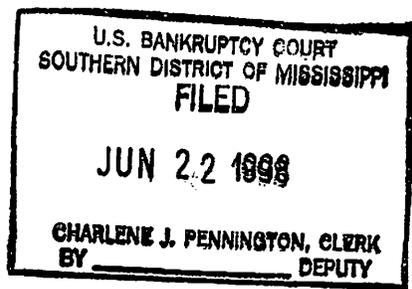


IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI



IN RE:
PAMELA M. LOWE

CHAPTER 7
BANKRUPTCY CASE NO. 9705120

SUNSTAR ACCEPTANCE CORPORATION

VS.

ADVERSARY NO. 9700215

PAMELA M. LOWE

Honorable Stephen E. Gardner
P.O. 23059
Jackson, MS 39225-3059

Attorney for Sunstar Acceptance Corporation

Honorable Jimmie D. Marshall
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Attorney for Debtor

Honorable Frank Youngblood
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Chapter 7 Trustee

MEMORANDUM OPINION

Before the Court for its consideration is the *Motion for Summary Judgment* of Sunstar Acceptance Corporation ("Sunstar") in which Sunstar seeks a determination from this Court that it is entitled to certain insurance proceeds held by the Debtor. After considering the motion, the itemization of undisputed facts, the memorandum brief in support of the motion, and the other pleadings filed in this adversary proceeding, the Court holds that the *Motion for Summary Judgment* is well taken and should be granted. In so holding, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On or about November, 14, 1995, the Debtor purchased an automobile and financed her purchase with Sunstar. Sunstar's loan was secured by the automobile, which was involved in an accident on August 13, 1996, rendering the vehicle a total loss.

After the accident, Sunstar initiated an action against the Debtor in the County Court of Hinds County, Mississippi, on its contract and received a Final Summary Judgment against her in the amount of \$18,900.69. Sunstar then sought to garnish the Debtor's wages to collect on its judgment. Prior to the Debtor's bankruptcy filing, Sunstar received \$1,577.94 as a result of the wage garnishment.

The subject automobile was insured with Integon General Insurance Corporation ("Integon"). The Debtor's attorney negotiated a settlement with Integon whereby Integon agree to pay \$11,200.00 for the loss of the vehicle. The Debtor's attorney then negotiated a settlement with Sunstar in May, 1997, in which Sunstar agreed to accept \$11,200.00 in satisfaction of the judgment it had against the Debtor. The settlement amount was then reduced by Integon by \$327.00, which represented storage costs for the vehicle. An insurance check in the amount of \$10,873.00 was then issued by Integon to the Debtor and made payable jointly to the Debtor, Sunstar, and the Debtor's attorney, Jimmie D. Marshall. Sunstar later agreed to accept the reduced amount in satisfaction of its judgment.

After the insurance check was issued, the Debtor refused to turnover the insurance proceeds unless Sunstar agreed to allow the Debtor to retain \$1000.00 from the settlement. Sunstar refused and the Debtor filed bankruptcy on September 24, 1997. Sunstar subsequently filed its *Amended*

Complaint to Compel Turnover of Funds, in which it argued that it was loss payee under the Integon insurance policy and was entitled to the insurance proceeds check.

CONCLUSIONS OF LAW

I.

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157. This is a core proceeding as defined by 28 U.S.C. 157(b)(2)(E) and (F).

II.

Rule 56 of the Federal Rules of Civil Procedure as made applicable by Rule 7056(e) of the Federal Rules of Bankruptcy Procedure provides that in order for a court to sustain a motion for summary judgment, the court must find that "[t]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See also Celotex Corp. v. Catrett, 477 U.S. 317, 322-34, 106 S.Ct. 2548, 2552-58, 91 L.Ed.2d 265 (1986). Additionally, the court must view the available evidence in the light most favorable to the nonmoving party. Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587-88, 106 S.Ct. 1348, 1356-57, 89 L.Ed.2d 538, 553 (1986). Although the Debtor denied most of the allegations contained in Sunstar's *Amended Complaint to Compel Turnover of Funds*, the Debtor failed to respond to the *Motion for Summary Judgment* of Sunstar or its *Memorandum Brief* which contained an itemization of undisputed facts.

