IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
OCT 14 2004
KENNETH S. GARDNER, CLERK
PS REP. SJ

In re:	)	Chapter 11
	)	
Conseco Finance Corp., et al.,	)	
	)	Case No. 02 B-49675
Debtors.	)	Honorable Carol A. Doyle
	)	(Jointly Administered)

MOTION TO RECONSIDER DISALLOWED CLAIM OF WILLIAM F. THOMPSON

Claimant, William F. Thompson, Attorney at Law, pursuant to the provisions of 11 U.S.C. § 502(j) and Federal Rule of Bankruptcy Procedure 3008, respectfully moves the Court to reconsider the Court's August 20, 2004, Order Granting the CFC Estate's Forty-Fourth Omnibus Objection to Claims Pursuant to Section 502(d) of the Bankruptcy Code, in which William F. Thompson's secured claim was disallowed as a preferential transfer under 11 U.S.C. § 547(b)(1) - (4) and in support of this motion states as follows:

1. The claim of William F. Thompson, Attorney at Law, in the amount of $111,249.84, was filed May 8, 2003, under Case Number 01-49676 and Claim Number 49676-001151 and was listed as a secured claim in the CFC Estate's Omnibus 22: Exhibit A - Secured Trust Collateral-Related Claims.

2. William F. Thompson's claim against estate property covers attorney fees for services rendered and costs advanced on behalf of the Finance Company Debtors in this case in obtaining Indiana State Court judgments for the recovery and preservation of property in favor of the Finance Company Debtors. The property preserved and recovered consists of manufactured homes and land ("the Property"). The amount of costs advanced for the recovery and preservation of the Property is estimated to be $10.000.00.

3. On or about February 13, 2004, the CFC Estate filed its *Twenty-Second Omnibus Objection To Claims And Motions For Payment of Administrative Expenses Asserted Against The Finance Company Debtors (Substantive Objection To Reclassify Certain Trust Collateral-Related Claims)* (the "Twenty-Second Omnibus Objection"). In the Twenty-Second Omnibus Objection filed by the CFC Estate, the CFC Estate sought to reclassify the secured claims of all attorneys who had filed claims against the Estate as general unsecured claims because the Trust Collateral had been sold or transferred and, pursuant to section 9-318(a) of Revised Uniform Commercial Code, the CFC Estate had no equitable interest in the Trust Collateral. Therefore, the CFC Estate

concluded, the value of the attorneys' interest in estate property was zero.

4. On or about March 1, 2004, William F. Thompson timely filed an Objection to the CFC Estate's Twenty-Second Omnibus Objection. In that Objection, William F. Thompson contended that there is a legal and equitable basis for William F. Thompson's claim as a secured claim. Indiana statutory law provides an attorney with a lien for his fees upon the judgment, which he obtained for the benefit of his client, Ind. Code § 33-1-3-1, and equity supplies a lien independent of the statute. *State ex rel. Shannon v. Hendricks Circuit Court*, 183 N.E.2d 331, 333 (Ind. 1962). In addition, William F. Thompson further contended that, under Indiana law, attorney fee liens for services and costs advanced are payable out of the proceeds of the judgments for the recovery and preservation of the Property that William F. Thompson obtained for the benefit of the Finance Company Debtors and have preference over the claims of general unsecured claims of the bankruptcy estate herein. In support of this proposition, William F. Thompson cited the following authorities: Ind. Code § 26-1-9.1-315(a)(1); *Blankenbaker et al., v. Bank of Commerce, et al.*, 85 Ind. 459, 462 (1882) (Held: equitable lien for attorney fees is payable out of proceeds of judgment

obtained for client and has preference in its payment over the claims of general creditors of the estate); *Totten v. Hogg Iron & Steel Foundry Company v. Muncie Nail Company*, 47 N.E. 703, 704 (Ind. 1897) ("The money derived from the sale of property upon which there is a mechanic's lien will be treated by a court of equity as it would treat the property before sale, and such court will follow it into the hands of the party who has converted the property into money"); *Booram, supra* at 330 (Held: statutory lien for attorney fees is payable out of proceeds from the sale of land recovered for client and has preference over general creditors of client); *Moore v. Boxman*, 245 N.E.2d 866, 869 (Ind.Ct.App. 1969) ("[T]he proceeds from a voluntary or involuntary sale of secured property . . . take the place of that property, and the security interest attaches thereto . . . ."); *In the Matter of Hull, supra*, 513 - 515 (Held: bankruptcy does not bar the enforcement of mechanic's liens and subcontractor's lien extended to funds/proceeds in the hands of the owner of the realty, which claim was superior to that of the trustee); *HCC Credit v. Springs Valley Bank & Trust*, 712 N.E.2d 952, 958 (Ind. 1999) ("We reaffirm that a security interest continues in any identifiable proceeds of collateral including collections received by the debtor.").

