

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

IN RE:)CHAPTER 13
)CASE NO. 03-10945-JDW
KOREY P. MADDOX,)
ETHEL M. MADDOX,)
)
DEBTORS)
)
VS.)
)
JANIE MAE PORTER,)
)
RESPONDENT)

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

OF COUNSEL:

For Debtors

GREG ALAN CLARK
Custer & Custer
P. O. Box 605
Albany, Georgia 31702

Janie Mae Porter

Janie Mae Porter (Pro Se)
711 W. 12th Avenue
Cordele, Georgia 31015

MEMORANDUM OPINION

Debtor filed a motion to avoid the judgment lien of Janie Mae Porter. After notice of the motion and a response from Janie Porter, the Court convened a hearing on June 16, 2003, to consider the motion and the responsive objection.

The judgment lien against Debtor was obtained following a tortured path of legal relations between Debtor and Ms. Porter caused by the inadequate documentation of a loan for a car sold by Debtor to Ms. Porter. In the end, Ms. Porter elected to receive a judgment in the U.S. Magistrate Court as an alternative to a return of the car and the continuation of the interpersonal difficulties experienced between Debtor and Ms. Porter.

The Court conducted the first of three hearings in this case on June 16, 2003. The evidence indicated abusive and predatory treatment of Ms. Porter by Debtor. Likewise, the record indicated irregularities in the payments made by Ms. Porter to Debtor. These circumstances would not ordinarily have any relevance to the question of whether the judgment lien should be avoided. Unfortunately, there was direct contradiction between the testimony of Debtor and Ms. Porter. The Court reasoned at that time that if Debtor were presenting false testimony to the Court, the Court should entertain the possibility that he would not enjoy the benefit of the lien

avoidance and might suffer the dismissal of the bankruptcy case as a sanction. Also, because Ms. Porter is proceeding pro se, the Court concluded that it would be appropriate to also consider her presentation as a request to dismiss this case as having been filed in bad faith. An order to that effect was entered on June 18, 2003, setting a hearing on the matter for July 22, 2003.

The most troublesome allegation in this case was developed as a matter of evidence at the July 22, 2003, hearing. Debtor contends that Ms. Porter signed a document evidencing a security interest in the disputed automobile. Ms. Porter indicates that she never signed any such document. The testimony from the two parties on this point indicates a clear intention by one of the parties to commit perjury in this Court due to the fact that the presence of Ms. Porter at a meeting in a lawyer's office is a principal point of contention. Ms. Porter says she never attended such a meeting and never signed the document. Debtor contends she did attend the meeting and she did sign the document. Such a discrepancy is most troublesome to this finder of fact. To aid the Court in resolving the disputed issue, the Court requested that the lawyer who drafted the document and witnessed the signatures of Debtor and Ms. Porter be required to appear in Court and testify about the transaction.

John C. Cotton, attorney at law, from Cordele, Georgia, complied with the Court's requirement and appeared in Court at a hearing on August 18, 2003, and testified as follows:

1. He did prepare a document at the request of Debtor.
2. A female person did accompany Debtor to his office and represent that she was Ms. Porter.
3. The lawyer did not require the person identified as Ms. Porter to provide any identification of herself in the form of a driver's license or other official document.
4. The lawyer could not confirm or deny that Ms. Porter, present in the courtroom during his testimony, was the same person who accompanied Debtor to his office.
5. The lawyer said that on the day of the office conference he went outside to inspect the vehicle and obtain the vehicle identification number.
6. The lawyer said he observed that the vehicle was red.

Mr. Cotton's secretary also appeared and testified at the hearing. Her recollection was consistent with Mr. Cotton's testimony. She too was unable to confirm or deny that Ms. Porter, present in the courtroom, was the person who signed the document she witnessed.

