UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 12-12680
	)	
JEFFREY S. BILFIELD and	)	Chapter 7
JANET M. BILFIELD,	)	
	)	
Debtors.	)	Chief Judge Pat E. Morgenstern-Clarren
	)	
	)	**MEMORANDUM OF OPINION**
	)	**AND ORDER**

On August 13 and 14, 2013, the court held an evidentiary hearing on two matters:

1. Motion of Bankers Healthcare Group, Inc. for relief from stay and abandonment;[1] and

2. The debtors' objection to Bankers Healthcare's claim, and request for sanctions under Bankruptcy Rule 3001(c)(2)(D) and Bankruptcy Rule 9011.[2]

For the reasons stated below, Bankers Healthcare's motion is granted in part as to abandonment and denied as moot as to relief from stay. The debtors' objection to claim is overruled as moot, their request for Bankruptcy Rule 3001 sanctions is denied as moot, and their request for Bankruptcy Rule 9011 sanctions is denied.

JURISDICTION

This court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 2012-7 entered by the United States District Court for the Northern District of Ohio on April 4, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B) and (G), and it is within the court's

[1] Docket 58.

[2] Docket 63.

constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011).

OVERVIEW

In 2009, the debtor Dr. Jeffrey Bilfield borrowed money from Bankers Healthcare for use in his dental practice. While he and his wife debtor Janet Bilfield thought that he was obtaining an unsecured loan, he signed a Financing Agreement that included a note, a security interest, and a guarantee. After defaulting under the note in 2012, he and Janet filed for protection under chapter 7 of the Bankruptcy Code and scheduled the debt as unsecured. Bankers Healthcare tried three times to collect the debt outside of the bankruptcy court after the debtors filed their case.

On July 13, 2012, Bankers Healthcare brought an adversary proceeding against the debtors in which it sought to have the debt declared nondischargeable based on fraud and also asked that both debtors be denied a discharge. The court entered judgment in favor of the Bilfields on those counts,[3] as well as on the debtors' counterclaim for violating the automatic stay.[4]

In the meantime, the dispute continued on two other fronts. First, Bankers Healthcare moved for relief from stay, seeking to proceed in state court to foreclose the lien interest on equipment that it claims under the Financing Agreement. The equipment includes one dental chair purchased about 30 years ago, two dental chairs that are older than 30 years, an X-ray

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[3] *Bankers Healthcare Group, Inc. v. Bilfield (In re Bilfield)*, 493 B.R. 748 (Bankr. N.D. Ohio 2013).

[4] *Bankers Healthcare Group, Inc. v. Bilfield (In re Bilfield)*, 494 B.R. 292 (Bankr. N.D. Ohio 2013).

machine, a desk, and some miscellaneous chairs. The debtors obtained an appraisal before they filed their case that values the equipment at about $4,000.00.

Second, the debtors objected to the secured claim filed by Bankers Healthcare. Bankers Healthcare amended the claim two weeks later to address the deficiencies alleged in the objection.

The court consolidated the objection and the motion for an evidentiary hearing because they have some common questions of fact and issues of law.

THE EVIDENTIARY HEARING

The debtors presented their case through their testimony, cross-examination of Kristian Vartabedian (Collections Manager for Bankers Healthcare), and exhibits. Bankers Healthcare presented its case through the testimony of Mr. Vartabedian and the debtors, together with exhibits.

The findings of fact made below are based on that evidence and reflect the court's weighing of the evidence presented, including determining the credibility of the witnesses. "In doing so, the Court considered the witness's demeanor, the substance of the testimony, and the context in which the statements were made, recognizing that a transcript does not convey tone, attitude, body language or nuance of expression." *In re The V Companies*, 274 B.R. 721, 726 (Bankr. N.D. Ohio 2002). *See* FED. R. BANKR. P. 7052 (incorporating FED. R. CIV. P. 52).

FACTS[5]

A. The Dental Practice

In 1984, after Jeffrey graduated from the University of Michigan and Case Western Reserve University School of Dentistry, he joined his father's dental practice. In the years leading up to this dispute, Jeffrey and Janet were the sole employees. Janet ran the practice with responsibility for scheduling, billing, financing, and all other office administrative functions. The practice experienced financial difficulty starting in 2001 after Jeffrey was diagnosed with a serious illness.

