

IT IS SO ORDERED.

Dated: May 10, 2013
01:41:27 PM



Kay Woods
 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

TERRY JAMES BIXLER,

Debtor.

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* CASE NUMBER 07-40221
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* CHAPTER 13
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* HONORABLE KAY WOODS
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ORDER (i) FINDING CITIFINANCIAL IN CONTEMPT; AND
(ii) IMPOSING SANCTIONS, INCLUDING \$1,000.00 PER DAY UNTIL THE
VEHICLE'S TITLE IS TURNED OVER TO DEBTOR'S COUNSEL

This cause is before the Court on Order to Appear and Show Cause ("Show Cause Order") (Doc. # 68) entered by this Court on April 19, 2013. The Show Cause Order directed CitiFinancial, through its authorized or designated representative, to appear before this Court on May 9, 2013 ("Show Cause Hearing"), and show cause (i) why it should not be found to have violated the discharge injunction in 11 U.S.C. § 1328 by failing to turn over title to the Debtor's 1991 Nissan Stanza ("Vehicle"); and

(ii) why the Debtor should not be entitled to sanctions for CitiFinancial's alleged violation of the discharge injunction.

By way of background, on February 5, 2007, Debtor Terry James Bixler filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code. On that same date, the Debtor filed his chapter 13 plan ("Plan") (Doc. # 2), which provided, "CITIFINANCIAL, on the 1991 Nissan Stanza, shall be paid in the plan at 100% of the secured value at 9.25% interest or contract rate, whichever is lower and the balance to be paid as a general unsecured claim." (Plan ¶ 2 C.) The Plan provided for allowed unsecured claims to be paid a 10% dividend (*id.* ¶ 4) and stated, "Any creditor who has the secured value of their allowed claim paid shall immediately issue a release of any title or security agreement to the debtor; this obligation shall be placed upon the creditor even if the unsecured portion of the claim is not yet paid." (*Id.* ¶ 12.) CitiFinancial did not object to confirmation of the Plan. The Plan was confirmed upon entry of Order Confirming Plan ("Confirmation Order") (Doc. # 17) on March 23, 2007.

On November 9, 2007, the Debtor filed an objection to CitiFinancial's proof of claim (Doc. # 29), which claim was denominated Claim No. 8. The Debtor requested that Claim No. 8 be allowed as secured in the amount of \$850.00, as opposed to the secured amount of \$2,450.00 asserted by CitiFinancial.

CitiFinancial did not oppose the Debtor's objection to Claim No. 8. On December 11, 2007, the Court sustained the Debtor's objection to Claim No. 8 and ordered that Claim No. 8 be paid as a secured claim in the amount of \$850.00 and an unsecured claim in the amount of \$10,439.44 (Doc. # 31).

On September 19, 2011, Michael A. Gallo, Standing Chapter 13 Trustee ("Trustee"), filed Notice of Completion of Plan Payments and Request for Discharge ("Notice") (Doc. # 59), in which the Trustee reported that the Debtor "completed all payments provided for under the Plan submitted and confirmed by this Court." (Notice at 1.) The Debtor received a discharge on that same date (Doc. # 60). On November 16, 2011, the Trustee filed Chapter 13 Standing Trustee's Final Report and Account (Doc. # 62), which indicated that CitiFinancial's allowed secured claim in the amount of \$850.00 was paid in full and CitiFinancial's allowed unsecured claim in the amount of \$10,439.44 was paid in the amount of \$1,043.94 - *i.e.*, at a rate of 10%.

The Debtor's case was closed on November 16, 2011, and reopened, upon motion of the Debtor, on April 10, 2013. After his case was reopened, the Debtor filed Motion for an Order to Show Cause for Violating 11 USC § 1328 ("Show Cause Motion") (Doc. # 66). The Debtor requested an order directing CitiFinancial to appear before this Court and show cause why it

should not be found to have violated the discharge injunction in § 1328 by failing to turn over title to the Vehicle. The Debtor also sought sanctions against CitiFinancial based upon its alleged conduct. In particular, the Debtor alleged the following:

1. On August 31, 2012, a letter was sent to CitiFinancial asking for release of the title to the Vehicle.
2. On November 29, 2012, Robert A. Ciotola, counsel for the Debtor, telephoned the local CitiFinancial office to ask for release of the title to the Vehicle.
3. On November 29, 2012, Mr. Ciotola again telephoned the bankruptcy department at CitiFinancial to ask for release of the title to the Vehicle.
4. On January 10, 2013, Mr. Ciotola sent a certified letter to CitiFinancial asking for release of the title to the Vehicle.
5. CitiFinancial has not released the title to the Vehicle.

