

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS

In Re)
) In Bankruptcy
CHARLES T. MONKMAN and)
CYNTHIA L. MONKMAN,) Case No. 03-73214
)
Debtors.)

OPINION

The Debtors, Charles and Cynthia Monkman, filed a petition pursuant to Chapter 13 of the Bankruptcy Code on June 30, 2003. On Schedule D, the Debtors listed U.S. Bank as a secured creditor with a lien on a 2000 Chrysler 300M arising out of a March, 2001, car loan. The Debtors valued the car at \$13,000, thereby leaving U.S. Bank with an unsecured claim of \$7,853.90. The Chapter 13 Plan filed by the Debtors on June 30, 2003, treated U.S. Bank's lien on the Chrysler 300M as follows:

The Debtor and Spouse propose a cram down on the Chrysler 300M automobile from the amount owed of \$19,540.51 to the market value of \$13,000.00 (Represents the Kelly [sic] Blue Book Value) the interest rate payable on the secured market value will remain 10.90%. The \$6,540.51 deficiency will be placed with the other general, unsecured creditors.

The meeting of creditors was set for August 7, 2003, and the deadline to file a proof of claim for all non-governmental creditors was set at November 5, 2003. No creditors appeared at the meeting of creditors.

Confirmation of the Chapter 13 plan was held up by litigation over the Trustee's objections to the Debtors' schedules, their plan, and their good faith. After the Debtors agreed to raise their monthly payments from \$1,200 to \$2,000 and increase the length of their plan by 22 months, the plan was confirmed on October 7, 2003. The total amount to be paid into the plan rose from \$45,600 to \$120,000. With regard to U.S. Bank's lien on the Chrysler 300M, the Order Confirming Plan provided as follows:

The Debtor and Spouse propose a cram down on the Chrysler 300M automobile on which U.S. Bank has a lien. The secured amount shall be \$13,000 and shall be paid with the contract rate of interest [9.9%]. The balance shall be treated as unsecured.

* * * *

The Chapter 13 Trustee shall from the funds received make the following payments to secured creditors...:

U.S. Bank on a 2000 Chrysler 300M, \$13,000
plus 9.9% interest[.]

On January 12, 2004, U.S. Bank filed an unsecured, non-priority claim in the amount of \$4,681. U.S. Bank did not file a secured claim. The claim actually filed by U.S. Bank provides under "Brief Description of Collateral" as follows: "00 Chrysler 300M (Unperfected Lien)". The Trustee objected to this claim because it was filed after the bar date. On February 26, 2004, the Court entered an Order sustaining the Trustee's objection, and the claim was denied as a late-filed, unsecured claim. In addition,

the February 26, 2004, Order provided as follows:

IT IS FURTHER ORDERED that U.S. Bank Corp. a/k/a Firststar Bank is ordered to turnover any title to the 2000 Chrysler 300M that may be in their possession within twenty-one days to the Chapter 13 Trustee....

The turnover of property usually requires an adversary proceeding. Bankruptcy Rule 7001(1). The Trustee did not file an adversary proceeding. Moreover, the Trustee's objection to the claim of U.S. Bank did not alert U.S. Bank that he was seeking a turnover of the title.

In March, 2004, the Trustee sent a copy of the Court's Order compelling turnover of the title to U.S. Bank. A representative of U.S. Bank informed the Trustee that U.S. Bank did not have possession of the title.

Subsequent to receipt of the Court Order, U.S. Bank conducted an investigation into the question of whether it had a perfected lien on the Chrysler 300M. Inquiries to and correspondence with the Illinois Secretary of State's Office now lead U.S. Bank to the conclusion that it has a perfected lien on the Chrysler.

On May 25, 2004, the Debtor filed a Motion to Compel. The Debtors requested the turnover of the title to the Chrysler 300M as ordered by the Court on February 26, 2004.

On July 2, 2004, U.S. Bank filed a Motion to Set Aside Default/Reconsider Order on Claim Entered February 26, 2004. U.S. Bank seeks to set aside the part of the Order of February 26, 2004,

that requires the Bank to surrender the title to the Trustee.

