

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

In the matter of: )

LISA ANN CHAVIS )  
(Chapter 13 Case Number 02-40060) )

*Debtor* )

LISA ANN CHAVIS )

*Plaintiff* )

v. )

WILLIE SPAULDING )

*Defendant* )

Adversary Proceeding

Number 03-4098

**FILED**

at 2 O'clock & 43 min P.M  
Date 9/17/04

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

**MEMORANDUM AND ORDER**  
**ON COMPLAINT FOR DAMAGES**

On January 7, 2002, Lisa Ann Chavis ("Plaintiff") filed a Chapter 13 bankruptcy petition. On July 24, 2004, Plaintiff filed an adversary complaint against Willie Spaulding ("Defendant") seeking compensatory damages for damage to a truck that Plaintiff leased to Defendant. Defendant failed to answer Plaintiff's Complaint for Damages and failed to appear at the Adversary Pre-Trial hearing held on September 17, 2003. This Court ordered the Clerk to enter a default. The

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default was entered on September 30, 2003, pursuant to Federal Rule of Bankruptcy Procedure 7055. A trial to determine damages was scheduled for November 10, 2003. On that date, Plaintiff's counsel informed the Court that the vehicle had been repossessed and was to be sold by the lender, thus damages for any deficiency could not be assessed until after the sale. The Court reassigned the trial to January 26, 2004. Defendant and his counsel appeared in Court on January 26, and the Court continued the trial in order for the parties to complete discovery. On May 20, 2004, this Court held a trial on the Complaint for Damages. This Court has jurisdiction over this matter under 28 U.S.C. § 157.

#### FINDINGS OF FACT

On June 24, 2001, Defendant leased a 2002 Dodge Dakota Pickup Truck from Plaintiff. The lease provided that Defendant would pay \$420.00 per month for 60 months directly to Wachovia Bank, the holder of the lien on the truck. On January 11, 2003, Wachovia notified Plaintiff that the account for the Dodge Dakota was in arrears. Plaintiff attempted to contact Defendant regarding the arrearage on several occasions; however, Defendant was non-responsive. On July 10, 2003, Wachovia contacted Plaintiff again to inform her that the account continued to be in arrears.

According to Plaintiff's testimony, Defendant surrendered the truck to Plaintiff on June 29, 2003. When Defendant returned the truck to Plaintiff, the payments to Wachovia were two months behind, and the total arrearage on the vehicle was \$851.00. Plaintiff claims that Defendant owes this amount to Plaintiff, and Defendant does not dispute this claim for damages.

Under the terms of the lease agreement, Defendant was to maintain insurance on the truck. *See* Plaintiff's Exhibit 1. For the first year, Plaintiff paid the insurance on the vehicle as repayment for a debt owed to Defendant. In May 2002, Plaintiff began collecting \$110.00 per month from the Defendant in order to pay the insurance premiums. Defendant made the \$110.00 payments from May 2002 to January 2003. Upon Defendant's failure to make the February insurance payment, Plaintiff paid the insurance premiums. In total, Plaintiff spent \$530.00 to maintain insurance on the vehicle from February 2003 to June 2003 while the truck remained in Defendant's possession. Plaintiff asserts Defendant owes \$530.00 to Plaintiff, and Defendant does not dispute this claim for damages.

After Defendant returned the truck, Plaintiff drove it approximately two miles to a gas station. She noticed the truck was making a "clicking" sound. In hopes of leasing the truck to another party, Plaintiff allowed friends to test drive it, and while they were driving, the truck broke down in Hardeeville, South Carolina. Plaintiff had the truck towed to Savannah Dodge. Savannah Dodge inspected the truck and informed Plaintiff that it needed a new engine. The estimated cost of a new engine was \$8,522.50, and the estimated cost of a refurbished engine was \$5,908.45. *See* Plaintiff's Exhibit 3. At the hearing, Defendant acknowledged that the truck was making a "clicking" sound when he drove it, but he denied that it was in disrepair when he returned it to Plaintiff. Despite Defendant's testimony, Plaintiff alleged in her Complaint that the Defendant caused such disrepair, thus it is deemed admitted by virtue of Defendant's failure to answer. *See* Fed. R. Bank. P. 7008.

Because Plaintiff believed that the cost of repair would be so high, on October 1,

2003, Plaintiff consented to Wachovia's Motion for Relief and allowed Wachovia to repossess the vehicle. According to Wachovia, Plaintiff owed \$11,965.83 on the truck. Wachovia sold the vehicle at a private sale on December 3, 2003 for \$4,200.00 and incurred total expenses of \$604.95. Wachovia claimed a deficiency of \$8,370.78. See Plaintiff's Exhibit 5. On January 26, 2004, Wachovia filed an amended claim in Plaintiff's bankruptcy case in the amount of \$8,370.78. Plaintiff asserts that she is entitled to receive from Defendant the entire amount that will be paid to Wachovia under the Chapter 13 plan.

On August 27, 2002, Plaintiff's Chapter 13 plan was confirmed at \$503.00 a month to pay at least a 35% dividend to unsecured creditors. According to the Chapter 13 Trustee, the \$503.00 payments would actually yield a 68.6% dividend to unsecured creditors not including the amended claim of Wachovia. Even with the addition of the Wachovia claim, Plaintiff does not need to increase her monthly payments in order to satisfy the 35% dividend that was provided in her confirmed plan.

Plaintiff also asserts that she is entitled to receive attorney's fees for the cost of bringing the adversary proceeding. The lease signed by the Defendant provides, "[t]he Lessee will pay all costs and expenses, including attorney's fees, incurred in the preservation or enforcement [of] any right of the Lessor or obligation of the Lessee under this Lease." Plaintiff's Exhibit 1. Plaintiff's attorney submitted to the Court a compilation of the hours worked on the adversary proceeding. The attorney requests fees in the amount of \$2,875.00 for working 23 hours at the rate of \$125.00 per hour. See Plaintiff's Exhibit 6. Defendant does not dispute that he owes attorney's fees to Plaintiff, but at

the hearing, Defendant objected that the fees were excessive. Defendant declined to make a specific objection or point to a specific entry that is excessive.

#### CONCLUSIONS OF LAW

While a defendant's default constitutes an admission of all well pleaded allegations of liability, it does not constitute an admission of damages. *See* Fed. R. Bank. P. 7008; Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2nd Cir. 1992). The plaintiff must establish damages at an evidentiary hearing in which the defendant has the opportunity to dispute the amount. Greyhound Exhibitgroup, Inc., 973 F.2d at 158.

Defendant does not dispute that he owes Plaintiff \$530.00 for insurance premiums from February 2003 through June 2003, thus the Court finds that Defendant is obligated to Plaintiff for that amount. Furthermore, Defendant does not dispute that he owes Plaintiff \$851.00 for the two payments that were past due when he surrendered the vehicle to the Plaintiff. The Court finds that Defendant is obligated to Plaintiff for that amount.

As to the amounts Plaintiff will be liable to pay to Wachovia under the Chapter 13 plan, the Court must look to the damages that Plaintiff will suffer. Actual damages are "real, substantial and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury . . . ." McMillian v. F.D.I.C., 81 F.3d 1041, 1054 (11th Cir. 1996) (quoting Black's Law Dictionary (6th Ed. 1991)). As long as Plaintiff remains in her Chapter 13 case, she will suffer no damages from the deficiency owed to Wachovia. Plaintiff's plan is confirmed at \$503.00

per month with a minimum 35% dividend to unsecured creditors. Because of the higher dividend her plan was paying when the Wachovia claim was allowed, Plaintiff's payments did not need to increase to satisfy the minimum 35% dividend. If Plaintiff is discharged, the Wachovia claim will be extinguished and Plaintiff will not be obligated to pay any balance on the Wachovia claim.

If for some reason, Plaintiff does not receive a discharge from bankruptcy, then Wachovia's deficiency claim will remain and Plaintiff will be liable for the amount remaining. By virtue of the default judgment entered against him, Defendant has admitted his liability in this action. If the Wachovia debt is not extinguished by a discharge, then Defendant will be liable to Plaintiff for the entire amount that remains due to Wachovia at that time.

Finally, Plaintiff is seeking attorney's fees as provided under the lease agreement. The general rule is that "attorneys' fees may be recovered as an item of damages where specifically authorized by statute or by contract." Nat Harrison Associates v. Gulf States Utilities Co., 491 F.2d 579, 588-89 (5th Cir. 1974). When construing a contract for attorney's fees, the courts look to state law. TranSouth Financial Corp. of Fla. v. Johnson, 931 F.2d 1505, 1507 (11th Cir. 1991). Under Georgia law, attorney's fees are recoverable when authorized in a contract. Bowers v. Fulton County, 183 S.E.2d 347, 348, 227 Ga. 814, 815 (1971). The lease agreement provides that the Defendant must pay any attorney's fees incurred in enforcing the Lease. See Plaintiff's Exhibit 1.

Plaintiff's counsel provided the Court with a fee application detailing the hours worked on the adversary proceeding in this case. Defendant's counsel did not make a specific

objection to the fee application other than arguing that the fees were generally excessive. As one court noted, "The amount requested by a fee application cannot be considered unreasonable simply because one party feels it is excessive: 'Objectors have the responsibility to challenge [the] information [presented in a fee application] and to produce evidence controverting that produced by the applicant . . . . [A] gestalt reaction that there was too much time spent . . . isn't good enough.'" In re Blackwood Associates, L.P., 165 B.R. 108, 111-12 (Bankr. E.D.N.Y. 1994). I reviewed the fee application and find it to be reasonable with the exception of a combined 1.75 hours that were spent performing clerical tasks such as filing a motion, filing discovery, filing a motion response, and filing certificates. With no specific objection by Defendant, the Court approves the remaining 21.25 hours at a rate of \$125.00 per hour totaling \$2,656.25.

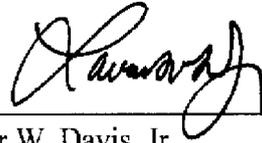
#### ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Defendant shall pay to Plaintiff \$530.00 for the unpaid insurance premiums.

FURTHER ORDERED that Defendant shall pay to Plaintiff \$851.00 for the two months Defendant failed to pay Wachovia.

FURTHER ORDERED that Defendant shall pay to Plaintiff \$2,656.25 in attorney's fees.

FURTHER ORDERED that In the event that Plaintiff does not receive a discharge from her Chapter 13 case, Defendant is ORDERED to pay to Plaintiff the amount remaining on the Wachovia claim at that time.



Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 15<sup>th</sup> day of September, 2004.

**C:** Debtor  
Debtor Atty  
Plaintiff Chavis  
Plff Atty Rehal  
Defendant Spaulding  
Deft Atty Thomas  
Trustee Brown  
U. S. Trustee  
Wachovia

MH  
9/20/04