

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

Case No. 6:00-bk-06195-ABB  
Chapter 13

LUCILLE A. RYERSON,

Debtor.

LUCILLE A. RYERSON and  
MALINDA JACKSON,

Plaintiffs,

vs.

Adv. Pro. No. 6:03-ap-00197-ABB

CHASE MANHATTAN MORTGAGE  
CORPORATION,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This matter came before the Court on the Defendant's Motion for Summary Judgment and for Leave to File Oversized Memorandum, *Instanter* (Doc. Nos. 83, 84, 85) ("Motion for Summary Judgment") filed by Chase Home Finance, LLC, successor by merger to Chase Manhattan Mortgage Corporation, the Defendant herein (the "Defendant"), seeking summary judgment on each of the counts contained in the First Amended Class Action Complaint (Doc. No. 45) ("Complaint") filed by Lucille A. Ryerson ("Ryerson") and Malinda Jackson ("Jackson"), the Plaintiffs herein (collectively, the "Plaintiffs"). An evidentiary hearing was held on September 25, 2006 at which counsel for the parties appeared. The parties filed post-hearing briefs in support of their positions (Doc. Nos. 100, 101). The Court makes the following findings and conclusions after reviewing the pleadings and evidence, hearing live argument, and being otherwise fully advised in the premises.

Ryerson and Jackson filed individual Chapter 13 cases in this Court. Ryerson instituted In re Lucille A. Ryerson, Case No. 6:00-bk-06195-ABB, on August 9, 2000 and Jackson instituted In re Malinda Ann Jackson, Case No. 6:02-bk-04175-

ABB, on April 23, 2002. The Plaintiffs' plans were confirmed. The Plaintiffs completed their plan obligations and received discharges. Ryerson's case was closed on August 4, 2005. Jackson's case was closed on September 11, 2006.

The Defendant, or its predecessor Irwin Mortgage, filed secured claims in the Plaintiffs' cases, based upon security interests in the Plaintiffs' homes. Plan payments included pre-petition mortgage arrearages and post-petition payments. The Plaintiffs' Complaint contains three counts alleging the Defendant wrongfully charged or assessed late fees and the Plaintiffs are entitled to various relief. The Plaintiffs cite 11 U.S.C. §§ 1322(b)(5), 1322(a)(1), 1326(c), and 1327(a) in each count and seek to invoke the Court's equitable powers pursuant to 11 U.S.C. § 105. The relief sought includes reimbursement of late charges and fees, actual damages, punitive damages, a declaration the Defendant's practices are illegal, and the issuance of a permanent injunction against the Defendant.

The Plaintiffs seek class certification through the Motion for Class Certification (Doc. No. 3). They define the proposed class as:

All individuals who have filed a Chapter 13 bankruptcy petition and against whom Defendant has claimed, charged and/or assessed as part of the amount due pursuant to a consumer loan a late charge, late fee or any similar charge or fee, which increases the amount claimed to be due from an individual, which was assessed, directly or indirectly, after the filing of a bankruptcy petition, on occasions when said individual made their plan payments to the Chapter 13 Trustee . . . .

Motion for Class Certification at ¶ 1. The parties agreed to address the Defendant's Motion for Summary Judgment before holding a hearing on the class certification issue.

The Defendant seeks summary judgment contending each count of the Complaint must fail. The Defendant asserts: (i) it had a contractual right to assess and/or charge late fees on post-petition mortgage payments; (ii) no Bankruptcy Code provision prohibits the Defendant from assessing or charging late fees; (iii) the Plaintiffs have no private right of action to pursue alleged violations of 11 U.S.C. §§ 1322(b)(5), 1322(a)(1), 1326(c), and 1327(a), or 11 U.S.C. § 105; (iv) injunctive relief is not available because the Plaintiffs' bankruptcy cases

are closed; (v) Ryerson paid the post-petition late fees and her claims are barred by the voluntary payment doctrine; and (vi) Jackson paid off her loan without having paid any post-petition late fees to the Defendant.

The arguments contained in the Motion for Summary Judgment are the same arguments raised by the Defendant in its Motion to Dismiss Class Action Complaint (Doc. Nos. 23, 24) (“Motion to Dismiss”) which was denied in open Court on September 29, 2003 (Doc. No. 30).

