

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re:

Case No. 01-1679-8G7

WILLIAM D. BUFFINGTON, JR.
and MOLLY A. BUFFINGTON,

Debtors.

Chapter 7

ASSOCIATED RECEIVABLES FUNDING, INC.,

Plaintiff,

vs.

Adv. No. 01-197

WILLIAM D. BUFFINGTON, JR.
and MOLLY A. BUFFINGTON,

Defendants.

**ORDER ON (1) OBJECTION TO ENTRY OF FINAL JUDGMENT, AND (2) EMERGENCY
MOTION TO REOPEN HEARING ON MOTION FOR ENTRY OF FINAL JUDGMENT**

THIS CASE came before the Court for hearing to consider the Objection to Entry of Final Judgment filed by the Debtors, William D. Buffington, Jr. and Molly A. Buffington, and also to consider the Debtors' Emergency Motion to Reopen Hearing on Associated Receivables Funding, Inc.'s Motion for Entry of Final Judgment.

In their Objection, the Debtors oppose the entry of a proposed final judgment against them, and assert that the amount set forth in the proposed judgment is incorrect.

Background

The Plaintiff, Associated Receivables Funding, Inc., (AR Funding) commenced this adversary proceeding by filing a Complaint to Determine Dischargeability of Debt against the Debtors, William D. Buffington, Jr. and Molly A. Buffington (the Debtors). (Doc. 1).

In the Complaint, AR Funding alleged that it entered into a factoring arrangement with two corporations known as Buffington Research and Development, Inc. and Grayco Redi-Mix, Inc. in August of 1999, and that the two corporations assigned all of their accounts receivable to AR Funding in accordance with the factoring arrangement. AR Funding further alleged that the Debtors personally guaranteed the obligations owed to AR Funding by the two corporations under the factoring arrangement. AR Funding contends, however, that the Debtors fraudulently induced it to advance funds to the corporations under the factoring arrangement by virtue of various false representations concerning the status and collection of the factored receivables. Consequently, AR Funding requests a determination that the debt owed to it by the Debtors is nondischargeable pursuant to §523(a)(2), §523(a)(4), and §523(a)(6) of the Bankruptcy Code.

The Debtors answered the Complaint, and denied the material allegations. (Doc. 6).

On January 15, 2002, the Debtors executed a Stipulation for Settlement and Entry of Final Judgment. In the Stipulation, the Debtors agreed in part:

The Buffingtons agree that AR Funding is entitled to the entry of a Final Judgment in its favor determining that the indebtedness arising out of the above-referenced Funding Agreement and the above-referenced Guarantee Agreement are non-dischargeable pursuant to 11 U.S.C. Section 523(a) and that AR Funding is entitled to a Judgment in its favor for the amount of the indebtedness declared to be non-dischargeable.

The Buffingtons agree to the entry of a Final Judgment for the full amount currently owing under the subject Funding Agreement and subject Guarantee Agreement, including attorney's fees and costs associated with the above-referenced Adversary

Proceeding. The amount of the Final Judgment shall be determined by a sworn Affidavit which will be filed by AR Funding contemporaneously with the filing of this Stipulation for Settlement and Entry of Final Judgment. The Affidavit will itemize the net amount of receivables owed under the subject Funding Agreement and the subject Guarantee Agreement, the amount of penalties owing under the subject Funding Agreement, and the amount of fees owed under the subject Funding Agreement and the attorney's fees and costs associated with this Adversary Proceeding. The Buffingtons shall have sixty (60) days from the date of filing such Affidavit to file a contravening affidavit which can dispute only the amount of net receivables owed under the subject Funding Agreement. If the Buffingtons file such a contravening affidavit, the parties agree that such dispute will be resolved by binding arbitration. If the Buffingtons fail to file such a contravening affidavit within the time prescribed, a Final Judgment shall be submitted to the Court which will include the full amount itemized in AR Funding's Affidavit and a determination that such debt is non-dischargeable pursuant to 11 U.S.C. Section 523(a).

(Doc. 13, Stipulation for Settlement and Entry of Final Judgment, pp. 2-3)(Emphasis supplied).

On the same date that the Debtors executed the Stipulation, AR Funding filed a Motion to Compromise Controversy in connection with the Debtors' chapter 7 case. (Doc. 13a). In the Motion, AR Funding stated that "the parties have agreed that AR Funding will be entitled to a judgment of non-dischargeability against the Buffingtons for the full amounts owed pursuant to the funding agreement."

A copy of the Stipulation was attached to the Motion, and all creditors and parties in interest were given twenty days within which to object to the compromise.