5. On or about May 14, 2004, the CFC Estate filed its *Omnibus Reply To Responses To Twenty-Second, Twenty-Sixth And Thirty-Second Omnibus Objections To Claims And Motions For Payment of Administrative Expenses.*

6. On or about May 28, 2004, pursuant to this Court's order of May 19, 2004, William F. Thompson timely filed a Surreply to the CFC Estate's *Omnibus Reply To Responses To Twenty-Second, Twenty-Sixth And Thirty-Second Omnibus Objections To Claims And Motions For Payment of Administrative Expenses.* In the Surreply William F. Thompson maintained that he has a secured claim against the CFC Estate based on the proceeds from the sale of the Finance Company Debtors' assets to CFN Investment Holdings LLC, which proceeds went into the CFC Estate and are now being held for liquidation by the CFC Estate. Stated another way, the Finance Company Debtors and now the CFC Estate derived monetary value from the sale of the accounts and servicing rights to the accounts upon which William F. Thompson had filed an attorney's lien. Therefore, his liens succeed as secured liens on the proceeds from those accounts and the sale of those servicing rights.

7. Since February 13, 2004, when the CFC Estate filed its Twenty-Second Omnibus Objection, hearings on the Objection have been scheduled and continued on a monthly

basis. William F. Thompson participated in the May 19, 2004, hearing by telephone conference at which time the matter was continued to June 18, then to July 16, and then to August 2004.

8. The foregoing facts demonstrate the following: (a) the nature of William F. Thompson's secured claim; (b) that since May 8, 2003, William F. Thompson's secured claim was a subject of the CFC Estate's Omnibus 22; (c) William F. Thompson's active participation in the Omnibus 22 proceeding; (d) that all responses to the Twenty-Second Omnibus Objections to William F. Thompson's claim were timely filed; and (e) as far as William F. Thompson was concerned, all that remained was for the Court to conduct an evidentiary hearing on his claim and the CFC Estate's objections thereto.

9. While William F. Thompson awaited an evidentiary hearing on the CFC Estate's Twenty-Second Omnibus Objection to William F. Thompson's claim, on or about July 21, 2004, the CFC Estate filed a ***Forty-Fourth*** *Omnibus Objection To Claims Pursuant To Section 502(d) Of The Bankruptcy Code* ("Forty-Fourth Omnibus Objection"). The basis for the Forty-Fourth Omnibus Objection was that the claimants identified on Exhibit A were the recipients of a

preferential transfer under 11 U.S.C. § 547(b)(1) - (4), and therefore those claims should be disallowed.

10. On or about August 20, 2004, William F. Thompson's claim was disallowed under the Forty-Fourth Omnibus Objection without a response from William F. Thompson and without an evidentiary hearing. On or about September 15, 2004, the CFC Estate's objection to William F. Thompson's claim was withdrawn under the Twenty-Second Omnibus Objection.

11. Federal Rule of Bankruptcy Procedure 3008 provides that a party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate, and that the court after a hearing on notice should enter an appropriate order.

11 U.S.C. § 502(j) provides that "[a] claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case."

12. Cause to reconsider exists in the present case for the following reasons:

A. Because William F. Thompson does not believe, as a matter of law, that a claim for attorney fees for services performed and expenses advanced on behalf of a debtor in the ordinary course of business constitutes a

preferential transfer under any circumstances, he mistakenly did not perceive that the Forty-Fourth Omnibus Objection could ever apply to his claim and therefore mistakenly did not respond to the Objection.

