SO ORDERED,

Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: April 27, 2022

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

KEVIN L. JONES **TENISIHIAI N. JONES,**	**CASE NO. 16-02188-JAW**
DEBTORS.	**CHAPTER 13**
KEVIN L. JONES AND TENISIHIAI N. JONES	**PLAINTIFFS**
VS.	**ADV. PROC. NO. 21-00006-JAW**
JC ENTERPRISES, LLC	**DEFENDANT**

MEMORANDUM OPINION AND ORDER
GRANTING MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on the Motion for Summary Judgment (the "Motion") (Adv. Dkt. #34)[1] filed by the defendant JC Enterprises, LLC (the "Defendant"), and the Defendant's Memorandum Brief in Support of its Motion for Summary Judgment (the "Brief") (Adv. Dkt. #35) filed by the Defendant in the Adversary. The Defendant attached five (5) exhibits to the Motion[2] (Adv. Dkt. #34-1), marked as Exhibits "A" through "E". The plaintiffs Kevin L. Jones and

[1] Citations to the record are as follows: (1) citations to docket entries in the above referenced adversary proceeding (the "Adversary") are cited as "(Adv. Dkt. #)"; and (2) citations to docket entries in the above-referenced bankruptcy case (the "Bankruptcy Case") are cited as "(Bankr. Dkt. #)".
[2] The Defendant's exhibits are cited as "(D. Ex. #)".

Tenisihiai N. Jones (the "Plaintiffs") did not file a response. The Plaintiffs are proceeding *pro se*, without the assistance of counsel.[3] After considering the Motion and related pleadings, the Court finds as follows:

Jurisdiction

The Court finds that it has jurisdiction over the parties to and subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (E), and (O). Notice of the Motion was proper under the circumstances.

Facts[4]

In the Adversary, the parties dispute the ownership of a 1999 16x80 Waverly Manufactured Home (the "Mobile Home") and the propriety of the Defendant's acts, and failures to act, stemming from the ownership dispute. The Defendant included a statement of facts in the Brief. (Adv. Dkt. #35). The facts recited in the Motion and Brief are deemed undisputed because of the Plaintiffs' failure to respond to the Motion or answer the Defendant's requests for admissions.

Underlying Debt

On February 19, 2015, the Plaintiffs executed a Residential Lease Agreement (the "Agreement") with the Defendant to rent the Mobile Home. (Adv. Dkt. #1 at 2; D. Ex. A). The Agreement provided for monthly payments of $550.00 to the Defendant beginning April 1, 2015 and ending at the Plaintiffs' discretion as long as the rental payments remained current. (Adv. Dkt. #1 at 9; D. Ex. A). The Agreement included an option to purchase the Mobile Home at a purchase price ranging from $24,400.00 to $7,900.00 depending upon the year the Plaintiffs exercised the option. If

[3] On July 28, 2021, the Plaintiffs' attorney filed the Motion to Withdraw as Counsel (Adv. Dkt. #8). On October 4, 2021, the Court entered the Order Allowing Attorney to Withdraw (Adv. Dkt. #24), which informed the Plaintiffs that they had twenty-eight (28) days to obtain new counsel, or they would proceed in the Adversary *pro se*.

[4] The Court makes the following findings of fact and conclusions of law in accordance with Rule 7052 of the Federal Rules of Bankruptcy Procedure.

the Plaintiffs choose to purchase the Mobile Home, the Defendant agreed to refund their security deposit of $2,500.00.

Bankruptcy Case

On July 8, 2016, the Plaintiffs filed a joint petition for relief pursuant to chapter 13 of the U.S. Bankruptcy Code. (Bankr. Dkt. #1). On July 28, 2016, the Defendant filed a Proof of Claim ("Claim 4-1") in the amount of $24,256.00 plus pre-petition arrears of $2,606.50. (Cl. 4-1). The Defendant identified the claim as a "residential lease" and attached the Agreement.

