

In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Brunswick Division

**FILED**  
at 8 O'clock & 36 min A.M.  
Date 7/31/01

MICHAEL F. McHUGH, CLERK  
United States Bankruptcy Court  
Savannah, Georgia *MB*

In the matter of: )  
)  
BETTY L. REGISTER ) Chapter 13 Case  
)  
) Number 00-20819  
Debtor )

**ORDER ON CREDITOR'S REQUEST FOR AN  
AWARD OF ATTORNEY'S FEES AND COSTS**

Southeastern Bank, in conjunction with a Motion for Relief from Stay, previously granted by separate order, petitions this Court for an award of attorney's fees and costs related to that motion. See In re Betty L. Register, Ch. 13 Case No. 00-20819 (S.D. Ga. April 30, 2001). Southeastern Bank holds a secured claim in this case inasmuch as it was granted a security interest in a boat, motor and trailer. However, the value of the boat, motor and trailer, because it cannot presently be located, cannot be established as exceeding the balance of the claim owed to the Bank. Accordingly, the provisions of 11 U.S.C. § 506 which would permit the Bank, if it held an over-secured claim, to collect attorney's fees and costs pursuant to its note and security agreement are inapplicable. See In re Gledhill, 164 F.3d 1338 (10<sup>th</sup> Cir. 1999)(holding that only creditors having oversecured consensual claims may recover attorney fees, costs, or other charges under

§506(b) and that “an underlying consensual agreement must exist before an oversecured creditor is entitled to attorney fees and costs under §506(b)”(quoting United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989)); In re Telfair, 224 B.R. 243 (Bankr. S.D. Ga. 1998)(holding that the postpetition interest, attorney fees and costs allowed to oversecured creditors applies only to that interest, attorney fees and costs accruing pre-confirmation).

The Bank nevertheless requests such an award arguing that Bankruptcy Rule 7054 authorizes it. That Rule provides that FED.R.CIV.P. 54 applies in adversary proceedings.<sup>1</sup> FED.R.CIV.P. 54 provides in relevant part as follows:

(d) Costs; Attorney’s Fees.

- (1) Costs Other than Attorneys’ Fees. Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys’ fees shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Such costs may be taxed by the clerk on one day’s notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court. (Emphasis added).

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<sup>1</sup> Bankruptcy Rule 9014 also provides that in contested matters Bankruptcy Rule 7054 is applicable.

(2) Attorneys' Fees.

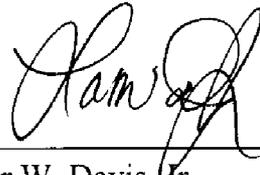
(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed and served no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made. (Emphasis added).

A close reading of this Rule leads to the conclusion that (1) costs other than attorney's fees shall be allowed as a matter of course to the prevailing party; (2) attorney's fees are allowed only upon motion unless the substantive law provides for automatic recovery (which is not the case here); and (3) the motion must specify "the judgment and the statute, rule, or other grounds entitling the moving party to the award." The Bank appears to argue that Rule 54 itself constitutes independent authority for an award of attorney's fees generally in bankruptcy cases to undersecured creditors. To the contrary, Rule 54(d)(2) is only a procedural rule which provides the mechanism for an award, but only if there is a separate

substantive "statute, rule or other ground" entitling the party to such an award. The Bank has not pointed to any such substantive law providing for such an award and the request is therefore denied.

SO ORDERED.



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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 30<sup>th</sup> day of July, 2001.