

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF MISSISSIPPI**

**IN RE:**

**CASE NO. 04-52929**

**HAROLD M. THIBODEAUX**

**CHAPTER 13**

**OPINION**

Before the court is the Motion to Dismiss filed by Robert R. Vance, as well as the Motion to Lift Stay filed by Robert R. Vance. Having considered the pleadings and memoranda submitted on these matters, the court concludes that motions should be denied.

**I. FACTUAL BACKGROUND**

1. On June 25, 2004, Harold Thibodeaux filed a petition for relief under Chapter 13 of Title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Mississippi.

2. Robert R. Vance (“Vance”), the owner of a judgment against the debtor in the principal amount of \$217,305.92, filed a motion to lift automatic stay in Thibodeaux’s bankruptcy proceeding seeking to proceed to trial with a matter pending in the Chancery Court of Hancock County, wherein Vance had filed a complaint alleging fraudulent transfer and requesting that a quitclaim deed in which Thibodeaux conveyed property in Hancock County to his wife be set aside.

3. Vance also filed a motion to dismiss Thibodeaux’s Chapter 13 proceeding claiming that Vance is the only creditor, that the debtor was not truthful on his schedules, that the debt is

arguably non-dischargeable in Chapter 7, that the bankruptcy was filed four days before a hearing on the fraudulent transfer action in state court, and that the debtor had other creditors not listed on the schedules. The debtor filed his response denying that Vance was entitled to the relief sought.

4. On April 15, 2005, an order was entered confirming the debtor's chapter 13 plan. The confirmed plan provided a 15% distribution to unsecured creditors with Vance's claim being treated as unsecured.<sup>1</sup>

5. On June 21, 2005, Vance filed a motion to set aside the order confirming the Chapter 13 plan that was opposed by the debtor and by the Chapter 13 trustee. An agreed order denying Vance's motion to set aside the order confirming the Chapter 13 plan was entered August 3, 2005.

6. The parties subsequently submitted briefs to the court on the motion to dismiss and on the motion to lift stay filed by Robert Vance.

## **II. CONCLUSIONS OF LAW**

The matter before the court is a core proceeding pursuant to 28 U.S.C. § 157. The court has jurisdiction over the subject matter and the parties to this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.

Vance asserts in his brief that under the plan Thibodeaux was to pay Vance 15% of the amount owed on the debt. Vance also points out that Thibodeaux claims that the issues of

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<sup>1</sup> The Chapter 13 trustee filed a motion to allow claims in December of 2004 with Vance's proof of claim attached indicating an unsecured claim for \$217,305. The order allowing claims was entered December 27, 2004.

dismissal and lifting the automatic stay are res judicata. Vance argues that his motions are still pending and that they should be heard, and that he has been denied due process of law.

As pointed out in the debtor's memorandum, there were numerous pleadings and opportunities in which Vance was notified of ongoing proceedings and as to the position of the debtor related to treatment of Vance's claim. The debtor listed Vance as a creditor, filed an objection to the claim, responded to the motions filed by Vance, and the parties met with the court for preliminary hearings on various matters. Vance filed his proof of claim as a general unsecured claim. Additionally, Vance filed a motion to set aside the confirmation order and subsequently entered into an agreed order denying the motion.

The court agrees with the arguments and authorities cited by the debtor and concludes that the creditor is bound by the terms of the debtor's confirmed plan and that the issues raised in the motion to dismiss and the motion for relief from stay are barred by res judicata, and the motions should be dismissed.

An order will be entered consistent with these findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58. This opinion shall constitute findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

**DATED THIS** the 21st day of November, 2006.

*/s/ Edward R. Gaines*  
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EDWARD R. GAINES  
UNITED STATES BANKRUPTCY JUDGE

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