(Show Cause Mot. ¶¶ 4-8.) The Certificate of Service attached to the Show Cause Motion indicated that it was sent by regular mail to "CitiFinancial, Bankruptcy Department-3-90, 6400 Las Colinas Blvd. Center, Irving, TX 75039." (*Id.* at 2.) Based upon the allegations in the Show Cause Motion, the Court issued

the Show Cause Order, which was sent by first class mail to CitiFinancial at the above-referenced address.

The Court held the Show Cause Hearing on May 9, 2013, at which Mr. Ciotola appeared on behalf of the Debtor. A representative of CitiFinancial did not appear. As a consequence, the Court telephonically contacted the bankruptcy department of CitiFinancial at 800-401-9836.¹ The Court advised the representative of CitiFinancial who answered the call that the Court was currently in session and a representative of CitiFinancial had failed to appear in contravention of the Show Cause Order. The Court asked to speak with a member of CitiFinancial's law department, but was repeatedly placed on hold and advised that a member of the law department could not be reached. The Court first spoke to a representative of CitiFinancial of 10:43 a.m. and was still on hold at 10:55 a.m., at which time the Court terminated the call.

Mr. Ciotola represented to the Court that he had placed fourteen to eighteen calls to CitiFinancial, but was unable to speak with a representative who could and/or would address the issue presently before the Court - *i.e.*, turnover of title to the Debtor's Vehicle. On one occasion, Mr. Ciotola was advised by a representative of CitiFinancial that a balance was due on

¹ This telephone number was provided to the Court by Mr. Ciotola. The person who answered the call identified herself as a representative of CitiFinancial's bankruptcy department.

the Vehicle loan, which is Account No. 2009 0903733351. In addition, the Debtor went to CitiFinancial's local office and requested turnover of title to the Vehicle, but was unsuccessful. Mr. Ciotola advised the Court that he had expended more than eight hours seeking turnover of the Vehicle's title and that his hourly rate is \$200.00.

Based upon the representations of the Debtor in the Show Cause Motion and Mr. Ciotola at the Show Cause Hearing, this Court finds that CitiFinancial has willfully violated the discharge injunction in 11 U.S.C. § 1328 by failing or refusing to turn over title to the Debtor's Vehicle, which conduct has prevented the Debtor from realizing the protections afforded by the Bankruptcy Code.² Pursuant to the Debtor's Plan and this Court's Confirmation Order, CitiFinancial was required to turn over title to the Vehicle upon payment of its allowed secured claim. On September 19, 2011, the Trustee filed the Notice, which expressly stated that the Debtor had completed all payments required by the confirmed Plan. Thereafter, the Debtor received a discharge. Thus, CitiFinancial has acted in contravention of the Plan, Confirmation Order and discharge injunction for more than one and one-half years. Moreover, the Debtor represented in the Show Cause Motion that CitiFinancial

² The Court notes that it previously found CitiFinancial in contempt of court for willfully violating the discharge injunction in § 1328 by failing to turn over title to a debtor's vehicle in *In re Martin*, Case No. 02-44573, Doc. # 43 (Nov. 6, 2008).

was requested to turn over title to the Vehicle beginning on August 31, 2012, which was more than eight months ago. CitiFinancial has shown a blatant disregard for the Bankruptcy Code and this Court's orders - *i.e.*, the Confirmation Order and the Show Cause Order.

For the reasons set forth above, the Court hereby finds that CitiFinancial has willfully violated the discharge injunction in 11 U.S.C. § 1328. The Court finds CitiFinancial in contempt of court based upon its willful violation of the discharge injunction and its failure to appear at the Show Cause Hearing. As a consequence, the Court hereby orders CitiFinancial to pay (i) Robert A. Ciotola, Esq. 4590 Boardman Canfield Rd., Canfield, OH 44406, attorney fees in the amount of \$2,000.00; and (ii) Debtor Terry James Bixler damages in the amount of \$1,000.00, which are to be delivered to Mr. Ciotola at Mr. Ciotola's above-referenced address, within fourteen (14) days after entry of this Order. Failure to pay either Mr. Ciotola's attorney fees or Mr. Bixler's damages within fourteen (14) days after entry of this Order may result in further sanctions.

Furthermore, the Court hereby directs CitiFinancial to immediately turn over to Mr. Ciotola, 4590 Boardman Canfield Rd., Canfield, OH 44406, title to the Debtor's Vehicle. Beginning May 13, 2013, CitiFinancial will be fined \$1,000.00

each day until title to the Debtor's Vehicle is turned over to Mr. Ciotola. The fine, if any, will be payable to the Clerk of Court for the United States Bankruptcy Court for the Northern District of Ohio.

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