

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-31173

JERRY WAYNE HICKMAN  
PATRICIA ANN HICKMAN

Debtors

**MEMORANDUM ON  
EXCEPTION TO DISALLOWANCE OF CLAIM**

**APPEARANCES:** GWENDOLYN M. KERNEY, ESQ.

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Chapter 13 Trustee

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**RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE**

This matter is before the court on the Exception to Disallowance of Claim filed by American General Finance<sup>1</sup> (American General) on August 4, 2003, in response to the Order Disallowing Claim Per Confirmed Plan entered on July 16, 2003, disallowing American General's secured claim.

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(A), (B), (O) (West 1993).

## I

The Debtors filed the Voluntary Petition commencing their Chapter 13 bankruptcy case on March 5, 2003. American General was listed as a secured creditor of the Debtors, holding a security interest in a 2000 Charger Fish/Ski Boat, trailer, and motor (collectively, the Collateral).<sup>2</sup> In their Chapter 13 Plan filed on March 5, 2003, the Debtors proposed to "Surrender in Full Satisfaction of Debt" the Collateral to American General. American General filed a Proof of Claim in the amount of \$17,810.99 on March 26, 2003. On its Proof of Claim, American General values the Collateral at \$20,899.00, thus placing it in an over-secured posture. American General did not object to its treatment under the plan.

On June 9, 2003, the court confirmed the Debtors' plan, with modifications unrelated to the Debtors' treatment of American General's claim. On June 18, 2003, the court entered an Agreed Order Granting Relief from the Automatic Stay and Abandoning Property, modifying the

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<sup>1</sup> The claim was filed by American General Financial Services, Inc., a name abbreviated by the parties to American General Finance.

<sup>2</sup> The trailer and motor were not listed by the Debtors. It is, however, undisputed that these items also secure the Debtors' obligation to American General.

automatic stay to allow American General to proceed with the enforcement of its security interest in the Collateral and abandoning the Collateral as a burdensome asset of the estate. The Agreed Order was approved by the Chapter 13 Trustee, the Debtors' attorney, and the attorney for American General. Thereafter, on July 16, 2003, the court entered the Order Disallowing Claim Per Confirmed Plan, submitted by the Chapter 13 Trustee, which states:

The debtor(s) confirmed plan provides that the collateral securing the claim of AMERICAN GENERAL FINANCE filed on 03/26/2003 is to be "surrendered in full satisfaction" of the debt. Therefore, in accordance with 11 U.S.C. §502 which provides that claims are deemed allowed unless objected to and the provision of 11 U.S.C. §1327 which provides that the terms of the plan bind creditors, it is hereby

ORDERED that the claim filed by AMERICAN GENERAL FINANCE in the amount of \$17810.99 [sic] is disallowed in its entirety unless within twenty (20) days of the entry of this Order the creditor files a written exception to the disallowance of the claim with the Bankruptcy Court.

Attached to the Order, which was served upon American General, is a copy of American General's Proof of Claim.<sup>3</sup> On August 4, 2003, American General filed the Exception to Disallowance of Claim presently before the court, citing as its basis for the exception the fact that an actual objection to its claim was never filed, as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the Eastern District of Tennessee.

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<sup>3</sup> Under Local Bankruptcy Rule 3007-1, all objections to claims must list the name and address of the creditor and the creditor's attorney, if known, must be served on all parties affected by the objection, and must have attached a copy of the creditor's proof of claim. *See* E.D. Tenn. LBR 3007-1 (a) and (b). The Chapter 13 Trustee did not file an objection to American General's claim.

## II

A proof of claim filed in accordance with the Bankruptcy Rules is considered "prima facie evidence of the validity and amount of the claim." FED. R. BANKR. P. 3001(f). Under § 502(a), a claim for which a proof of claim has been filed is deemed allowed unless a party in interest objects. 11 U.S.C.A. § 502(a) (West 1993).<sup>4</sup> In obtaining confirmation of a plan, the Bankruptcy Code provides debtors with the following three options for dealing with allowed secured claims: (1) obtain acceptance of the plan from the secured creditor; (2) "cramdown" the creditor's claim; or (3) surrender the collateral securing the creditor's claim. *See* 11 U.S.C.A. § 1325(a)(5); *In re McCommons*, 288 B.R. 594, 596 (Bankr. M.D. Ga. 2002) (citing *Assocs. Commercial Corp. v. Rash*, 117 S. Ct. 1879 (1997)).

In this case, the Debtors' plan provides for surrender of the Collateral in full satisfaction of American General's claim. "Surrender of collateral to a secured creditor is the indubitable equivalent of payment of the secured claim." *In re Hernandez*, 282 B.R. 200, 207 (Bankr. S.D. Tex. 2002). Additionally, "[s]urrender 'in full satisfaction of' [a debt] refers to the satisfaction of the entire debt, and would extinguish any resulting deficiency." *In re Basham*, 167 B.R. 903, 904 (Bankr. W.D. Mo. 1994) (citing *In re Rincon*, 133 B.R. 594, 596 n.5 (Bankr. N.D. Tex.

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<sup>4</sup> Under 11 U.S.C.A. § 502(b) (West 1993 & Supp. 2003), the court may disallow an objected-to claim, after notice and a hearing. Rule 3007, entitled "Objections to Claims," provides that

An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

FED. R. BANKR. P. 3007.

1991)). Here, there could be no deficiency because American General is, by its own admission, over-secured.

American General's exception to the Order Disallowing Claim is well-taken, although for reasons other than those espoused in its Exception to Disallowance of Claim.<sup>5</sup> The claim should not have been disallowed because it had already been satisfied in full. American General did not object to the Debtors' Chapter 13 Plan, and it is bound thereby under 11 U.S.C.A. § 1327(a) (West 1993).<sup>6</sup> It accepted the Debtors' surrender of the Collateral, and it entered into the Agreed Order Granting Relief from the Automatic Stay and Abandoning Property. American General valued the Collateral at \$20,899.00, while the outstanding balance owed it by the Debtors at the time of their bankruptcy filing was \$17,810.99. Accordingly, American General was over-secured in the amount of \$3,088.01. American General has received satisfaction of its fully secured claim. *See* 11 U.S.C.A. § 506 (West 1993). The disallowance of American General's claim after it had been fully satisfied was inappropriate and inconsistent as American General had already received the full amount of its claim as provided in the Debtors' confirmed plan.

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<sup>5</sup> Although not specifically referenced, the court will consider American General's exception as a motion to reconsider the disallowance of its claim pursuant to § 502(j). *See* 11 U.S.C.A. § 502(j) (West 1993) and FED. R. BANKR. P. 3008.

<sup>6</sup> Section 1327(a) provides that "[t]he 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." 11 U.S.C.A. § 1327(a). "[A] creditor who fails to object to a Chapter 13 plan is deemed to have accepted it." *Basham*, 167 B.R. at 904.

Consistent with this Memorandum, the court will enter an order vacating the Order Disallowing Claim Per Confirmed Plan entered on July 16, 2003.

FILED: September 22, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 03-31173

JERRY WAYNE HICKMAN  
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Debtors

**ORDER**

For the reasons stated in the Memorandum on Exception to Disallowance of Claim filed this date, the court directs the following:

1. The Exception to Disallowance of Claim filed by American General Finance on August 4, 2003, is SUSTAINED.
2. The Order Disallowing Claim Per Confirmed Plan entered on July 16, 2003, disallowing American General's secured claim, is VACATED, because the claim of American General Finance had already been fully satisfied pursuant to the terms of the Debtors' Chapter 13 Plan confirmed on June 9, 2003.

SO ORDERED.

ENTER: September 22, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE