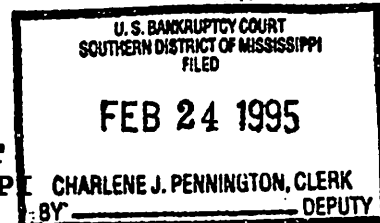


IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



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

CASE NO. 9103765JC

JIMMIE D. NICHOLS AND

PLAINTIFFS

VS.

ADVERSARY NO. 940225 JEE

FARMERS AND MERCHANTS BANK

DEFENDANT

Jimmie D. & Linda F. Nichols
2174 Highway 481 North
Morton, MS 39117

Pro Se

Jeff D. Rawlings
1290 Deposit Guaranty Plaza
Jackson, MS 39201-2302

Attorney for Farmers and
Merchants Bank

Edward Ellington, Bankruptcy Judge

MEMORANDUM OPINION

This adversary proceeding is before the Court on the *Motion to Dismiss and for Sanction Pursuant to Bankruptcy Rule 9011* filed by the Farmers and Merchants Bank. After notice to all parties and a hearing on the motion, and after being fully advised in the premises, the Court holds that the bank's motion to dismiss is well taken and should be granted. The Court further holds that the bank's motion for sanctions should be dismissed without

prejudice to being brought again after the Court's order dismissing this adversary proceeding becomes final. In so holding, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Jimmie D. Nichols and Linda F. Nichols filed a petition for relief under Chapter 13 of the Bankruptcy Code¹ in 1991. Their chapter 13 case is still pending. In November of 1994, the Nichols commenced this adversary proceeding against Farmers and Merchants Bank seeking various remedies² relating to a parcel of real property previously owned by the Debtors upon which F & M Bank foreclosed. In response to the complaint, the Defendant, F & M Bank filed a motion to dismiss the complaint pursuant to rule 7012(b)(6) of the Federal Rules of Bankruptcy Procedure and also for sanctions pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure.

¹ Hereinafter, all code section refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

² In their complaint, the Nichols pray for this Court to order a) that the bank cease claiming the Nichols' real property, b) that all claims to the Nichols' real property be cancelled in the Office of the Chancery Clerk of Scott County, Mississippi land records, c) that the Nichols' 1985 chapter 7 discharge precludes all claims of the bank against the property, d) that the property be restored to the Nichols, e) that certain 1992 Chancery Court orders regarding the Nichols' property are void, f) that the 1986 Trustee's Deed conveying the property to the bank is void, g) attorney's fees, costs and all other relief to which the Nichols may be entitled.

The allegations contained in the Nichols' complaint are as follows.³ In 1985 the Nichols filed a chapter 7 petition for relief. During the chapter 7 case, an agreed order was entered setting aside a trustee's deed conveying the property to the F & M Bank because the bank did not first obtain relief from the automatic stay before foreclosing on the property. In June of 1985, the Nichols received a discharge pursuant to § 727 of the Bankruptcy Code.

In 1986, F & M Bank obtained another trustee's deed on the real property, and litigation ensued in the Chancery Court of Scott County, Mississippi. In 1991 certain judgments and a writ of possession were entered in favor of F & M Bank in the Chancery Court litigation. After entry of the chancery court judgments in the bank's favor, the Nichols commenced their present chapter 13 case.

³ In support of their allegations, the Nichols attached to the complaint the following documents as exhibits:

- a) Order Approving Trustee's Report of No Distribution and Closing Estate entered in 1987 in case no. 8500260JC;
- b) Discharge of Debtor entered in 1985 in case no 8500260JC;
- c) Motion to Lift Stay filed in the Nichols' present chapter 13 case in November, 1991 by F & M Bank;
- d) Summary Judgment entered July, 1991 in Scott County, Mississippi Chancery Court;
- e) Final Judgment and Writ of Possession entered October, 1991 in Scott County, Mississippi Chancery Court;
- f) Final Judgment lifting automatic stay entered February, 1992 in Nichols' present chapter 13 case;
- g) Order entered April, 1992 in Scott County, Mississippi Chancery Court;
- h) Notice filed in Scott County, Mississippi Chancery Court in April, 1992; and
- i) Agreed Order entered June 1985 in case no. 8500260JC setting aside trustee's deed.

The bank then filed a motion for relief from the automatic stay in the Nichols' chapter 13 case in order to enforce the final judgment and writ of possession obtained by the bank in the chancery court. In February of 1992, this Court entered an order granting relief from the automatic stay.

In March of 1992, pursuant to the chancery court writ of possession, the Nichols were removed from the real property to which they claim title. After obtaining possession of the real property, the bank returned to the chancery court and obtained an order regarding the disposition of the Nichols' personal property. The bank gave notice to the Nichols pursuant to the terms of the chancery court order.

The Nichols contend that as a result of the 1985 order setting aside a previous trustee's deed to the bank and also the Nichols' 1985 chapter 7 discharge, the bank's claim was extinguished, and all issues regarding the bank's claim are *res judicata*. The Nichols further contend that since the bank's claim was extinguished by the 1985 discharge, all actions taken against the property are void. Therefore, this Court should order that all of the orders discussed above are void, that the 1986 trustee's deed be cancelled, and that the real property and personal property in question be returned to the Nichols.

The F & M Bank asserts that the Nichols' complaint should be dismissed because it fails to state a claim upon which relief can be granted. F & M further asserts that the complaint was filed solely to harass the bank in violation of Rule 9011 of the Federal

Rules of Bankruptcy Procedure, and that sanctions should be imposed against the Nichols. The bank also requests an order barring the Nichols from pursuing any further action relating to the foreclosure of the property or prior court rulings.

CONCLUSIONS OF LAW

Rule 7012(b) of the Federal Rules of Bankruptcy Procedure makes Rule 12(b)-(h) of the Federal Rules of Civil Procedure applicable to adversary proceedings. F & M Bank has asserted, pursuant to 12(b)(6), that the complaint filed by the Nichols fails to state a claim upon which relief can be granted, and therefore, should be dismissed.

When considering a Rule 12(b)(6) motion, "the complaint is construed in the light most favorable to plaintiff and its allegations are taken as true. The court's inquiry is directed to whether the allegations constitute a statement of a claim under Rule 8(a)."⁴ 5A Charles A. Wright and Arthur R. Miller, Federal Practice and Procedure § 1357 (1990)(footnotes omitted).

The Nichols' theory of law is that their 1985 chapter 7 discharge extinguished the bank's claim to the real property in question. Therefore, all actions taken by F & M Bank against the real property after entry of their 1985 discharge were wrongful,

⁴ Rule 8 of the Federal Rules of Civil Procedure is made applicable to adversary proceeding by Rule 7008 of the Federal Rules of Bankruptcy Procedure. Rule 8 contains the general rules of pleading, and subsection (a) sets forth the requirement that a claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief"

all orders entered were void, and the 1986 trustee's deed conveying the property to the bank is void.

However, the Nichols' theory of law incorrectly states the effect of a chapter 7 discharge and the permanent injunction provisions contained in § 524 of the Bankruptcy Code. The law is well settled that while the chapter 7 discharge did release the Nichols from their personal liability to F & M Bank, it did not extinguish the bank's right to satisfy its claim by enforcing its lien against the property.

The United States Supreme Court has explained the effect of a chapter 7 discharge on a mortgage lien as follow:

A mortgage is an interest in real property that secures a creditor's right to repayment. But unless the debtor and creditor have provided otherwise, the creditor ordinarily is not limited to foreclosure on the mortgaged property should the debtor default on his obligation; rather, the creditor may in addition sue to establish the debtor's in personam liability for any deficiency on the debt and may enforce any judgment against the debtor's assets generally. A defaulting debtor can protect himself from personal liability by obtaining a discharge in a Chapter 7 liquidation. However, such a discharge extinguishes *only* 'the personal liability of the debtor.' 11 U.S.C. § 524(a)(1). Codifying the rule of *Long v. Bullard*, 117 U.S. 617, 29 L.Ed. 1004, 6 S.Ct. 917 (1886), the Code provides that a creditor's right to foreclose on the mortgage survives or passes through the bankruptcy.

Johnson v. Home State Bank, 501 U.S. 78, 82-3 (1991)(citations omitted).

Furthermore, § 362(c) of the Bankruptcy Code specifically provides as follows:

11 USC § 362. Automatic Stay

- ...
- (c) Except as provided in subsection (d), (e), and (f) of this section -
- (1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; and
 - (2) the stay of any other act under subsection (a) of this section continues until the earliest of -
 - (A) the time the case is closed;
 - (B) the time the case is dismissed; or
 - (C) if the case is a case under chapter 7 of this title concerning an individual ... the time a discharge is granted or denied.

Taking all of the factual allegations contained in the complaint as true, the Nichols have not stated a claim upon which this Court may grant the relief requested. The chapter 7 discharge received by the Nichols did not extinguish the bank's right to proceed against the property in question. Therefore, the complaint fails to state a claim upon which relief can be granted and should be dismissed by this Court.

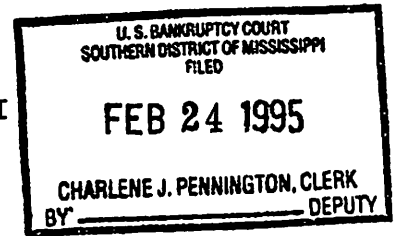
Further, the Court will dismiss F & M Bank's motion for Rule 9011 sanctions at this time without prejudice to being brought again after the Court's order dismissing the complaint becomes final.

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 24th 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

CASE NO. 9103765JC

JIMMIE D. NICHOLS AND

PLAINTIFFS

VS.

ADVERSARY NO. 940225 JEE

FARMERS AND MERCHANTS BANK

DEFENDANT

FINAL JUDGMENT

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

1. That the complaint filed in this adversary proceeding should be, and hereby is, dismissed with prejudice pursuant to Rule 7012(b)(6) of the Federal Rules of Bankruptcy Procedure; and

2. That the motion of Farmers and Merchants Bank for sanctions pursuant to Rule 9011 of the Federal Rules of Bankruptcy Procedure should be, and hereby is, dismissed without prejudice to being brought again upon the dismissal of the complaint becoming final.

SO ORDERED this the 24TH day of February, 1995.

UNITED STATES BANKRUPTCY JUDGE