UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: PETER SHERMAN and PATTI SHERMAN CASE NO. 05-10188

OPINION

This matter originally came before the court on a motion to lift the automatic stay and to abandon property filed by Trustmark National Bank ("Trustmark"), and the response thereto which was filed by Peter Sherman and Patti Sherman ("debtors"). The motion was set for hearing on March 16, 2005, in Greenville, Mississippi. On the day of the hearing, counsel for Trustmark appeared and stated that the debtors had consented to the lifting of the automatic stay, but objected to the demand by Trustmark for attorney's fees. The parties requested, and the court agreed, that the automatic stay should lift, but that a sum of money equal to the amount of the attorney's fees should be held in escrow by Trustmark pending a review of the reasonableness of said fees. An order terminating the automatic stay and abandoning the property from the estate was entered along with a separate escrow order which provided as follows:

> It is therefore ordered and adjudged that debtors and/or the third party as purchaser or assignee to be, and they are hereby directed, to place the amount of Five Thousand Fifty-Three and 74/100 Dollars ($5,053.74) in an interest-bearing account at bank, pending a determination by the court of the reasonableness of said fees and expenses, said funds to remain in said account pending further order of this court.

The court has reviewed the contemporaneous time records submitted by counsel for Trustmark in addition to an affidavit of Charles S. Tindall, III, a local attorney, attesting to the reasonableness of the fees. The debtors have not filed an itemized objection to the request. Based on a review of these items, the court finds as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this contested proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This matter would be considered a core contested proceeding as defined in 28 U.S.C. §157(b)(G).

II.

The two paragraphs, set forth hereinbelow, are taken from the statement in support of the fee request submitted by Trustmark's attorney. The facts expressed therein are uncontested:

> The first issue is whether insurance proceeds are an asset of the bankruptcy estate. Prior to the filing of the Petition for Relief, the residence was damaged by fire. State Farm Insurance, the hazard insurance carrier, paid the loss, but failed to include Trustmark's name on the check. Peter negotiated the check, but did not pay the proceeds to Trustmark. Later, without advising Trustmark that its collateral had been damaged by fire, Peter delivered a check from Conseco Insurance Company to Trustmark. The amount of the Conseco check was less than the amount of the check which Peter had received from State Farm. Upon review of its files, Trustmark determined that Conseco was not the hazard insurance carrier and contacted State Farm. It was at this point that Trustmark learned of the fire. Trustmark refused to accept the check from Conseco. State Farm ultimately paid approximately $36,000 to Trustmark. These funds were placed in a "holding" account. Greenville Lumber Company undertook repairs to the residence and received one draw in the amount of $4,000 from the holding account before Peter filed bankruptcy. A significant amount of time was devoted by this firm to reviewing all of the documentation related to the fire loss and the lien documents and then performing legal research on the issue. The general rule is that insurance proceeds are an asset of the bankruptcy estate; however, there are exceptions, and an assignment of insurance proceeds to the Bank by the Debtors through the Deed of Trust is one such exception. The Deed of Trust to Trustmark contains assignment of insurance proceeds language.
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> A second issue involves §521. Peter filed a Statement of Intentions reflecting that he wished to reaffirm the indebtednesses secured by the residence and the Mazda automobile. Trustmark was unwilling to agree to reaffirmation. There is a split among the Circuits as to the options available to a Debtor under §521. Again, significant legal research was required to determine the position of the 5th Circuit and then address various collateral issues, such as: (a.) whether a Debtor can unilaterally reaffirm an indebtedness; and (b.) what is the proper procedure for a Creditor to pursue when a Debtor is unable to comply with §521. Through our research, we determined that a

> Debtor cannot unilaterally reaffirm an indebtedness, that the failure or inability of a Debtor to comply with §521 constitutes "cause" under §362(d) for lifting the stay, and that the proper procedural vehicle for a creditor to utilize is a Motion to Lift Stay.

Based on the above uncontested recitation of facts, the court finds that this case contains novel issues from Trustmark's point of view. In addition, the court notes that the legal research was necessitated by the fact that the debtors responded to the motion to lift the automatic stay.

At the time of the filing of the bankruptcy case, Trustmark's indebtedness was approximately $92,000.00, and the residence, which was encumbered by Trustmark's deed of trust, was valued at approximately $125,000.00. This indicates that Trustmark was an oversecured creditor. Consequently, 11 U.S.C. §506(b) provides that Trustmark may receive "interest on such claim, and any reasonable fees, costs, or charges provided under the agreement under which such claim arose."

III.

The time entries reflected on the time sheets represent work which was necessary and reasonable under the circumstances. The hourly rates charged by Harold H. Mitchell, Jr., and Chris M. Finn at $150.00 per hour and $115.00 per hour, respectively, are consistent with the hourly rates charged in the local area. The itemization of expenses set forth in Invoice No. 25435, dated February 7, 2005, and Invoice No. 25610, dated March 11, 2005, are fair, reasonable, and compensable.

IV.

The promissory note signed by Peter A. Sherman on February 15, 2001, evidencing the debt owed to Trustmark, provides as follows: "Maker and all other parties hereto agree to pay all costs and expenses of collection, including a reasonable attorney's fee." Accordingly, the court

finds that Trustmark is entitled to fees in the amount of $4,786.50, and expenses in the amount of $267.24, for a total sum of $5,053.74. The funds which are being held in escrow pursuant to the March 16, 2005 order, as well as, any interest which may have accrued thereon, may be released to Trustmark.

An order will be entered accordingly.

This the 7th day of April, 2005.

/s/DAVID W. HOUSTON, III
UNITED STATES BANKRUPTCY JUDGE