On September 19, 2016, the Court entered the Confirmation Order (Bankr. Dkt. #28), confirming the Plaintiffs' Chapter 13 Plan (Bankr. Dkt. #7) (the "Plan"). Pursuant to the Plan, the Plaintiffs were required to pay to the Defendant pre-petition arrears of $2,606.50 in monthly installments of $48.27 and ongoing payments of $550.00 a month for the Mobile Home. (Bankr. Dkt. #28 at 4). The Defendant did not object to confirmation of the Plan. On February 5, 2021, the chapter 13 trustee (the "Trustee") filed a notice that the Plaintiffs had paid the arrears in full. (Bankr. Dkt. #56). The Plaintiffs completed their plan payments on March 16, 2021, including $30,250.00 in ongoing payments paid to the Defendant. (Bankr. Dkt. #70). On April 13, 2021, the Plaintiffs were granted a discharge under 11 U.S.C. § 1328(a). (Bankr. Dkt. #66).

Since the discharge, the Plaintiffs have not paid the Defendant any additional funds, including the $550.00 installment payment due under the Agreement on April 1, 2021. The Plaintiffs contend that on or about April 12, 2021, the Defendant commenced collection procedures against them for past due lease payments in the amount of $1,100.00. (Adv. Dkt. #1 at 4). These collection procedures allegedly consisted of phone calls and the placement of notices on the doors of the Plaintiffs' home and the homes of their neighbors. (Adv. Dkt. #1 at 4).

Adversary

On June 1, 2021, the Plaintiffs, through their counsel, filed the Complaint for Contempt of Court, Sanctions, Turnover of Property, Violations of the Automatic Stay and Other Relief (the "Complaint") (Adv. Dkt. #1), commencing the Adversary. In the Complaint, the Plaintiffs request: (1) an order finding that the Plaintiffs have paid the Defendant in full for the Mobile Home at a purchase price of $24,256.00 pursuant to Claim 4-1; (2) an order requiring the Defendant to transfer the title to the Mobile Home to the Plaintiffs; (3) an order requiring the Defendant to turn over the $5,994.00[5] in excess funds it received from the Plaintiffs to the Trustee to be paid to general unsecured creditors; (4) an order requiring the Defendant to refund the Plaintiffs' $2,500.00 security deposit; (5) actual damages; (6) injunctive relief pursuant to 11 U.S.C. §§ 105,[6] 362, and 524 and punitive damages in an amount to be determined for the Defendant's willful violations of §§ 362 and 524; and (7) that the Defendant be held responsible for the Plaintiffs' attorneys' fees and costs.

On July 2, 2021, the Defendant filed the Answer to Complaint for Contempt of Court, Sanctions, Turnover of Property, Violations of the Automatic Stay and Other Relief (the "Answer") (Adv. Dkt. #4). In the Answer, the Defendant argues that: (1) the payments of $550.00 per month in the Plan were not paid as installment payments to purchase the mobile home, but rather as continuing lease payments; (2) the Plaintiffs are not entitled to the title for the Mobile Home; (3) no overpayment was made by the Trustee to the Defendant; (4) the Plaintiffs never notified the Defendant that they were electing to purchase the Mobile Home; (5) any efforts by the Defendant to contact the Plaintiffs regarding additional lease payments were made with regard to a claim that accrued after the petition was filed and, accordingly, the automatic stay does not apply; and (6) the

[5] $30,250.00 (plan payments) − $24,256.00 (amount of claim in Claim 4-1) = $5,994.00
[6] Hereinafter, all references to code sections are to the U.S. Bankruptcy Code found at title 11 of the U.S. Code.

automatic stay terminated as to the Plaintiffs upon discharge on April 13, 2021, and therefore, any communications after the discharge did not violate the automatic stay.

On October 4, 2021, an order was entered allowing the Plaintiffs' attorney to withdraw and granting the Plaintiffs twenty-eight (28) days to retain new counsel. (Adv. Dkt. #24). On November 1, 2021, the Court held a status conference regarding the Adversary (the "Status Conference"). (Adv. Dkt. #32). Tenisihiai N. Jones ("Jones") appeared before the Court telephonically at the Status Conference and stated that "we're not going to seek another counsel."[7] The Court specifically instructed Jones that a scheduling order would be entered and that there would be deadlines the Plaintiffs would need to comply with in order to proceed.[8] Thereafter, the Court entered a scheduling order. (Adv. Dkt. #27).