No objections to the proposed compromise were filed within the twenty-day period provided in the Motion. Accordingly, following the expiration of that period, the Court entered an order approving the compromise. (Doc. 15). The Order provided in part:

Associated Receivables Funding, Inc. and the Debtors, William D. Buffington, Jr. and Molly A. Buffington are ordered to comply with the terms and conditions as set forth in the Motion to Compromise Controversy and the related Stipulation for Settlement and Entry of Final Judgment.

(Doc. 15, Order Granting Motion to Compromise Controversy, ¶ 2).

On February 14, 2002, AR Funding filed an Affidavit of Brian K. Holden and an Attorney's Fee Affidavit signed by Jeffrey C. Hakanson, Esquire. Brian K. Holden (Holden) is the president of AR Funding. In his Affidavit, Holden stated that the total amount due to AR Funding from the Debtors was \$210,073.64, consisting of the following:

- a. Net monies owed - \$129,413.08
- b. Attorney's fees to Brown, Massey, Evans, McLeod & Haynsworth - \$8,042.00
- c. Fees (per agreement) - \$27,368.56; and
- d. Penalties (per agreement) - \$45,250.00.

(Doc. 14, Affidavit of Brian K. Holden, ¶ 9). Additionally, in a separate Affidavit, Jeffrey C. Hakanson, Esquire stated that the attorney's fees and costs incurred by his law firm in connection with the adversary proceeding totaled \$11,705.65. Consequently, the total amount claimed by AR Funding is \$221,779.29 ($\$210,073.64 + \$11,705.65 = \$221,779.29$).

No contravening affidavits or objections to AR Funding's Affidavits were filed within the sixty-day period following February 14, 2002, and the adversary proceeding was closed on April 19, 2002. No final Judgment had been entered in the proceeding at the time that it was closed.

On May 16, 2002, more than three months after AR Funding's Affidavits were filed, the Debtors filed the Objection to Entry of Final Judgment that is currently under consideration. (Doc. 17). In the Objection, the Debtors acknowledge that the Stipulation that they executed in this case allowed them sixty days within which to challenge the amounts set forth in AR Funding's Affidavits. The Debtors assert, however, that their attorney and AR Funding's attorney were communicating about the amounts due during the sixty-day period, that the Debtors were unable to obtain records to verify the amounts

set forth in AR Funding's affidavits, and that AR Funding's attorney had agreed to furnish certain records to them, but had failed to do so.

On July 8, 2002, AR Funding filed a "Client Summary" and "Collections Report" related to its transactions with the Debtors. (Doc. 19).

On July 25, 2002, the Debtors filed an Affidavit Contesting Proposed Judgment. The Affidavit was executed by Molly Buffington. (Doc. 21). In her Affidavit, Ms. Buffington asserts that she reviewed the documents filed by AR Funding, and that it "appears that there are charges against the account of Grayco by A/R Funding which are improper or in error." She contends, for example, that interest and other charges were incurred in some instances because of a delay in posting the collection of certain receivables, and that other discrepancies in the reports are not explained. Finally, she contends that she lacks sufficient information to further dispute AR Funding's calculations.

A hearing was conducted on the Debtors' Objection to Entry of Final Judgment on August 13, 2002. The hearing was continued to August 20, 2002, to enable the parties to exchange information and documentation regarding the amounts owed to AR Funding. Despite the continuance of the hearing, however, the parties were unable to resolve their differences.

More than a week after the continued hearing, on August 29, 2002, the Debtors filed an Emergency Motion to Reopen Hearing on Associated Receivables Funding, Inc.'s Motion for Entry of Final Judgment. (Doc. 23).

The following day, on August 30, 2002, the Debtors filed an Amended Affidavit Contesting Proposed Judgment and Contravening Plaintiff's Affidavit of Amounts Due. (Doc. 26). The Amended Affidavit was signed by Molly Buffington. In the Amended Affidavit, Ms. Buffington primarily restates the Debtors' position that they did not receive adequate information to verify the amount

claimed by AR Funding. Additionally, Ms. Buffington appears to contend that the sum of \$57,685.94 was not actually advanced by AR Funding, as contained in its report, and that the sum of \$19,000 that is currently held by Grayco's chapter 7 trustee should be paid to AR Funding. Finally, Ms. Buffington asserts that unspecified amounts were improperly claimed by AR Funding because of the delay in posting collections, that certain receivables were discounted without authorization, and that additional receivables remain outstanding.

Discussion

The Court concludes that the Debtors' Objection to the entry of the proposed Final Judgment should be overruled, and that AR Funding is entitled to the entry of a Final Judgment.

