

In re Johnson, 1990 WL 605089 (Bankr.S.D.Ga., Aug 13,1990) (NO. 87-10284

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA

Augusta Division

IN RE:)	Chapter 13 Case
)	Number <u>87-10284</u>
WILLIE JAMES JOHNSON)	
BERNICE JOHNSON)	
)	
Debtors)	

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WILLIE JAMES JOHNSON)	
BERNICE JOHNSON)	
)	FILED
Movant)	at 11 O'clock & 31 min. A.M.
)	Date: 8-13-90

vs.)
)
FARMERS FURNITURE COMPANY)
)
Respondent)

ORDER

Farmers Furniture Company requests dismissal of the objection to proof of claim filed by the debtors. Farmers Furniture Company contends that the order of confirmation is res judicata on all justiciable issues decided or which could have been decided at the hearing on confirmation. The motion of Farmers Furniture Company to dismiss is granted in part and denied in part. By pleading filed May 3, 1990 Willie James Johnson and Bernice Johnson debtors in this Chapter 13 proceeding object to the amended proof of claim of Farmers Furniture Company. The debtors assert two grounds for objection:

1. the fair market value of the property securing the loan of Farmers Furniture Company is less than the amount of their secured claim; and

2. the claimed attorneys fees should be disallowed. Additionally, the debtors demand the recovery damages, out-of-pocket expenses for bringing the objection and attorney's fees. The relevant facts can be determined from the file in this proceeding.

The debtors filed for relief under Chapter 13 of Title 11 United States Code on March 13, 1987 and proposed a plan to pay to the Chapter 13 trustee the sum of Eighty-Five and No/100 (\$85.00) Dollars weekly for sixty (60) months. The pertinent portion of this plan provided:

(b) Secured creditors shall retain the lien securing their claims. Creditors who file claims and whose claims are allowed as secured claims shall be paid the lesser of (1) the amount of their claim, or (2) the value of their collateral as set forth here: [blank]

The plan further provided to pay allowed unsecured claims in full. On April 6, 1987 Farmers Furniture Company filed a claim in the amount of Four Thousand Five Hundred Ninety-Three and 84/100 (\$4,593.84) Dollars asserting a purchase money security interest in personal property of the debtor. On May 13, 1989 Farmers Furniture Company amended its claim to Five Thousand Two Hundred Eighty-Two and 92/100 (\$5,282.92) Dollars asserting a claim for principal and interest of Four Thousand Five Hundred Ninety-Three and 84/100 (\$4,593.84) Dollars and attorneys fees of Six Hundred Eighty-Nine

and 08/100 (\$689.08) Dollars. At the confirmation hearing held August 25, 1987 the debtor agreed to increase payments to One Hundred Five and No/100 (\$105.00) Dollars weekly. At debtors request the August 25, 1987 hearing was continued to allow the debtors an opportunity to object to the amended proof of claim of Farmers Furniture Company regarding the attorneys fees claimed. At this initial confirmation hearing, Farmers Furniture Company contended that it was an oversecured creditor in accordance with 11 U.S.C. §506(b) and the recovery of attorneys fees were warranted. At the continued confirmation hearing held October 13, 1987 the debtors again increased their plan payment to One Hundred Nine and No/100 (\$109.00) Dollars weekly. The plan was confirmed. No objection to the amended claim of Farmers Furniture Company was filed by the debtors.

The order issued at the close of the confirmation hearing is styled "ORDER CONFIRMING PLAN; ORDER ALLOWING CLAIM; ORDER DIRECTING DISTRIBUTION, ET AL." The order allowed the amended claim of Farmers Furniture Company as secured in the amount of Five Thousand Two Hundred Eighty-Two and 92/100 (\$5,282.92) Dollars.¹

¹An order styled "ORDER MODIFYING ALLOWED CLAIM; ORDER MODIFYING CONFIRMED PLAN; ORDER MODIFYING DIRECTED DISTRIBUTION, ET AL." was entered May 11, 1988. This order did not affect the allowed secured claim of Farmers Furniture Company.

The provisions of 11 U.S.C. §1327(a)² and the decision of the Court of Appeals for the Fifth Circuit in In re: Simmons, 765 F.2d 547 (5th Cir. 1985) relied upon by Farmers Furniture Company is, at least in part, inapplicable. The pertinent portion of the confirmed plan provides that "Secured creditors shall retain the lien securing their claims. Creditors who file claims and whose claims are allowed as secured claims shall be paid . . . the amount of their claim." The objection of the debtor is not directed to the provisions of his confirmed plan but to that portion of the order dated October 13, 1987 which allowed the claim of Farmers Furniture Company as secured in the amount of Five Thousand Two Hundred Eighty-Two and 92/100 (\$5,282.92).

By this objection, the debtor do not seek collaterally to attack the order of confirmation but seek reconsideration of the order allowing the claim of Farmers Furniture Company.³ The

²11 U.S.C. §1327(a) provides:

(a) 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.