B. The First Communication from Bankers Healthcare to Jeffrey

Bankers Healthcare originates about 1,500 loans a year to physicians, dentists, and veterinarians. By letter dated November 20, 2009, Bankers Healthcare sent these materials to Jeffrey Bilfield:

a. A cover letter that read:

> **Congratulations! You have been pre-selected for a Bankers Healthcare Group Inc. Working Capital Loan for ONE HUNDRED THOUSAND DOLLARS ($100,000.00)!**
>
> You should know that this status is not easily achieved. However, with your excellent professional Medical record as a dentist, our decision was very simple - we want you as a life long client. Becoming a client is virtually as easy as signing your name. We won't trouble you with a lengthy application. Simply complete one of the engagement options listed below and all the benefits of being a Bankers Healthcare Group client will be yours.
>
> What are the benefits of being a Bankers Healthcare Group client? First and foremost, you will have the comfort and flexibility of having working capital funds at your disposal! In spite of today's credit crisis, BHG is still actively

[5] Despite the determination that some matters are moot, these findings are made to aid in the resolution of the debtors' pending motion for sanctions for vexatious litigation. *See Bankers Healthcare Group, Inc. v. Bilfield*, Adv. No. 12-1208, docket 69.

lending. As a well managed, privately held equity firm, we are not subject to the banking and credit issues that have haunted healthcare professionals and caused a severe lack of available funds.

Being a Bankers Healthcare Group client also entitles you to a flexible payment schedule. Right now Bankers Healthcare Group is offering you a competitive fixed payment plan to make achieving your cash flow goals that much easier. Pay only $2,070.00 per month for 84 months.

We know that your time is limited so we have made it as simple as 1-2-3! What could be easier? BHG provides approval decisions within 48 hours and can have your cash in hand within five (5) business days!

- Call us today at 866-280-5086
- Login to your personalized website: [omitted]
- Complete the Confirmation of Receipt on page 5 and fax it to (954) 323-0100

Congratulations on reaching this very special milestone. I look forward to welcoming you as a client with great anticipation.

Sincerely,
/s/ Bob Castro
President
Bankers Healthcare Group, Inc.

Your Personalized Website:
[omitted]

P.S. We can only hold your status for a limited time, so call NOW 866-280-5086 or fax Confirmation of Receipt to (954) 323-0100.

(emphasis in the original)

At the bottom of the second page, in print significantly smaller than anything else on the page, the letter states: "All applicants require further consideration and additional information may be required. Credit is subject to approval. BHG credit standards apply. BHG reserves the right to withdraw or modify this offer based on BHG's determination of this borrower's creditworthiness."

b. A Pre-Selected Confirmation Statement

The statement says that the available loan amount is "$100,000.00 (unsecured)" payable over 84 months with no collateral. Other relevant parts say: "Contingency Requirements: copy of valid Dental license; valid driver's license; proof of content insurance. Others may apply." Farther down, the document says that the amount of financing available is "Up to $150,000.00, of which up to $100,000.00 can be taken as an unsecured working capital loan" and as to collateral, "None. 1st lien position not required." Under Restrictions on Use, it says "NONE as long as funds are used for business related purposes." The second page has questions and answers, including:

> Q. **How much money do I qualify for?**
> A. Based on our information, Bankers Healthcare Group, Inc. is willing to offer you up to $100,000.00 as an unsecured commercial loan.

(Emphasis in original).

The offer interested the Bilfields, and so Janet had the documents reviewed by their certified public accountant. The accountant advised them to make sure that they borrowed no more than $100,000.00 so that the loan would be unsecured.

Jeffrey filled out the "Confirmation of Receipt" and Janet faxed it to Bankers Healthcare.

C. The Signed Loan Documents

On December 10, 2009, Jeffrey signed a Financing Agreement (Sole Proprietorship) Promissory Note/Security Agreement/Personal Guaranty as both the borrower and the guarantor. Although there are spaces for a witness signature, and a scribble appears above those spaces, no one actually witnessed Jeffrey's signature. Jeffrey also initialed the document next to these three sentences:

I have read and understand that I am executing a promissory note.

I have read and understand that I am executing a security agreement.

I have read and understand the applicable law, jurisdiction, venue and waivers.

The note states that Jeffrey promised to pay Bankers Healthcare $150,122.28 in 84 payments of $1,787.17 each, which "represents the total of payments of principal plus interest due and which will become due hereunder from the date of this Agreement until the maturity date of this Agreement." There is no interest rate stated in the note.