B. On its face William F. Thompson's claim in the amount of $111,249.84 for services rendered and expenses advanced on behalf of the Finance Company Debtors in this case was not a preferential transfer. Clearly, the claim comes within the exception under 11 U.S.C. § 547(c)(2). Section 547(c) provides, in pertinent part, that:

> The trustee may not avoid under this section a transfer-
>
> (2) to the extent that such transfer was-
>
> (A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;
>
> (B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and
>
> (C) made according to ordinary business terms;

C. Furthermore, in contrast to the Twenty-Second Omnibus Objection filed by the CFC Estate, there was nothing in the Forty-Fourth Omnibus Objection received by William F. Thompson that identified William F. Thompson as a potential preferential transferee. He was not provided with a copy of Exhibit A referred to in the Forty-Fourth Omnibus Objection or any other document that would have made him aware he had been identified as a potential

preferential transferee. Had he been aware, William F. Thompson would have filed a timely response to the Forty-Fourth Omnibus Objection as he had to the Twenty-Second Omnibus Objections because, as stated above, clearly his claim falls within the exception under 11 U.S.C. § 547(c)(2).

As it was, it was only on August 30, 2004, when William F. Thompson received the August 20, 2004, Order Granting the CFC Estate's Forty-Fourth Omnibus Objection, which included a specific reference to his claim, did he become aware that his claim was a subject of the Forty-Fourth Objection and that it had been disallowed in its entirety without the opportunity to present evidence on the propriety of his claim.

D. There was no reason for William F. Thompson to believe that the Forty-Fourth Objection applied to his claim because there is no relationship between the $111,249.84 claim and the $87,233.18 the CFC Estate now claims that William F. Thompson received from the Finance Company Debtors during the 90 days before the bankruptcy was filed.

Furthermore, in this regard, not only has the CFC Estate wrongfully secured an order disallowing the claim of William F. Thompson in excess of the amount of the claimed

preferential transfer but the CFC Estate has filed a Complaint to Avoid and Recover Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b) and 550 as Adversary Proceeding Number 04-03640 against William F. Thompson to recover the amount of the claimed preferential transfer used as the basis to avoid the secured claim of William F. Thompson. Significantly, the evidence that will determine the outcome of the adversary proceeding is the same evidence that would have been heard had William F. Thompson filed a timely response to the CFC Estate's Forty-Fourth Omnibus Objection.

Surely equity and justice require that the Court reconsider its August 20, 2004, Order, which disallowed William F. Thompson's claim, and conduct an evidentiary hearing on the CFC Estate's Forty-Fourth Omnibus Objection insofar as it pertains to William F. Thompson's secured claim at the same time it conducts a hearing on the CFC Estate's Adversary Proceeding against William F. Thompson.

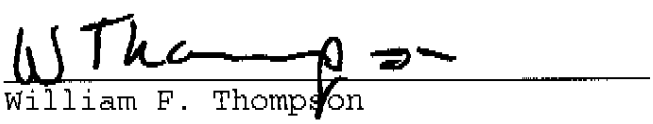
E. To the best of William F. Thompson's knowledge and belief, prior to July 21, 2004, William F. Thompson's claim was only listed as a secured claim in the CFC Estate's Omnibus 22. Equitably speaking, the CFC Estate is obligated to make objections to a claim in one document and not piecemeal them. However, the CFC Estate has initiated

what amounts to three separate proceedings concerning William F. Thompson's claim: (1) the 22nd Omnibus; (2) the 44th Omnibus; and (3) the complaint to avoid and recover preferential transfers pursuant to 11 U.S.C. §§ 547(b) and 550. All three of these matters should be considered in one proceeding - assuming there are no other proceedings being contemplated.

12. No order closing the estate has been entered.

WHEREFORE, claimant, William F. Thompson, Attorney at Law, respectfully prays the Court to reconsider the Court's August 20, 2004, Order Granting the CFC Estate's Forty-Fourth Omnibus Objection to Claims Pursuant to Section 502(d) of the Bankruptcy Code, insofar as it disallowed William F. Thompson's claim as a preferential transfer under 11 U.S.C. § 547(b)(1)-(4), that upon such reconsideration the order expunging and disallowing William F. Thompson's claim be vacated and further that William F. Thompson be provided with an opportunity to file a Response to the CFC Estate's Forty-Fourth Omnibus Objection and for all other appropriate relief.

Respectfully submitted,



William F. Thompson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been deposited with the United States Postal Service this 11th day of October, 2004, addressed to the following:

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