The Defendant filed its initial disclosures (Adv. Dkt. #30) and later, on December 23, 2021, served the Defendant's First Set of Requests for Admissions Propounded to Plaintiffs (the "Requests for Admission") (Adv. Dkt. #31 at 1). The Plaintiffs did not respond to the Requests for Admission. Moreover, the Plaintiffs have not moved to withdraw or amend their deemed admissions.

The Court held a status conference on April 25, 2022. (Adv. Dkt. #32). Counsel for the Defendant appeared, but the Plaintiffs did not appear and have otherwise failed to prosecute this Adversary.

Motion

On February 28, 2022, the Defendant filed the Motion and the Brief. The Defendant alleges that: (1) the Plaintiffs cured their pre-petition arrearage and maintained monthly rental payments

[7] (Hr'g at 10:33:20-10:33:40 (Nov. 1, 2021)). The Status Conference was not transcribed. References to the discussions at the Status Conference are cited by the timestamp of the audio recording.
[8] (Hr'g at 10:34:23-10:34:41 (Nov. 1, 2021)).

of $550.00 through the Plan until March 2021; (2) the Plaintiffs were current in their rental payments through March 2021; (3) the Plaintiffs did not elect to purchase the Mobile Home under the Agreement; (4) the Plaintiffs have not paid the Defendant since the last Plan payment in March 2021; (5) the Plaintiffs continue to reside in the Mobile Home, which they do not own; (6) the Defendant has not violated the automatic stay or discharge injunction by not giving the title of the Mobile Home to the Plaintiffs or by asking the Plaintiffs to make monthly post-discharge payments; (7) through the Plan the Plaintiffs paid exactly the amount of pre-petition arrearage owed plus monthly rental payments from August 2016 through March 2021; (8) the Plaintiffs owe post-petition rental payments from April 2021 to the present; and (9) the Defendant has not been overpaid in any amount. (Adv. Dkt. #35 at 8-9). Accordingly, the Defendant requests that the Complaint be dismissed with prejudice.

Responses to the Motion were due by April 4, 2022. (Adv. Dkt. #36). The Plaintiffs did not file a response, and the Defendant did not file a reply. *See* MISS. BANKR. L.R. 7056-1.

Discussion

A. Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure, as made applicable to adversary proceedings by Rule 7056 of the Federal Rules of Bankruptcy Procedure, provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). To prevail on a motion for summary judgment, a party must "cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." FED. R. CIV. P. 56(c)(1)(a). "[I]f the 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 judgment as a matter of law" then the Court may grant the motion for summary judgment. *Am. Express Centurion Bank v. Valliani (In re Valliani)*, No. 13-4030, 2014 WL 345700, at *2-3 (Bankr. E.D. Tex. Jan. 30, 2014) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (internal quotations omitted)). "[T]here are two (2) elements that must be met in order for summary judgment to be appropriate: (1) there must be no genuine dispute of the material fact; and (2) the undisputed facts are such that the movant is entitled to judgment as a matter of law." *Greenpoint AG, LLC v. Kent (In re Kent)*, 554 B.R. 131, 139 (Bankr. N.D. Miss. 2016).

The movant bears the initial burden of proof to specify the basis upon which the Court should grant summary judgment and to identify portions of the record that demonstrate the absence of a genuine issue of material fact. FED. R. CIV. P. 56(c)(1); *see also Celotex*, 477 U.S. at 322. The court looks to the substantive law to determine if a fact is material. *Kent*, 554 B.R. at 139-40. Once the initial burden is met, the burden of production shifts to the nonmovant who then must rebut the presumption by coming forward with specific facts, supported by the evidence in the record, upon which a reasonable factfinder could find a genuine fact issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court "must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000). Summary judgment should be granted where the nonmovant "has failed to make a sufficient showing on an essential element of [the] case with respect to which [the party] has the burden of proof." *Celotex*, 477 U.S. at 323.

The nonmovant's failure to respond to a motion for summary judgment does not entitle the movant to summary judgment by default. *Eversley v. MBank Dallas*, 843 F.2d 172, 174 (5th Cir.

1988). In the absence of opposition to a motion for summary judgment, the Court may consider the movant's facts to be undisputed, but the Court may enter summary judgment in the movant's favor only if those undisputed facts show that the movant has met its initial burden and is entitled to summary judgment as a matter of law. *Id.*; FED. R. CIV. P. 56(e).

