

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE

In re:

No. 96-10886

Chapter 13

GORDON LEE HARRELL
ALICE FAYE HARRELL

Debtor

GORDON LEE HARRELL
ALICE FAYE HARRELL

Plaintiff

v.

Adversary Proceeding

No. 98-1157

MIKE EDWARDS, EARL EDWARDS, FIRST
TENNESSEE BANK and C. KENNETH STILL,
TRUSTEE

Defendant

MEMORANDUM

Appearances: Joseph E. Willard, Jr., Rossville, Georgia, Attorney for Plaintiff

J. Michael Winchester, Lacy & Winchester, P.C., Knoxville, Tennessee,
Attorney for Defendant First Tennessee Bank

Harold L. North, Jr., Shumacker & Thompson, Chattanooga, Tennessee,
Attorney for Defendant C. Kenneth Still, Trustee

HONORABLE R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

The Chapter 13 debtors brought this lawsuit against two creditors, Earl and Mike Edwards to recover an alleged overpayment on their claims. The debtors also named First Tennessee Bank and the Chapter 13 Trustee as defendants. The question now before the court is whether to grant the debtors' motion for summary judgment against Mike Edwards.

The summary judgment motion deals only with Mike Edwards because the undisputed facts show that Earl Edwards is deceased, and the debtors have been unable to find a proper party to substitute for Earl Edwards.

The following facts are also undisputed.

The debtors filed their Chapter 13 case in February 1996. The confirmed Chapter 13 plan provided for a maintenance payment – meaning the regular monthly mortgage payment – to Mike Edwards of \$1,382.31 per month. It also provided for an arrearage of \$1,400 to be paid at the rate of \$100 per month.

The Edwards filed two proofs of claims. Claim number 2 was for an arrearage of \$2,364.97. Claim number 900 was for the balance of the mortgage debt in the amount of \$9,676.17.

The debtors modified their Chapter 13 plan in June 1997, but the modification did not affect the treatment of the Edwards' claims.

In June 1998 the debtors filed an objection to the Edwards' claims and a modified plan that did not provide for any more payments on their claims. The debtors based the objection

and the modified plan on the allegation that the Edwards had already been overpaid. They alleged an overpayment of \$16,116.35. The objection was supported by an accounting done by Ben Hill of Ben Hill Accounting.

The court confirmed the modified plan on July 6, 1998. The objection to the claim was heard on July 9, 1998. No one appeared on behalf of either Mr. Edwards. The court entered an order on July 14, 1998. The order directed that no further payments be made on the Edwards' claims. The order also provided that it was without prejudice to the debtors' right to recover the overpayment from the Edwards.

On September 30, 1998, the debtors filed the complaint commencing this adversary proceeding. Mr. Edwards did not file a formal answer, but he did respond with a letter. The letter is undated, and nothing in the file reveals when it was received by the court.

The letter states:

I would also like to explain that I do not feel liable for the court dispursing [sic] to [sic] much money. I had no knowledge of this and it was brought to my attention about one year past maturity, I also understand \$35,000 more was on schedule at the time of notification of completion. Again I am sorry all this reached this point, but I do not feel liable.

The debtors filed their motion for summary judgment in March 1999. In support of the motion the debtors filed an affidavit from Ben Hill of Ben Hill Accounting. The affidavit states that Mr. Hill is a registered public accountant, that he has maintained an office in Trenton, Georgia

for many years, that in May 1998 he was hired by Gordon Harrell, Sr., to review the mortgage with the Edwards, that he reviewed the mortgage and prepared the attached letter, and that the attached letter shows overpayment of the mortgage in the amount of \$16,115.35. The attached letter shows the total payments made on the mortgage; they include payments during the debtors' current Chapter 13 case, payments made during a prior Chapter 13 case, and payments made while the debtors were not in Chapter 13. The letter shows the total payments to be \$16,116.35 more than the amount required to pay the mortgage debt in full according to the terms of the mortgage note. Attached to the letter are a copy of the mortgage note and an amortization schedule.

The motion for summary judgment is also supported by copies of the objection to the Edwards' claims and the resulting order to stop payment on the claims.

DISCUSSION

The court can grant summary judgment to the debtors if there is no genuine issue of material fact, and based on the facts, the law entitles the debtors to judgment in their favor. *Fed. R. Bankr. P. 7056; Fed. R. Civ. P. 56(c)*.

The defendant, Mr. Edwards, has not responded to the motion for summary judgment. The court sees no reason to doubt the accounting offered in support of the motion. The accounting shows an overpayment of \$16,116.35.

Under the law of either Tennessee or Georgia, a debtor that overpays a debt generally is entitled to recover the overpayment from the creditor. *See, e.g., Southern Housing Co. v. Morton*, 35 Tenn. App. 109, 242 S.W.2d 843 (1950); *Graham v. Hogan*, 185 Ga. 842, 366 S.E.2d 219 (1988).

It makes no difference in this case that the payments were made through the Chapter 13 plan. The money still came from the debtors; it was not the court's money or the government's money. It also was not money that can be claimed by the debtors' other creditors. In this regard, the confirmed Chapter 13 plan was binding on all creditors. 11 U.S.C. § 1327. They can not demand that the overpayment be returned to the Chapter 13 trustee so that it can be used to pay a higher percentage on their claims than the percentage set by the confirmed plan.

The court will enter an order granting the debtors' motion for summary judgment.

This memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

entered July 28, 1999

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EASTERN DISTRICT OF TENNESSEE

In re:

No. 96-10886
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Defendant

ORDER OF JUDGMENT

In accordance with the court's Memorandum entered this date,

It is ORDERED, ADJUDGED AND DECREED that the plaintiffs, Gordon Lee Harrell and Alice Faye Harrell, are granted a judgment against the Defendant, Mike Edwards, in the amount of Sixteen Thousand One Hundred Sixteen Dollars and Thirty-Five Cents (\$16,116.35).

ENTER:

BY THE COURT

entered July 28, 1999

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE