

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

FILED
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Date 4/12/06

United States Bankruptcy Court
Savannah, Georgia *MAH*
Chapter 7 Case
Number ³~~04~~-43071
MAH

In the matter of:)
)
MICHAEL B. WATERS, SR.)
MELODY S. WATERS)
)
)
Debtors)

**MEMORANDUM AND ORDER
ON DEBTORS' MOTION REQUESTING THE
DISBURSEMENT OF EXEMPT FUNDS**

Michael B. Waters, Sr. and Melody S. Waters (collectively, the "Debtors") have filed a Motion Requesting Disbursement of Exempt Funds (the "Motion"). *See* Dckt. No. 64 (January 11, 2006). On October 19, 2005, James L. Drake, Jr., the Chapter 7 Trustee, filed a Motion to Approve Compromise and Payment of Attorney's Fees and Expenses, which related to the settling of a personal injury claim by the Debtors against Central of Georgia Railway for injuries suffered by Michael B. Waters, Sr., in an incident that occurred on April 4, 2002. *See* Dckt. No. 55 (October 19, 2005). This Court approved the settlement. *See* Dckt. No. 62 (December 21, 2005).

After payment of the attorney's fees and expenses stemming from the personal injury claim, the gross amount of \$89,431.62 remained in the Debtors' bankruptcy estate. Of this amount, the Debtors claim that \$20,000.00 is exempt pursuant to O.C.G.A.

§ 44-13-100(a)(11)(D), and \$10,700.00 is exempt pursuant to O.C.G.A. § 44-13-100(a)(6).
See Dckt. No. 64 (January 11, 2006).

Darby Bank & Trust Company (“Darby”) objects to the disbursement sought by the Debtors. Darby notes that a previous consent order had been entered between it and Michael B. Waters, Sr. *See* Adv. Proc. No. 03-04170, Dckt. No. 12 (July 7, 2004). In that consent order, the parties agreed that Darby would have a non-dischargeable judgment against Michael B. Waters, Sr., in the amount of \$12,000.00. Making note of the personal injury claim against Central of Georgia Railway, the consent order states the following:

The parties agree that Darby’s judgment lien shall attach to any proceeds of the tort action which would otherwise be payable to the Debtor and the Debtor agrees to instruct his tort attorneys to disburse the proceeds of the tort action to Darby up to the amount necessary to satisfy Darby’s judgment before any distribution to the Debtor.

This language, Darby contends, indicates that the parties agreed that Darby’s \$12,000.00 non-dischargeable claim would not attach to all the proceeds stemming from the settlement of the personal injury claim but only to those proceeds that were payable to the Debtors. *See* Dckt. No. 69 (February 21, 2006). The Chapter 7 Trustee agrees that Darby is entitled to the full satisfaction of its claim before the Debtors receive their exempted funds. *See* Dckt. No. 71 (February 23, 2006). The Debtors contend that their exempted funds are immunized from

Darby's judgment because the consent order did not expressly state that Darby would be paid out of their exempted funds. *See* Dckt. No. 72 (March 23, 2006).

CONCLUSIONS OF LAW

With regards to the interpretation of a consent decree or order, the rules of interpretation are the same as those used to interpret a contract. Sierra Club v. Meiburg, 296 F.3d 1021, 1029 (11th Cir. 2002). "With a consent decree as with a contract, the first place [to] look and often the last as well is to the document itself." Id. The consent order in this case is clear. It explicitly states that Darby's \$12,000.00 non-dischargeable claim would attach to the proceeds from the personal injury claim that "would otherwise be payable to the Debtor" and that Darby would be compensated "before any distribution to the Debtor." Whereas all of the settlement proceeds are in the possession of the Chapter 7 Trustee awaiting distribution to creditors, the proceeds that "would otherwise be payable to the Debtor" includes that amount claimed by the Debtors as exempt under Georgia law. It is from these latter proceeds that the language of the consent order requires that Darby receive \$12,000.00 in satisfaction of its non-dischargeable claim.

ORDER

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that the Debtors' Motion Requesting Disbursement of Exempt Funds be DENIED IN PART. The Chapter 7 Trustee shall disburse the amount of \$12,000.00 to Darby Bank & Trust Company

in satisfaction of its non-dischargeable claim against Michael B. Waters, Sr. Furthermore, the Chapter 7 Trustee shall disburse the amount of \$18,700.00 to the Debtors in satisfaction of their claimed exemptions under Georgia law.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 11th day of April, 2006.