B. Failure to Respond to Requests for Admission

"Under Federal Rule of Civil Procedure 36(a), requests for admissions are deemed admitted if not answered within 30 days."[9] *Murrell v. Casterline,* 307 F. App'x 778, 780. (5th Cir. 2008). "Rule 36 of the Federal Rules provides that a matter requested through an admission will be deemed admitted unless the party to whom it is directed responds within thirty days after service of request." *Hill v. Breazeale,* 197 F. App'x 331, 336 (5th Cir. 2006) (citing FED. R. CIV. P. 36(a)). Lastly, "[t]he Fifth Circuit has found that failure to respond to Requests for Admission results in a deemed admission for each of the matters for which an admission was requested, including ultimate facts." *Blakeney v. Cherokee Env't. Constr. (In re Blakeney),* No. 09-51102-NPO, 2010 WL 1711487, at *4 (Bankr. S.D. Miss. Apr. 26, 2010).

The Requests for Admission regarding the Mobile Home included the following:

> **REQUEST NO. 4:** Please admit the Chapter 13 Plan which you filed in this proceeding provides that the payments of $550.00 per month were to be paid as lease payments on a continuing basis.
>
> **REQUEST NO. 5:** Please admit that the payments of $550.00 per month were scheduled under the continuing payments section of your chapter 13 Plan.
>
> **REQUEST NO. 6:** Please admit that no payments were listed under the section titled "Mortgage Claims to be Paid in Full Over Plan Terms" of your chapter 13 plan.
>
> **REQUEST NO. 7:** Please admit that your plan payments of $550.00 per month scheduled to JC Enterprises is in the exact same amount as the lease payments of $550.00 per month which were being paid prior to the bankruptcy.

[9] Rule 36 of the Federal Rules of Civil Procedure ("Rule 36") is made applicable to adversary proceedings by Rule 7036 of the Federal Rules of Bankruptcy Procedure.

> **REQUEST NO. 9:** Please admit that under the terms of the Residential Lease Agreement if you elect to purchase the 1999 16x80 Waverly Manufactured Home between the dates of April 1, 2020 and March 31, 2021 the purchase price of the mobile home would have been $7,900.
>
> **REQUEST NO. 10:** Please admit that until you exercise your option to purchase under the Residential Lease Agreement you are obligated to pay rental to JCE of $550.00 per month for the 1999 16x80 Waverly Manufactured Home.
>
> **REQUEST NO. 11:** Please admit that you have not exercised an option to purchase under the Residential Lease Agreement.
>
> **REQUEST NO. 12:** Please admit that you do not own the 1999 16x80 Waverly Manufactured Home which is subject to the Residential Lease Agreement.
>
> **REQUEST NO. 13:** Please admit that you received a chapter 13 discharge on April 13, 2021.
>
> **REQUEST NO. 14:** Please admit that JCE's claim in your chapter bankruptcy proceeding was scheduled by the chapter 13 trustee as "continuing."
>
> **REQUEST NO. 15:** Please admit that the balance due to JCE after competition of your chapter 13 plan was scheduled by the chapter 13 trustee as "continuing."

(Adv. Dkt. #34-1 at 13-14).[10] Because the Plaintiffs did not respond to the Requests for Admission and did not file a motion to withdraw the admissions, all of the above matters are deemed conclusively established. *See* FED. R. CIV. P. 36.

"[P]ursuant to Fifth Circuit case law, admissions by default are a proper basis for summary judgment if the admissions leave no genuine issues of material fact for trial." *Blakeney*, 2010 WL 1711487, at *4. This rule applies equally to *pro se* parties. *Breazeale*, 197 F. App'x at 337. In the Motion, the Defendant asserts that "[m]ore than thirty-three days have passed since Plaintiffs were served with the [Requests for Admissions]. Plaintiffs have not responded to [the Requests for Admissions] as required by Fed. R. Civ. P. 36." (Adv. Dkt. #34 at 5; Adv. Dkt. 34-1 at 12). Accordingly, the Plaintiffs have admitted the following key conclusions: (1) the $550.00 payments made

[10] The individual requests contained within the Requests for Admissions are cited as "(Request No. ___)".

to the Defendant through the Plan were lease payments, meant to be paid on a continuing basis; (2) they did not exercise the option to purchase the Mobile Home; (3) until they exercise their option to purchase under the Agreement, they are obligated to pay the Defendant $550.00 per month to lease the Mobile Home; (4) they do not own the Mobile Home; (5) the balance due to the Defendant after completion of the Plan was scheduled by the Trustee as "continuing"; and (6) they received a chapter 13 discharge on April 13, 2021.