³The debtor has styled his pleading "Objection to the Proof of Claim" which is governed by the provisions of Bankruptcy Rule 3007. This rule provides that an objection to claim is "an objection to the allowance of a claim". In this case, the claim of Farmers Furniture Company has already been allowed. While a motion to dismiss on the basis that an "objection to claim" is barred because the order of October 13, 1987 allowed this claim

proper procedure would be to seek reconsideration of the order allowing the claim. Bankruptcy Code section 502(j)⁴ and Bankruptcy Rule 3008⁵ provide the authority and procedure for claim reconsideration. Section 502(j) contemplates the

might be proper, the granting of such motion would simply result in the refiling by the debtor of a properly captioned motion with the resulting additional expenditure of time and money by all parties in interest. No prejudice will result to Farmers Furniture Company by this court considering the pending motion as a motion for reconsideration of claim. In the interest of justice and judicial economy, the motion will be so considered at hearing on the merits.

⁴11 U.S.C. §502(j) provides:

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and if of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

⁵Bankruptcy Rule 3008 provides:

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

possibility for claim reconsideration after confirmation of a plan and distribution under

the plan. Reconsideration of both allowed and disallowed claims may occur at any time before a case is closed, but in such reconsideration the court must weigh the extent and reasonableness of any delay, or prejudice to any party in interest, the effect on efficient court administration and the moving party's good faith. In re: Resources Reclamation Corporation of America, 34 B.R. 771 (BAP 9th Cir. 1983). The debtors' request for reconsideration seeks to disallow that portion of the allowed secured claim in the amount of Six Hundred Eighty-Nine and 08/100 (\$689.08) Dollars designated attorney's fees. The order of confirmation does not bar such reconsideration.

In addition to reconsideration of the claim, by means of this "objection," the debtors seek to value the collateral securing the claim⁶. Valuation of collateral securing a claim is permitted under to 11 U.S.C. §506(a)⁷. While Bankruptcy Rule 3012⁸

⁶For the reasons stated under footnote 3 this court will also consider the pleading now under consideration styled "objection to the proof of claim" as a motion to determine the value of a claim secured by a lien on property in which the estate has an interest.

⁷11 U.S.C. §506(a) provides in pertinent part:

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and

provides the procedure for valuation of security, it does not provide a time limit for the filing of a motion for such determination. However, as in this case, where the confirmed plan resolves the valuation issue §1327(a) does apply and bars reconsideration. The confirmed plan provided "Secured creditors shall retain the liens securing their claims. Creditors who file claims and whose claims are allowed as secured claims shall be paid the lesser of (1) the amount of their claim, or (2) the value of their collateral as set forth here: [blank]". The plan as confirmed did not value the collateral securing the allowed claim of Farmers Furniture Company at less than the amount of the allowed claim. In this instance, the plan addressed the issue of valuation and "[t]he provisions of [the] confirmed plan bind the debtor . . ." 11 U.S.C. §1327(a). The order of confirmation is res judicata as to all justiciable issues decided and is not subject to collateral attack even by the debtor. In re: Simmons, supra at 557 - 558 [citing In re: Lewis, 8 B.R. 132 (Bankr. D. ID. 1981); 5 Collier on Bankruptcy ¶1327.01 (L. King

of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan effecting such creditor's interest.

⁸Bankruptcy Rule 3012 provides:

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other entity as the court may direct.

15th ed. 1989)]. Regarding the debtors' attempted valuation of collateral through objection to claim, the motion of Farmers Furniture Company to dismiss the debtors' objection to claim is granted.⁹

Regarding the remainder of the objection to claim, the debtors seek the recovery of damages, "of at least three times the overcharge, plus costs of court including Six and No/100 (\$6.00) Dollars in copying costs and that the Debtor be reimbursed for any lost time from work in prosecuting this objection, transportation costs and other necessary expenses, including debtor's attorneys fees." This requested relief is the recovery of money or property under Bankruptcy Rule 7001. If the objection to claim is joined with the demand for relief of a kind specified in Bankruptcy Rule 7001 the objection must be treated as an adversary proceeding requiring the issuance and service of a summons pursuant to Federal Rule of Civil Procedure 4(a) made applicable to bankruptcy proceedings through Bankruptcy Rule 7004. At the close of the hearing, debtors' counsel indicated that it was not his intent to proceed with an adversary proceeding. This court directed, if the debtors intended to proceed with this aspect of their objection to claim, that within ten (10) days of the date of the hearing debtors' counsel must obtain a summons from the clerk and proceed as an

⁹The terms of this order take precedent over contrary oral findings of this court made at the conclusion of the hearing on the motion to dismiss.

adversary proceeding. More than ten (10) days having elapsed since the date of hearing without debtors' attorney proceeding with this matter as an adversary proceeding, the motion of Farmers Furniture Company to dismiss the prayers of the objection to claim for the recovery of damages, costs and attorneys fees is granted.

It is therefore ORDERED that the motion of Farmers Furniture Company to dismiss debtors' "objection to the proof of claim" is denied as to that aspect of the objection seeking reconsideration of the order allowing the portion of the claim of for attorney's fees. The balance of the debtor's "objection to the proof of claim" is ORDERED dismissed.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 10th day of August, 1990.