The testimony regarding the meeting in the lawyer's office is critical. The document was dated December 12, 2002. Ms. Porter claimed that she was in possession of the car on that date and it was not repossessed by Debtor from her until December 18, 2002. This would mean that Debtor was unable to present the car to the lawyer for inspection at the meeting in his office. The lawyer testified that he obtained the serial number used in the disputed document from the vehicle he inspected. He described that vehicle as red. While the serial number was the same as the disputed vehicle allegedly in Ms. Porter's custody on December 12, 2002, the color of the disputed vehicle is blue.

In a further effort to get at the truth, the Court required Debtor to bring the disputed vehicle to the lawyer's office along with another vehicle which was alleged by Ms. Porter to be the one which was actually presented on the day of the conference in the lawyer's office. Mr. Cotton was asked to inspect both vehicles, describe their color, and obtain serial numbers from each of them and report to the Court. Mr. Cotton's letter of August 20, 2003, reported that the serial number from the disputed vehicle was exhibited on a blue rather than a red vehicle. He concluded in his letter that he was mistaken in remembering the car as red. The other vehicle was a burgundy vehicle which Ms. Porter contends was

the one exhibited to the lawyer. Unfortunately for Ms. Porter's case, the serial number from that vehicle did not match the one the lawyer said he inspected on the day of the office conference.

Something is very wrong with the testimony in this case. Ms. Porter disputes Debtor's account of the office meeting. If she is correct in her testimony, Debtor has committed a serious fraud on this Court. Unfortunately for Ms. Porter, there is no preponderance of the evidence sufficient to cause the Court to come to such a conclusion. There is ample support for Debtor's position in the form of testimony and followed with documentation from the lawyer who hosted the conference. There is no reason to have any doubt about the lawyer's testimony since he is a respected member of the bar and, further, has no interest in this proceeding. As much as Ms. Porter is very credible, persuasive, and adamant in her insistence that Debtor has misrepresented the facts to this Court, her intensity, diligence, and passion are not sufficient as a matter of evidence to permit the Court to come to a conclusion adverse to the Debtor. The preponderance of the evidence supports Debtor's account of the proceedings. Without evidence of bad faith on the part of Debtor, there is no support for the idea of dismissing the case based on allegations of Debtor's bad faith.

Furthermore, the initial matter of lien avoidance is one which was never in dispute. There was never any evidence offered directly in opposition to the motion for lien avoidance. The judgment lien impaired Debtor's exemption. As such, the Bankruptcy Code mandates, upon motion duly made, its avoidance.

An order in accordance with these findings and conclusions will be entered on this date.

Dated this 16th day of September, 2003.

Hon. James D. Walker, Jr.
United States Bankruptcy Court

CERTIFICATE OF SERVICE

I, Cheryl L. Spilman, certify that the attached and foregoing have been served on the following:

Greg Alan Clark
Custer & Custer
P. O. Box 605
Albany, GA 31702

Janie Mae Porter
711 W. 12th Avenue
Cordele, GA 31015

Kristin Smith
Chapter 13 Trustee
P. O. Box 1907
Columbus, GA 31902

This 16th day of September, 2003.

Cheryl L. Spilman
Deputy Clerk
United States Bankruptcy Court

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MIDDLE DISTRICT OF GEORGIA
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DEBTORS)

ORDER

Debtor has filed a motion to avoid the judgment lien of Janie Mae Porter. In objecting to the motion, Ms. Porter has filed documents interpreted by the Court as a request to dismiss Debtors' case for bad faith. This order is entered in accordance with the findings of fact and conclusions of law stated in the memorandum opinion of even date.

Now, therefore it is hereby

ORDERED that Ms. Porter's motion to dismiss this case be and it hereby is DENIED; and it is hereby further

ORDERED that Debtors' motion to avoid the judgment lien of Janie Mae Porter be and it hereby is GRANTED and Ms. Porter's objection is overruled.

Dated this 16th day of September, 2003.

JAMES D. WALKER, JR.
United States Bankruptcy Court

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This 16th day of September, 2003.

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