The note states after the caption "Security Interest" that Jeffrey gave Bankers Healthcare a security interest in equipment, among other categories. Despite the written statements about the loan being secured, Jeffrey and Janet both thought the loan was unsecured based on the early communications with Bankers Healthcare.

D. Financial Information Provided by Jeffrey to Bankers Healthcare

On December 15, 2009, Jeffrey filled out a short Personal Financial Statement provided by Bankers Healthcare.[6] In it, he listed the value of his practice at $200,000.00 and the value of the practice equipment at $100,000.00. That same day, Jeffrey signed a document titled Verbal Confirmation Form which stated among other things that he had signed a note for a loan that would be repaid at $1,787.17 a month for 84 months. There is no evidence in the record as to what, if anything, Bankers Healthcare did with this financial information.

[6] Bankers Healthcare Exh. 18.

E. The Loan Disbursement

On December 21, 2009, Bankers Healthcare countersigned the Financing Agreement and disbursed $79,952.39 to Jeffrey to fully fund the loan. The Bilfields used the money primarily for business purposes, including paying a large credit card balance, lab fees, and vendors.

F. The UCC Filings and the Sale of the Loan to Interbank

On December 15, 2009, Bankers Healthcare filed a UCC Financing Statement with the Ohio Secretary of State covering equipment and other collateral.

On December 30, 2009, Bankers Healthcare sold the loan to Interbank.

On January 4, 2010, Bankers Healthcare filed an amendment to the UCC Financing Statement listing a change in the debtor's name to add a middle initial.

On January 20, 2010, Bankers Health again amended the filing to identify Interbank as the secured party by assignment.

G. The Loan Default and Bankruptcy Filing

Jeffrey defaulted under the loan in about February 2012. A few months later, the Bilfields filed their chapter 7 case. Jeffrey scheduled Bankers Healthcare as having an undisputed, liquidated, non-contingent unsecured claim in the amount of $80,000.00. The debtors also valued the assets in Jeffrey's dental practice at $4,118.00 based on a recently-obtained certified appraisal and claimed that amount as exempt under Ohio Revised Code § 2329.66(A)(5).

H. Proofs of Claim Filed by Bankers Healthcare

On August 7, 2012, Bankers Healthcare filed claim 6, asserting a secured claim in the amount of $70,435.03 plus fees and costs. These documents are attached:

(1) The Financing Agreement/Note;

(2) A typed payment history on Bankers Healthcare stationery;

(3) UCC-1 filed December 15, 2009; and

(4) UCC-1 filed January 4, 2010.

When Bankers Healthcare filed claim 6, it did not own the note signed by Jeffrey and it did not have a security interest in the dental equipment.

On October 19, 2012, Bankers Healthcare repurchased the defaulted loan from Interbank.

On April 29, 2013, Bankers Healthcare amended claim 6, attaching these documents:

(1) Financing Agreement;

(2) UCC-1 filed December 15, 2009;

(3) Individual Reserve Agreement dated December 30, 2009, between Bankers Healthcare and Interbank;

(4) UCC-1 filed on January 4, 2010; and

(5) UCC-1 filed January 20, 2010.

At that time, Bankers Healthcare owned the note and had a perfected security interest in the dental equipment.

THE POSITIONS OF THE PARTIES

A. The Debtors' Objection to the Proof of Claim

The debtors ask that the proof of claim be disallowed and that Bankers Healthcare be sanctioned under Bankruptcy Rule 3001(c)(2)(D) for making a false filing and for fraud because Bankers Healthcare did not own the note or have a security interest in the equipment when it filed the original claim. They also ask, as a sanction, that Bankers Healthcare be prohibited from introducing evidence that it now owns the note and has a security interest in the equipment.

Bankers Healthcare argues that it is entitled to a presumption that its proof of claim is valid based on its *amended* filing. It contends that the debtors did not rebut that presumption.

B. The Motion for Relief from Stay and Abandonment

Bankers Healthcare moves for relief from stay and abandonment so that it can proceed in state court to obtain possession of the equipment, liquidate it, and apply the proceeds to its secured debt. It contends that the Financing Agreement created a security interest in the equipment, that it is not adequately protected, and that it should be permitted to foreclose on that interest. Also, it alleges that cause exists to lift the stay.

