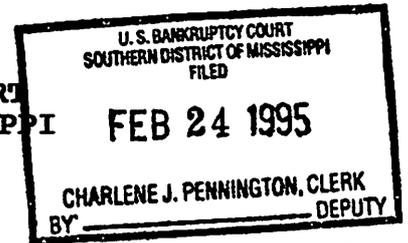


IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE: JIMMIE D. NICHOLS AND  
LINDA F. NICHOLS

CASE NO. 9103765JC

Jimmie D. & Linda F. Nichols  
2174 Highway 481 North  
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Pro Se

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Home Administration

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This case is before the Court on the *Motion to Object to Claim and to Vacate Order* filed by the Debtors, Jimmie D. Nichols and Linda F. Nichols. In their motion, the Nichols seek an order vacating this Court's April, 1993 order lifting the automatic stay as to the Farmers Home Administration. After notice to all parties and a hearing on the matter, and after being fully advised in the premises, this Court holds that the Debtors' motion is not well taken and should be denied. In so holding, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

In 1986, the Farmers and Merchants Bank foreclosed on a certain parcel of property owned by the Debtors on which the bank held a second lien position. The Farmers Home Administration was the holder of a first priority lien on the property.

In 1991, the Debtors commenced this case by filing their petition for relief under Chapter 13 of the Bankruptcy Code.<sup>1</sup>

In April of 1993, an order was entered in the Debtors' chapter 13 case granting relief from the automatic stay so that the Farmers Home Administration could have its lien satisfied by the Farmers and Merchants Bank. No appeal was taken from the order lifting the automatic stay.

In October of 1994, the Debtors filed the present motion to vacate the Court's April, 1993 order lifting the automatic stay. In support of their motion, the Debtors state that all claims held by the FmHA were extinguished by the Debtors' previous chapter 7 discharge entered in 1985, and that the FmHA had no right to file the motion for relief from the automatic stay in their present chapter 13 case.

At the close of the Debtors' presentation to the Court, the FmHA brought a motion, pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, for entry of a judgment as a matter of law dismissing the Debtors' motion. The Court declined to rule on the FmHA's 7052 motion at the hearing, but instead permitted the FmHA to present its evidence and arguments to the Court.

#### CONCLUSIONS OF LAW

The Debtors' motion seeks to vacate this Court's April, 1993 order granting relief from the automatic stay. While the

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<sup>1</sup> Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

Debtors do not state under which rule they are bringing their motion, the Court will treat the motion as a one seeking relief from a judgment or order brought pursuant to 9024 of the Federal Rules of Bankruptcy Procedure. With certain exceptions that do not apply to this case, Rule 9024 makes Rule 60 of the Federal Rules of Civil Procedure applicable to all cases under the Bankruptcy Code.

Rule 60 provides an avenue for relief from a judgment or order in certain limited circumstances, stating in pertinent part as follows:

**Rule 60. Relief from Judgment of Order.**

....  
**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence ...; (3) fraud ... misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.

The Debtors' motion to vacate the April, 1993 order was filed in October of 1994. Since the Debtors brought their motion to vacate order approximately eighteen months after entry of the order granting relief from the automatic stay, the Court may only

consider those reasons contained in subsections (4), (5), and (6) of Rule 60(b).

In support of their motion, the Debtors introduced into evidence a copy of a 1968 promissory note executed by Jimmie Nichols in favor of the Farmers Home Administration along with a document that appears to contain an account balance of approximately \$ 9,000. The Nichols also called David Usry, attorney for the FmHA, as a witness and asked him to identify the documents. Mr. Nichols also testified, stating that he could not find out from the FmHA how much money was owing on the 1968 promissory note. After presenting their evidence, the Nichols argued that the FmHA should not have filed anything in their chapter 13 bankruptcy since all claims of the FmHA were extinguished by their 1985 discharge entered pursuant to § 727 of the Bankruptcy Code.

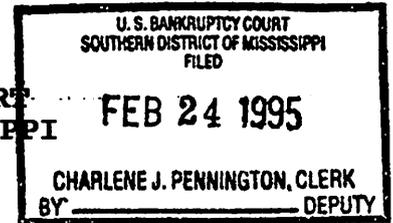
The Court finds that the Debtors have offered no evidence which would support any of the grounds contained in Rule 60(b)(4), (5), or (6) for granting relief from an order. Therefore, the Debtors are not entitled to an order vacating this Court's 1993 order lifting the automatic stay.

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

THIS the 24<sup>th</sup> day of February, 1995.

  
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE: JIMMIE D. NICHOLS AND  
LINDA F. NICHOLS

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FINAL JUDGMENT

Consistent with this Court's opinion dated contemporaneously herewith, it is hereby ordered and adjudged that the *Motion to Object to Claim and to Vacate Order* filed by the Debtors should be, and hereby is, denied.

SO ORDERED this the 24<sup>th</sup> day of February, 1995.

  
UNITED STATES BANKRUPTCY JUDGE