The Court must first determine whether the insurance proceeds are property of the estate. Sunstar claims in its *Motion for Summary Judgment* that it is entitled to the insurance proceeds.

The overriding question when determining whether insurance proceeds are property of the estate is whether the debtor would have a right to receive and keep those proceeds when the insurer paid on a claim. When a payment by the insurer cannot inure to the debtor's pecuniary benefit, then that payment should neither enhance nor decrease the bankruptcy estate. In other words, when the debtor has no legally cognizable claim to the insurance proceeds, those proceeds are not property of the estate.

Houston v. Edgeworth (In re Edgeworth), 993 F.2d 51, 55-56 (5th Cir. 1993).

Insurance policies on vehicles are intended to protect the owner and the secured creditor in the event of destruction of the security (the vehicle). Ford Motor Credit Corp. v. Stevens (In re Stevens), 130 F.3d 1027, 1030 (11th Cir. 1997). The proceeds of such insurance policies act as a substitute for the insured collateral. Id. Thus, in the event of destruction of the vehicle, the proceeds are given to the insured and the secured creditor. However, when the amount of the secured claim is the same amount or exceeds the amount of the insurance proceeds, the owner of the vehicle has no claim to such proceeds. In re Edgeworth, 993 F.2d at 55-56.

Miss. Code Ann. § 75-9-203(3) also provides that a security agreement gives a secured party the right to proceeds provided by Miss. Code Ann. § 75-9-306. Section 75-9-306(1) provides in part:

Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement.

Id.

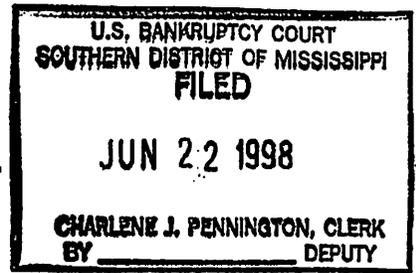
It is clear that Sunstar, as a secured party, had an interest in the insurance proceeds paid by Integon for the destroyed vehicle. Because Sunstar's secured lien exceeded the amount of the insurance proceeds, the Debtor has no legally cognizable claim to the proceeds. Based upon the foregoing, the Court finds that the insurance check issued by Integon represents insurance proceeds

to which Sunstar is entitled and which are not part of the bankruptcy estate. To the extent that the insurance proceeds check fails to satisfy the full amount of Sunstar's lien, this Court makes no adjudication as to Sunstar's remaining claim, if any. Accordingly, this Court finds that the *Motion for Summary Judgment* of Sunstar is well taken and should be granted. The Court declines to award attorneys fees to Sunstar as requested in its *Motion for Summary Judgment*.

A separate final judgment consistent with this opinion will be entered in accordance with Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

This the 22nd day of June, 1998.


UNITED STATES BANKRUPTCY JUDGE



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JUDGMENT

Consistent with the Court's opinion dated contemporaneously herewith, it is hereby ordered and adjudged that:

1. The *Motion for Summary Judgment* of Sunstar Acceptance Corporation is well taken and should be granted.

2. The Debtor, Pamela M. Lowe, and her attorney, Jimmie D. Marshall, shall endorse and turnover to Sunstar Acceptance Corporation, or its attorney, the insurance proceeds check issued by Integon General Insurance Corporation, no later than July 6, 1998.

3. This judgment is a final judgment for the purposes of Rules 7054 and 9021 of the Federal Rules of Bankruptcy Procedure.

SO ORDERED this the 22nd day of June, 1998.


UNITED STATES BANKRUPTCY JUDGE