The debtors respond that Bankers Healthcare is not a secured creditor because it fraudulently induced Jeffrey to enter into the Financing Agreement by advertising the loan as unsecured and then instead sending him a contract that, in small print, created a secured loan. The consequence, according to the debtors, is that the security provision should be unenforceable for that reason or because the contract reflects a mutual mistake of fact.[7] They also argue that even if the loan is secured, the balance of the equities favors letting Jeffrey keep the equipment and continue to practice because the equipment is worth so little to Bankers Healthcare.

ADDITIONAL PROCEDURAL INFORMATION

A. The Trustee's No Asset Report

On May 22, 2012, the chapter 7 trustee, believing that there would be assets to distribute, notified creditors to file proofs of claim by August 30, 2012.[8] On July 9, 2012–having reached a different conclusion–the trustee filed his report that the estate had been fully administered, all

[7] The debtors did not cite any law to support the mutual mistake argument.

[8] Docket 19.

scheduled assets were abandoned, and there would be no distribution to creditors.[9] After that, but within the bar date, Bankers Healthcare filed its proof of claim. And despite the no asset report, the debtors objected to the claim more than a year later. Neither side addressed the consequences of this no asset report on the claim objection.

B. The Debtors' Discharge

Additionally, after the court took this most recent dispute under submission, the debtors received their discharge.[10] Ordinarily, the debtors would have received a discharge several months earlier. The discharge could not, however, be granted until the appeal time ran on the final judgment in the adversary proceeding case challenging whether the debtors were entitled to a discharge.[11] Because of the timing, neither side addressed the impact that the discharge has on the motion for relief from stay.

DISCUSSION

A. Abandonment

Bankers Healthcare requests that the trustee be ordered to abandon the equipment to it. Bankruptcy Code § 554 provides that the court may order the chapter 7 trustee to abandon estate property "that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b). However, as a general rule, abandonment of property under §554 serves to remove property from the estate and return it to the debtor, rather than to a third party such as a creditor. *See In re Renaissance Stone Works, L.L.C.*, 373 B.R. 817, 819-21 (Bankr. E.D. Mich. 2007); *see also Auday v. Wet Seal Retail, Inc.*, 698 F.3d 902, 905 (6th Cir. 2012)

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[9] Docket 49.

[10] Docket 84.

[11] Adv. Pro. 12-1208, docket 85,

(noting that the chapter 7 trustee could have abandoned a claim for age discrimination and that doing so would have returned it to the debtor).

In this case, the chapter 7 trustee did not oppose the abandonment request and also filed a no asset report, which will effectively abandon the equipment when the case is closed. *See* 11 U.S.C. § 554(c); FED. R. BANKR. P. 5009(a). These two facts establish that the equipment is of little benefit to the estate.

Although the debtors object to the request for abandonment, their objection and briefs do not state a legal or factual basis for their opposition. Moreover, the debtors' own appraisal of the equipment shows that it has little value to the estate. Consequently, abandonment is appropriate. Such abandonment, however, will return the property to Jeffrey, the party with the possessory interest in the equipment, rather than to Bankers Healthcare. The motion for abandonment is, therefore, granted in part.

B. Mootness

United States Courts are courts of limited jurisdiction. This limitation flows from Article III of the United States Constitution which empowers federal courts to hear cases and controversies. U.S. Const. art. III, § 2, cl.1. The requirement that there be a case or controversy is "a cradle-to-grave requirement that must be met in order to file a claim in federal court and that must be met in order to keep it there." *Fialka-Feldman v. Oakland Univ. Bd. of Trs.*, 639 F.3d 711, 713 (6th Cir. 2011). Mootness is a subset of this justiciability requirement which "demands a live case-or-controversy when a federal court decides a case." *Bench Billboard Co. v. City of Cincinnati*, 675 F.3d 974, 981 (6th Cir. 2012) (citation and internal quotation marks omitted). "A case becomes moot when the issues presented are no longer live or parties lack a legally cognizable interest in the outcome." *United States v. City of Detroit*, 401 F.3d 448, 450

(6th Cir. 2005) (internal quotation marks and citation omitted). The question is whether the relief requested, if granted, would "make a difference to the legal interests of the parties[.]" *Id.* at 450-51 (internal quotation marks and citation omitted). This requirement applies equally to bankruptcy courts. *Cassim v. Educ. Credit Mgmt. Corp. (In re Cassim)*, 594 F.3d 432, 437 (6th Cir. 2010). To stay within these parameters, this court has a "continuing duty to ensure that it adjudicates only genuine disputes between adverse parties, where the relief requested would have a real impact on the legal interests of those parties." *Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 584 (6th Cir. 2006).