"Stipulations voluntarily entered into by parties to litigation will be enforced by a court unless the stipulation violates public policy or other extenuating circumstances exist." In re Kalmanowicz, 248 B.R. 249, 256 (M.D. Pa. 1998)(quoting In re Sando, 30 B.R. 474, 476 (E.D. Pa. 1983))(and citing B.O.S.S. Partners I v. Tucker, 37 B.R. 348 (Bankr. M.D. Fla. 1984)).

In this case, the Debtors voluntarily entered into the Stipulation for Settlement and Entry of Final Judgment. Pursuant to the Stipulation, the Debtors were expressly required to object to the amounts claimed by AR Funding within sixty days after AR Funding filed its Affidavit setting forth the amounts due. Further, the Court entered an order approving the agreement, and specifically directed the parties to comply with the terms and conditions of the Stipulation. Consequently, the Debtors were bound by the obligations contained in the Stipulation. In re Laing, 31 F.3d 1050, 1051 (10th Cir. 1994).

Notwithstanding the binding nature of the Stipulation, the Debtors failed to file an affidavit disputing the amounts claimed by AR Funding within the period prescribed by the agreement. The

Debtors primarily contend that they were unable to comply with the requirement because they lacked adequate information upon which to base such a contravening affidavit. However, the Debtors entered the Stipulation knowing the extent and condition of the records that were in their possession. The Court finds that the Debtors' contention in this regard is not an "extenuating circumstance" that warrants negating a clear provision of the agreement.

Further, after AR Funding filed its Affidavit setting forth the amounts due, the Debtors allowed more than three months to elapse before asserting their objection. In fact, the Debtors did not file a detailed affidavit containing specific challenges to the amounts claimed even by the dates on which the Court scheduled and conducted two separate hearings on their Objection.

The Stipulation for Settlement and Entry of Final Judgment was a binding agreement entered by the Debtors, and the Debtors failed to file a timely objection to the amounts claimed by AR Funding, as expressly required by the Stipulation. No extenuating circumstances are present in this case to justify the entry of an order relieving the Debtors from the obligations imposed by their agreement.

The Debtors' Objection to Entry of Final Judgment should be overruled.

Accordingly:

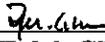
IT IS ORDERED that:

1. The Objection to Entry of Final Judgment filed by the Debtors, William D. Buffington, Jr. and Molly A. Buffington, is overruled.
2. The Emergency Motion to Reopen Hearing on Associated Receivables Funding, Inc.'s Motion for Entry of Final Judgment, filed by the Debtors, is granted to the extent that the Court has reviewed

the Amended Affidavit Contesting Proposed Judgment executed by Molly Buffington on August 29, 2002. The Emergency Motion is denied in all other respects.

DATED this 15th day of January, ~~2002~~. 2003.

BY THE COURT



PAUL M. GLENN
United States Bankruptcy Judge

BUFFINGTON, WILLIAM D., JR.
BUFFINGTON, MOLLY A.

Case No. 01-01679-8G7

Adv. Pro. 01-197

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to the Bankruptcy Noticing Center (BNC) on January 15, 2003 for service by U. S. Mail to the parties listed below:

by: Pam
Deputy Clerk

Service list:

Debtor - BUFFINGTON, WILLIAM D., JR., 10227 GARDEN ALCOVE DRIVE, TAMPA, FL 33647
Joint Debtor - BUFFINGTON, MOLLY A., 10227 GARDEN ALCOVE DRIVE, TAMPA, FL 33647
Attorney for Debtors - DAVID W. STEEN, MCWHIRTER, REEVES, 400 N. TAMPA ST., SUITE 2450, TAMPA, FL 33602
DAVID W. STEEN/DAVID L. SCHRADER, 602 SOUTH BOULEVARD, TAMPA, FL 33606-2630
Chapter 7 Trustee - SUSAN K. WOODARD, P.O. BOX 7828, ST. PETERSBURG, FL 33734
Attorney for Trustee - CURRAN K. PORTO, BIANCO & PORTO, P.A., 711 N. FLORIDA AVENUE, SUITE 250, TAMPA, FL 33602
ASSISTANT UNITED STATES TRUSTEE - TIMBERLAKE ANNEX, SUITE 1200, 501 E. POLK STREET, TAMPA, FL 33602
JEFFREY C. HAKANSON, 3321 HENDERSON BLVD., P. O. BOX 2177, TAMPA, FL 33601-
ASSOCIATED RECEIVABLES FUNDING OF FLORIDA, INC., C/O J. HAKANSON, P. O. BOX 2177, TAMPA, FL 33601
ASSOCIATED RECEIVABLES FUNDING OF FL, C/O JEFFREY C. HAKANSON, 3321 HENDERSON BLVD., TAMPA, FL 33609