Ryerson and Jackson each provided for the curing of mortgage defaults and maintenance of ongoing mortgage payments in their plans pursuant to 11 U.S.C. § 1322(b)(5). Ryerson’s plan provided “[a]ll timely payments made to the Trustee shall be deemed timely payments to each creditor listed above” and Irwin Mortgage was a listed creditor. (Amended Plan at ¶ 3). The Amended Confirmation Order required Ryerson to make monthly plan payments to the Trustee, ordered the Trustee to commence and continue disbursements, and provided:

Provisions for both pre-petition and post-petition arrearages are included in the plan. After the completion of all payments under the plan and discharge of the Debtor, the mortgage will be cured and reinstated. All post-petition late fees and charges incurred incident to the plan are discharged.

(Confirmation Order at ¶¶ 2, 5, 7). Jackson’s confirmed Amended Plan contained similar provisions requiring mortgage payments to be made to the Trustee. It provided “[a]ll timely payments made to the Trustee shall be deemed timely payments to each creditor listed above,” which included the Defendant. The confirmation Order required Jackson to make monthly plan payments to the Trustee, the Trustee to commence and continue disbursements, and provided:

Provisions for both pre-petition and post-petition arrearages are included in the plan. After the completion of all payments under the plan and discharge of the Debtor, the mortgage will be cured and reinstated. All post-petition late fees and charges incurred incident to the plan are discharged.

(Confirmation Order at ¶¶ 2, 5, 7).

Ryerson and Jackson submitted their income to the Trustee to fund their plans in accordance with 11 U.S.C. § 1322(a)(1) and the Trustee made distributions to creditors, including the Defendant, in conformity with § 1326(c), the terms of the plans, and the confirmation orders. The Defendant was bound by the terms of Ryerson’s and Jackson’s confirmed plans pursuant to § 1327(a).

The cornerstone issue of this adversary proceeding is whether the Defendant charged or assessed late fees in violation of the confirmed plans and the confirmation orders entered by this Court. The Defendant contends the Plaintiffs have no standing to bring suit because neither § 1322(b)(5), 1322(a)(1), 1326(c), 1327(a), nor 105 contain a private right of action, such as is found in § 362(h). The Defendant’s position eviscerates Chapter 13. No plan would ever be binding on creditors and confirmation would be meaningless. A creditor could assess any charges it wanted to against a debtor and the debtor would have no recourse for challenging charges. The Defendant’s position would also render the discharge injunction meaningless. Section 524 does not contain a specific private right of action, but the courts have universally recognized a debtor’s standing to seek damages for violations of the discharge injunction. *See, e.g., Hardy v. United States (In re Hardy)*, 97 F.3d 1384, 1989 (11th Cir. 1996).

Ryerson and Jackson have standing to seek a determination whether the Defendant complied with the obligations imposed upon it by the Bankruptcy Code provisions governing Chapter 13 proceedings, their confirmed plans, and the confirmation orders. *In re Harris*, 297 B.R. 61 (Bankr. N.D. Miss. 2003). A bankruptcy court has inherent powers pursuant to § 105(a) to enforce its own orders and to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a); *Jove Eng’g, Inc. v. Internal Revenue Serv. (In re Jove)*, 92 F.3d 1539, 1553-54 (11th Cir. 1996).

Granting summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c) (2005) (made applicable to bankruptcy proceedings by Fed. R. Bankr. P. 7056). The moving party bears the initial burden of demonstrating the absence of a genuine issue of

material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

The non-moving party must establish specific facts showing the existence of a genuine issue of fact for trial, if a movant makes a properly supported summary judgment motion,. Fed. R. Civ. P. 56(e). The non-moving party may not rely on the allegations or denials in its pleadings to establish a genuine issue of fact, but must come forward with an affirmative showing of evidence. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A court determining entitlement to summary judgment must view all evidence and make reasonable inferences in favor of the party opposing the motion. Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995).

It is premature to issue a judgment on the merits of this case. This case is fact-intensive and fundamental facts have not yet been fully explored or established. Many of the legal issues are intertwined with factual issues. There are issues and disputes relating to the assessment and/or charging of late fees, payments, communications, and contractual rights. Genuine issues as to material facts exist.

The Defendant has not established it is entitled to judgment as a matter of law. The Plaintiffs have standing to bring this action to determine whether the Defendant violated any provision of the Bankruptcy Code, the Plaintiffs' confirmed plans, or the confirmation orders. Summary judgment is not appropriate pursuant to Federal Rule of Civil Procedure 56(c).

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Defendant's request for leave to file its Oversized Memorandum is hereby **GRANTED**; and it is further

**ORDERED, ADJUDGED and DECREED** that the Defendant's Motion for Summary Judgment is hereby **DENIED**.

Dated this 20<sup>th</sup> day of November, 2006.

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