Based on events in the debtors' chapter 7 case and for the reasons discussed below, the court concludes that the remaining matters before it are now moot.

1. Relief from Stay

When the debtors filed their petition, Bankruptcy Code § 362 (a) created an automatic stay. *See* 11 U.S.C. § 362(a). The stay is not indefinite. As to acts against property of the estate, the stay continues only until the property is no longer property of the estate. 11 U.S.C. § 362(c)(1). Otherwise, in an individual's chapter 7 case, the stay as to acts against the debtor or the debtor's property only continues until the earlier of case closing, case dismissal, or the granting or denying of the debtor's discharge. 11 U.S.C. § 362(c)(2).

Bankers Healthcare seeks relief from the stay to allow it to proceed in state court to obtain the equipment, liquidate it, and apply the proceeds to its debt. However, in the time this matter has been pending, the debtors received their discharges, which effectively terminated the stay as to any actions against them under § 362(c)(2). Additionally, as discussed above, the equipment has now been removed from the estate through abandonment, which effectively terminated the stay as to actions against the property under § 362(c)(1).

As the stay is no longer in effect, the request for relief from stay no longer presents a live controversy for this court and is denied as moot.

2. <u>The Objection to Claim</u>

The debtors object to Bankers Healthcare's proof of claim. In a chapter 7 case the purpose of a proof of claim is to allow a creditor to assert a right to participate in a distribution of assets of the estate. "In no-asset chapter 7 liquidation cases, the filing of a proof of claim serves no practical purpose since there will be no distribution from the estate in which to participate." 4 Collier on Bankruptcy, 501.01[3][b] (16th ed.); *see also* FED. R. BANKR. P. 2002(e) (providing for a notice in a chapter 7 case that there are no assets to pay a dividend and that it is unnecessary to file claims); FED. R. BANKR. P. 3002(c)(5) (providing for a notice to file claims when it later appears that a dividend is possible). The chapter 7 trustee in this case initially believed that there would be a distribution and gave notice to creditors to file claims. His later report establishes that there are no assets to distribute. As a result, the debtors' objection to Bankers Healthcare's claim does not present a live controversy and is overruled as moot. *See In re Morris*, 430 B.R. 824, 830 (Bankr. W.D. Tenn. 2010) (noting that the only purpose of a proof of claim in a chapter 7 case is to permit the creditor to assert a right to participate in the distribution of assets); *In re Fajardo*, No. 7-06-11239, 2009 WL 2913219 at *2 (Bankr. D. N.M. Apr. 15, 2009) (denying a claim objection as moot because no distribution could be made); *Telmark, LLC v. Booher (In re Booher)*, 284 B.R. 191, 217 (Bankr. W.D. Pa. 2002) (dismissing debtor's objection to claim as moot in a no-asset chapter 7 case because there was no need to liquidate the claim after determining that it was dischargeable).

The debtors also asked in their objection that the court impose two kinds of sanctions: an evidentiary sanction under Bankruptcy Rule 3001(c)(2)(D) and sanctions under Bankruptcy Rule

9011. *See* FED. R. BANKR. P. 3001(c)(2)(D); and FED. R. BANKR. P. 9011.[12] The request under Rule 3001 is moot based on the court's findings and resolution of these matters and is, therefore, denied. The request for Rule 9011 sanctions is also denied, but for a different reason. Rule 9011 requires that a request be made separately from other motions or requests. FED. R. BANKR. P. 9011(c)(1). The debtors did not comply with that procedure.

CONCLUSION

For the reasons stated, Bankers Healthcare's motion for relief from stay and abandonment is granted, in part, as to abandonment with the motion to lift the stay denied as moot. The debtors' objection to Bankers Healthcare's proof of claim is overruled as moot, their request for sanctions under Bankruptcy Rule 3001 is denied as moot, and their request for Bankruptcy Rule 9011 sanctions is denied.

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge

[12] Although the debtors suggested in their brief that they should be awarded fees, they did not make that request in the objection and the court will not consider it.