Fed.R.Bankr.P. 9024 makes Federal Rule of Civil Procedure 60 applicable to bankruptcy proceedings. Rule 60(b) provides for relief from a final order for mistake, inadvertence, surprise, excusable neglect, or any other reason justifying relief from the operation of the judgment. A motion for relief from a final order of judgment filed pursuant to Fed.R.Civ.P. 60(b) must be filed within one year after the order was entered.

Rule 60(b) provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. . . .

In order to qualify for relief from a judgment under Rule 60(b), the Defendant herein must demonstrate that the judgment resulted from a mistake, inadvertence, surprise, or excusable neglect and that it has a meritorious defense. Ellingsworth v. Chrysler, 665 F.2d 180 (7th Cir. 1981). Rule 60(b) relief is an extraordinary remedy and is granted only in exceptional

circumstances. See Nelson v. City Colleges of Chicago, 962 F.2d 754, citing CKS Engineers, Inc. v. White Mountain Gypsum Co., 726 F.2d 1202 (7th Cir. 1984); In re John Carey Oil Company, Inc., Case No. 89-71311, Adv. No. 90-7140 (Bankr. C.D. Ill. 1992).

U.S. Bank argues that the portion of the February 26, 2004, Order requiring U.S. Bank to turn over the title to the Chrysler 300M should be vacated because it was based on a mistake of fact, i.e. the secured status of U.S. Bank. The documents submitted by U.S. Bank in support of its argument do not clearly show that there was a mistake of fact. U.S. Bank has produced a document from the Illinois Secretary of State's Office that shows that it is the lienholder on the Chrysler. However, U.S. Bank has failed to produce the certificate of title with its name on it as lienholder; the only title submitted by U.S. Bank shows "NO SECURED INTEREST ON RECORD". The Bank thinks that it is enough for perfection that it submitted an application for a certificate of title to the Illinois Secretary of State; the Trustee and Debtor maintain that the Bank's lien must appear on the title.

The Court need not resolve the validity of the Bank's lien on the Chrysler at this time. The limited issue before the Court is whether the turnover portion of the Court's Order of February 26, 2004, should be vacated. The Court finds that procedural due process mandates the vacating of part of the Order requiring U.S.

Bank to turn over the title to the Chrysler because U.S. Bank did not have notice that such relief was being sought by the Trustee in his objection to the claim of U.S. Bank. There is a big difference between the relief sought in the Trustee's Objection - the denial of U.S. Bank's unsecured claim on the vehicle on the grounds that it was tardily filed - and the relief actually awarded - turnover of the vehicle. Because U.S. Bank did not have notice that the Trustee was seeking turnover of the title to the Chrysler 300M, such relief should not have been awarded. If the Trustee or the Debtor wishes to challenge the validity of the Bank's lien on the Chrysler, they should do so by filing the appropriate adversary actions pursuant to Bankruptcy Rule 7001(a) and (2).

For the foregoing reasons, U.S. Bank's Motion to Reconsider Order on Claim Entered February 26, 2004, is allowed and the Order is vacated to the extent that it requires U.S. Bank to surrender the certificate of title to the 2000 Chrysler 300M.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: September 21, 2004

LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE

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401 Main St. #1100
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CERTIFICATION OF MAILING

The undersigned, deputy clerk of the United States Bankruptcy Court, hereby certifies that a copy of this Opinion was mailed and/or otherwise transmitted this date to the parties listed herein.

Dated: September 21, 2004

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF ILLINOIS

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CHARLES T. MONKMAN and)
CYNTHIA L. MONKMAN,) Case No. 03-73214
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Debtors.)

ORDER

For the reasons set forth in an Opinion entered this day,
IT IS HEREBY ORDERED that U.S. Bank's Motion to Reconsider
Order on Claim Entered February 26, 2004, be and is hereby allowed.

IT IS FURTHER ORDERED that the Order entered February 26,
2004, be and is hereby vacated to the extent that it requires U.S.
Bank to surrender the certificate of title to the 2000 Chrysler
300M.

ENTERED: September 21, 2004

LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE

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Dated: September 21, 2004
