general unsecured claim in the amount of \$39,899.88 and claim no. 1 is amended to reflect that amount. Centura Bank has also filed an unsecured claim for \$39,899.88. Deanna K. Waterloo's claims is subordinated to the claim of Centura Bank.

Claim no. 2 is in the amount of \$30,000.00. This claim is based upon the Debtor improperly withdrawing monies from the children's educational accounts. Pursuant to a separation agreement and property settlement that was entered into on July 28, 1997, between Deanna K. Waterloo and William E. Waterloo, the parties agreed that William E. Waterloo, the

Debtor, would continue to contribute the sum of \$375.00 per month to a educational fund set up for his two minor children. The agreement further provided that Deanna Waterloo and the Debtor were to be joint owners of these accounts. The terms and provisions of the educational fund were under Article III of the Separation Agreement providing for "custody and child support." At the time the separation agreement was executed, the account for Justin Waterloo had a value of \$15,640.29 and the account for Eric Waterloo had a value of \$14,215.89. Both parties agreed not to withdraw funds from the account except for the children's post high school education or other expenses as allowed by the Internal Revenue Service. Documents were never executed to make Deanna Waterloo a joint owner of these accounts.

On November 2, 1998, William E. Waterloo withdrew the sum of \$19,059.46 from the Fidelity Investment Account Mutual Fund T083245108 "William E. Waterloo, Custodian for Justin E. Waterloo - UTMA NC." He converted these funds for his own personal use. On November 2, 1998, William E. Waterloo withdrew the sum of \$17,714.04 from the Fidelity Investment Account Mutual Fund T083154116 "William E. Waterloo Custodian for Eric T. Waterloo - UTMA NC." He converted these funds for his own personal use. The use of such funds was in clear violation of the terms and conditions of the separation agreement and property settlement. The funds were agreed upon support for a child in connection with a separation agreement and constitute a priority claim under 11 U.S.C. § 507(a)(7) in the amount of \$36,773.50. Claim no. 2 as amended in open court is allowed as a priority claim in the amount of \$36,773.50.

Claim no. 4 is in the amount of \$5,841.00. This claim is based upon the failure of the Debtor to make house payments for the eight months prior to filing this bankruptcy case. The Separation Agreement and Property Settlement executed by Deanna K. Waterloo and the Debtor

expressly provided that the Debtor was to pay one-half of the monthly mortgage payment for so long as Deanna had sole possession of the former marital residence. The Debtor failed to make any payments from January 2000 to August 2001 and his share was \$630.00 per month. The Claimant shall be entitled to a priority claim under 11 U.S.C. § 507(a)(7) in the amount of \$5,040.00

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Deanna K. Waterloo shall have allowed claims in the following amounts: Claim no. 1 shall be allowed as a general unsecured claim in the amount of \$39,899.88. Claim no. 2 shall be allowed as a priority claim under 11 U.S.C. § 507(a)(7) in the amount of \$36,773.50 and Claim no. 4 shall be allowed as a priority claim under 11 U.S.C. § (a)(7) in the amount of \$5,040.00

This the 13 of September 2001.

CATHARINE R. CARRUTHERS

Catharine R. Carruthers
United States Bankruptcy Judge