

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re:)
)
MARK METZGER,)Case No. 6:02-bk-12930-ABB
)Chapter 7
Debtor.)
_____)

WILLIAM WHITE SNYDER, II,)
)
Plaintiff,)
)
vs.)Adv. Pro. No 6:03-ap-00092-ABB
)
MARK METZGER,)
)
Defendant.)
_____)

MEMORANDUM OPINION

At Orlando, in said District on October 23, 2004, before Arthur B. Briskman, Bankruptcy Judge. This matter came on the Debtor’s, Mark Metzger, Motion to Tax Attorney Fees (Doc. 16). After reviewing evidence, the following Findings of Fact and Conclusions of Law are made.

FINDINGS OF FACT

William White Snyder, II, (“Plaintiff/ Snyder”) brought an Objection to Discharge pursuant to §523(a)(2)(A) to except a debt owed to him by Mark Metzger (“Defendant/ Debtor”) (Doc.1). Snyder loaned Debtor \$3,951.85 to facilitate a home purchase. Snyder entered into a court stipulated payment agreement with the Debtor to reduce the principal

amount to \$2,100. Debtor made two fifty-dollar (\$50) monthly payments and filed Chapter 7.

Snyder alleged Debtor was not dealing in good faith when he entered into a Court stipulated payment agreement prior to filing Chapter 7. A judgment was entered for Debtor and against Snyder on May 3, 2004 (Doc. 14). Debtor has brought a motion pursuant to § 523(d) to tax his attorney fees against Snyder alleging the adversary proceeding was without merit (Doc. 16).

Snyder acted in good faith in bringing the adversary proceeding, brought the adversary proceeding without the benefit of legal counsel and did not engage in any abusive practices.

CONCLUSIONS OF LAW

An award of attorney fees is governed by section 523(d) which provides:

If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not *substantially justified*, except that the court shall not award such costs and fees if *special circumstances* would make the award unjust. (emphasis added).¹

The “substantially justified” standard is derived from the Equal Access to Justice Act,² directing a losing party to show strong justification for its claims.³

¹ 11 U.S.C. § 523(d). Historical and Statutory Notes provide debtor may be awarded costs and fees in a proceeding under subsection (a)(2), unless the court finds that the creditor acted in good faith.

² 28 U.S.C. § 2412(d).

Section 523(d) also provides, however, costs and fees shall not be awarded if “special circumstances” would make the award unjust. If the creditor has a sound case, acts in good faith, and has not used abusive practices in obtaining a false statement, the court may deny judgment for costs and attorney’s fees even though the debtor may ultimately prevail after trial.⁴

Snyder brought the adversary proceeding without the benefit of legal counsel. Snyder has acted in good faith and did not engage in any abusive practices. Therefore, Debtor’s Motion to Tax Attorney Fees (Doc. 16) is **DENIED**.

Dated this 13th day of October, 2004.

/s/ Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

³ Collier on Bankruptcy 15th Ed. (Citing Natural Resources Defense Council v. United States Env’tl. Protection Agency, 703 F.2d 700, 707 (3d Cir. 1983) (observing where the government had a reasonable basis both in law and fact, no award will be made)).

⁴ See Camden Nat’l Bank v. Archangeli (In re Archangeli), 6 B.R. 50 (Bankr. D. Me. 1980).