The Court examines each claim for relief asserted by the Plaintiffs in the Complaint separately to determine whether these admissions demonstrate the absence of any genuine issue for trial.

C. First Claim for Relief

In the Complaint's First Claim for Relief, the Plaintiffs argue that by filing Claim 4-1, the Defendants agreed to accept the Plaintiffs' exercise of their option to purchase the Mobile Home. (Adv. Dkt. #1 at 4-5). The Plaintiffs allege that they paid the Defendant in full for the Mobile Home through the Plan and that the Defendant should be required to transfer title to the mobile home to the Plaintiffs pursuant to Claim 4-1[11] and the Plan. (Adv. Dkt. #1 at 5). By failing to respond to the Requests for Admission, the Plaintiffs admit that they have not exercised an option to purchase the Mobile Home under the Agreement or paid the Defendant $5,400.00, the purchase price of $7,900.00[12] less the $2,500.00 refundable security deposit. (Adv. Dkt. #35 at 3; Request No. 11). The Plaintiffs admit that they do not own the Mobile Home, which is subject to the Agreement. (Adv. Dkt. #35 at 3; Request No. 12). The Plaintiffs admit that until they exercise their

[11] It appears that the Plaintiffs base their allegations on the amount of the "secured" claim listed in Claim 4-1. They equate this amount with the purchase price of the Mobile Home, even though Claim 4-1 identifies the Agreement as a "residential lease."

[12] The Agreement sets $7,900.00 as the purchase price if the Plaintiffs exercised their option between the dates of April 1, 2020 and March 31, 2021. (Adv. Dkt. #35 at 3; Request No. 9).

option to purchase under the Agreement, they remain obligated to pay the Defendant $550.00 per month for the Mobile Home. (Adv. Dkt. #35 at 4; Request No. 10).

Under these undisputed facts, the Court finds that that there is no genuine issue that the Plaintiffs do not own the Mobile Home and are not entitled to its title. Accordingly, the First Claim for Relief should be dismissed.

D. Second Claim for Relief

In the Second Claim for Relief, the Plaintiffs allege violations of the automatic stay, discharge injunction, and discharge order.

The Plaintiffs first assert that the Defendant's refusal to transfer the title for the Mobile Home is a willful and intentional act in violation of the automatic stay, pursuant to §§ 362(a)(3) and 1327. (Adv. Dkt. #1 at 4-5). The Court finds that the Defendant's refusal to transfer the title of the Mobile Home is not a violation of the automatic stay because, as discussed above, the Plaintiffs are not entitled to the title of the Mobile Home, as they do not own it. In addition, the automatic stay under § 362(a)(3) ended when the Plaintiffs received their discharge. 11 U.S.C. § 362(c)(2).

Second, the Plaintiffs allege that the Defendant's refusal to refund their $2,500.00 security deposit is a willful and intentional act in violation of the automatic stay, § 362(a)(3), and the discharge injunction as set forth in § 524. (Adv. Dkt. #1 at 5). Regarding the security deposit, the Agreement provides: "If the Customer chooses to purchase the home for the Purchase Price below, the Refundable Security Deposit will be paid in full to the Customer." (D. Ex. A at 5). Because the Plaintiffs have admitted that they did not purchase the Mobile Home, the Plaintiffs are not entitled to a refund of the security deposit.

Third, the Plaintiffs argue that the Defendant received excess Plan payments from the Trustee for its claim and its refusal to turn over these funds is a willful violation of the automatic stay that

