UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND
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In re: :

BILLINGS AND CHERYL MANN : BK No. 99-11323
Debtors Chapter 7

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ORDER DENYING DEBTORS' MOTION FOR SANCTIONS

Heard on the Debtors' Motion for Sanctions and Punitive Damages against Chrysler Financial Company and Shermeta, Chimko & Kilpatrick, P.C. ("Chrysler"). Upon consideration of the facts and the applicable case law, I find, for the following reasons, that the imposition of sanctions is not appropriate in this instance, and that the Debtors' Motion should be and is denied.

BACKGROUND

On April 9, 1999, Billings and Cheryl Mann ("Mann") filed a joint Chapter 13 petition, listing Chrysler as a secured creditor. In their plan, the Manns provided for the surrender of their 1996 Hyundai Elantra to Chrysler in full satisfaction of its claim, and shortly thereafter the car was returned to the dealership. On May 21, 1999, Chrysler filed a secured proof of claim in the amount of $8,424, and on June 9, 1999, obtained

relief from the automatic stay, notwithstanding the fact that its collateral had already been voluntarily surrendered. The Debtors' Chapter 13 plan was confirmed as filed on July 16, 1999. On November 15, 1999, Chrysler filed an amended proof of claim in the amount of $5,288.60 for its deficiency after disposition of the collateral. In response, the Debtors filed the instant Motion for Sanctions and Punitive Damages against Chrysler Financial Company and its attorneys, Shermeta, Chimko & Kilpatrick, P.C., alleging that: (1) the filing of the amended proof of claim was a willful and intentional violation of the Automatic Stay under 11 U.S.C. § 362; and (2) the filing of the amended proof of claim violated Bankruptcy Rule 9011. Chrysler objects, arguing: (1) that it did not receive a copy of the plan or of the confirmation order; and (2) that it had a right to file the amended proof of claim under 11 U.S.C. § 101(5)(A). Chrysler also contends that its actions were not "willful or intentional," and that if we were to find a violation of the stay, the Debtors have suffered no damage.

DISCUSSION

On April 13, 1999, the Court mailed a copy of the Section

341 Notice[1] to all creditors, including Chrysler, and the Debtors' attorney certified that on April 13, 1999, he mailed a copy of the Chapter 13 plan to Chrysler. In its objection, Chrysler alleges that its attorney, F. Matthew Jackson, Esq., did not receive a copy of the plan. Jackson, however, did not file his entry of appearance until May 21, 1999, one month *after* the mailing of the initial court notice and Chapter 13 plan. It is the creditor's obligation to forward pleadings to its attorneys, and there is no allegation that Chrysler never received the documents sent by Debtors' counsel *and* by the Court.

Chrysler is too sophisticated a creditor to be excused from its obligation to exercise ordinary care in protecting its legal rights. The Court's Section 341 notice containing the confirmation hearing date, combined with the certification by Debtors' counsel that he mailed Chrysler a copy of the Chapter 13 Plan, constitutes sufficient notice to Chrysler of the filed

[1] The Section 341 notice contains the date and time of the confirmation hearing, as well as a statement informing creditors as to whether the Debtor has filed a plan.

plan and the time and place of the confirmation hearing. It is clear that Chrysler had ample opportunity to object to the plan and to appear at the confirmation hearing to ask questions and voice concerns, and that it did none of the above. Under the circumstances, Chrysler's claim that it did not receive a copy of the order confirming plan is inconsequential. *See Factors Funding Co. v. Fili* (*In re Fili*),_ B.R. _, 2001 WL 40551 (B.A.P. 1st Cir. Jan. 11, 2001)(finding that when a creditor receives proper notice of a Chapter 13 plan that places the creditor's claim in jeopardy and the creditor does not object to confirmation of the plan, the creditor's later-filed claim is barred under principles of *res judicata)*.

Nevertheless, even though Chrysler is charged with notice of the contents of the Chapter 13 Plan when it filed its amended proof of claim for a deficiency balance, the act of filing the amended proof of claim is not, per se, a violation of the automatic stay. The Debtors have supplied no case law to support such a contention, and we are unable to find any.[2]

[2] While the Debtors' action here appears understandable, because Chrysler is attempting to collect a debt that was clearly discharged under the Chapter 13 plan and by the surrender of the vehicle, to find a willful violation of the

automatic stay in these circumstances, i.e., post-confirmation, may produce the odd consequence of requiring creditors to seek relief from stay before filing or amending a proof of claim. Without authority which mandates that result, I am unwilling to establish such a precedent.

While the filing of an amended proof of claim after confirmation is not a violation of the automatic stay, neither can it be considered properly filed or allowable, as the issues that give rise to the claim were deemed litigated at confirmation, and are res judicata. “Courts universally hold that, where a creditor does not object to confirmation, § 1327 binds the creditor to the terms set forth in the plan and further precludes collateral attack of the plan's confirmation”. See *In re Rincon,* 133 B.R. 594, 596 (Bankr. N.D. Tex. 1991)(citations omitted); *In re Fili*, _ B.R. _, 2001 WL 40551. Numerous courts, including the Court in *Evans*, have held that "[a]n order confirming a Chapter 13 plan is res judicata as to all justiciable issues which were or could have been decided at the confirmation hearing". *In re Evans,* 30 B.R. 530, 531 (B.A.P. 9th Cir. 1983). These cases look to Bankruptcy Code 11 U.S.C. § 1327(a) which provides,

> The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.

Here, the provision of the Debtors’ plan which provided for the surrender of the vehicle *in full satisfaction* of Chrysler’s

claim is binding on Chrysler, regardless of any deficiency remaining after disposition of the collateral.

Finally, I find that Chrysler's actions do not constitute a violation of Rule 9011, and while this creditor probably should have done a more thorough investigation of the record before filing its amended claim, that single act, without more, is not the kind of violation that warrants the imposition of sanctions. With that said, the Debtors could have easily dealt with the amended claim by filing a straightforward objection setting forth the law as it appears above. In the circumstances, I will treat the Debtors' Motion for Sanctions as an objection to Chrysler's amended proof of claim, and SUSTAIN said objection. The Debtors' Motion for Imposition of Sanctions is **DENIED;** however, the Debtors are awarded compensatory attorney fees in the amount of $600, i.e., the reasonable cost to object to and defend against Chrysler's amended claim, which it was ill advised to file.

Enter judgment consistent with this order.

Dated at Providence, Rhode Island, this 20th day of February, 2001.

/s/ Arthur N. Votolato

Arthur N. Votolato
U.S. Bankruptcy Judge