warrants damages, including attorneys' fees and costs under §§ 362(k), 524, 541, and 542. (Adv. Dkt. #1 at 6). The Plaintiffs rest their argument on Claim 4-1. (Adv. Dkt. #1 at 4). The Plaintiffs subtract the amount of the "secured" claim ($24,256.00) from the ongoing payments paid to the Defendant under the Plan from August 2016 through March 2021 ($30,250.00) and argue that the difference ($5,994.00) constitutes an overpayment. (Adv. Dkt. #1 at 4). The Plan, however, provided for ongoing payments to the Defendant in the amount of $550.00 per month under the heading "Home Mortgages." (Bankr. Dkt. #28 at 4). No payments were listed under the heading "Mortgage Claims to be Paid in Full Over Plan Term." The Plaintiffs' position, if adopted, would require a modification of the Plan after the completion of Plan payments, which § 1329 does not allow. The Plaintiffs have admitted that for as long as they reside in the mobile home, or until they exercise the option to purchase contained within the Agreement, they are obligated to pay rent to the Defendant of $550.00 per month for the Mobile Home. (Adv. Dkt. #35 at 3; Request No. 10). Accordingly, the Plaintiffs have made no overpayment to the Defendant simply by making their Plan payments.

Next, the Plaintiffs aver that the Defendant's demand letters and notices posted on the door of the Mobile Home and on the doors of their neighbors' homes constituted willful and intentional acts designed to collect a discharged debt, in violation of the discharge order and discharge injunction as set forth in § 524. (Adv. Dkt. #1 at 5). Section 524(a)(2) provides that a discharge injunction permanently enjoins creditors from trying to collect discharged debts. Claims on which the last payment is due after the due date of the final plan payment, however, are "long-term debts" deemed nondischargeable under § 1328(a)(1). The Plaintiffs received a chapter 13 discharge on April 13, 2021. (Bankr. Dkt. #66). The Plaintiffs admit that the Defendant's claim was scheduled by the Trustee as "continuing," and that the balance owed the Defendant after completion of the Plan was

scheduled by the Trustee as "continuing." (Adv. Dkt. #35 at 4; Requests No. 14, No. 15). As a long-term debt, payments owed after the completion of the Plan were not discharged under § 1328(a)(1). The Court finds that the Mobile Home payments accruing after the discharge were not subject to the discharge injunction or discharge order, and thus the Defendant's attempt to collect those payments did not violate § 524. (*See* Adv. Dkt. #35 at 3; Request No. 10).

3. Sanctions

Finally, the Plaintiffs argue that as a direct and proximate result of the Defendant's continued actions allegedly in violation of the automatic stay, discharge order, and discharge injunction, the Plaintiffs have suffered mental distress and emotional anguish and have incurred legal fees and costs necessary to enforce the discharge order. (Adv. Dkt. #1 at 6). Because the Court has found that there is no genuine dispute that the Defendant has not violated the automatic stay, discharge order, or discharge injunction, the Plaintiffs are not entitled to any sanctions, legal fees, or costs.

4. Summary

The Court finds that the Defendant has shown that there is no genuine issue and that it is entitled to a judgment as a matter of law that: (1) the Plaintiffs are not entitled to the refund of the security deposit; (2) the Defendant is not required to transfer the title of the Mobile Home, (3) the Defendant has not violated the discharge injunction; (4) the Plaintiffs have not made any excess payments to the Defendant; and (5) the Defendant has not violated the automatic stay. Accordingly, the Court finds that the Second Claim for Relief should be dismissed.

E. Third Claim for Relief

In the Third Claim for Relief, the Plaintiffs argue that they overpaid the Defendant by $5,994.00. The Plaintiffs request that this overpayment be turned over to the Trustee and paid to timely filed, general unsecured creditors. (Adv. Dkt. #1 at 6). As discussed above, there is no

genuine issue that the Plaintiffs did not make any overpayment to the Defendant through the Plan. The Court, therefore, finds that the Defendant is entitled to a judgment as a matter of law that there is no overpayment to turn over to the Trustee. Accordingly, the Court finds that the Third Claim for Relief should be dismissed.

Conclusion

The Defendant has shown that there is no genuine dispute that the Plaintiffs do not own the Mobile Home. The Defendant has further shown that it has not violated the automatic stay, discharge order, or discharge injunction and, accordingly, does not owe legal fees or costs to the Plaintiff. The Court finds that Motion should be granted, and that summary judgment should be awarded in favor of the Defendant. The Court's award of summary judgment resolves all claims raised in the Complaint. Accordingly, the Court finds that the Adversary should be closed. In accordance with Rule 7058 of the Federal Rules of Bankruptcy Procedure, the Court will enter a final judgment consistent with this Opinion.

##END OF OPINION##