

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

**DOUGLAS FRIES and AUTOMATIC
SPRINKLER PROTECTION, INC.,
Plaintiffs**

vs.

**WILLIAM SMITH d/b/a
SMITH SPECIAL PRODUCTION,
Defendant**

: No. 00-01904
:
:
:
: CIVIL ACTION - LAW
:
:
: Non-Jury Trial

OPINION AND VERDICT

This matter was heard by the Court on May 21, 2001. The only issue for the Court to determine was what amount Defendants would have to pay in order to redeem the parade balloons and costumes. Plaintiffs asserted Defendants had to pay approximately \$50,000 to redeem the property. This figure included the judgment note in the amount of \$13,000, interest at the rate of \$6.41 per day from February 1, 1999 to the present (approximately \$5,449), attorney fees (\$10,067), and the costs for Plaintiffs' time and expenses (\$21,209). Defendants asserted that the redemption amount was \$5,000, the value of the property (\$6,500) was Defendants' exemption (\$1,500).

FINDINGS OF FACT

1. Plaintiff is Douglas W. Fries, who President and sole owner of Automatic Sprinkler Protection, Inc. and does business at P.O. Box 4175, Williamsport, Pennsylvania.

2. Plaintiff, Automatic Sprinkler Protection, Inc., is a Pennsylvania Corporation which does business at P.O. Box 4175, Williamsport, Pennsylvania.

3. Defendant, William A. Smith, is an individual who resides at 32 Hoffman Avenue, Williamsport, Pennsylvania 17701 and does business as Smith Special Productions at this same address.

4. Plaintiffs loaned Defendants \$7,800 in late Summer or Fall, 1998.

5. As part of the loan, Defendant executed security interest by signing a UCC-1 form (Plaintiffs' Exhibit 2) which granted a security in the personal property of William Smith and all property of Smith Special Productions, including the parade balloons and costumes at issue.

6. On February 1, 1999, Defendants signed a Judgment Note in the amount of \$13,000, with interest at 18% per annum cost of suit, release of errors and ten percent added for collection fees (Plaintiff's Exhibit 3). The note was recorded in the Lycoming County Courthouse on February 23, 1999 to number 99-00314.

7. On May 27, 1999, Defendant filed for bankruptcy under Chapter 13 of the Bankruptcy Code, 11 U.S.C. §1301 et. seq.

8. On June 7, 1999, Defendant's bankruptcy was converted to Chapter 7.

9. In his bankruptcy schedules, Defendants' debt to Plaintiffs was disclosed and stated as \$13,000.

10. The parties have stipulated that the balloons are worth \$6,500 in total.

11. The Honorable John J. Thomas of the Bankruptcy Court found that Plaintiffs have a security interest in the balloons and costumes and that Defendants were entitled to an exemption in these items in the amount of \$1,500 as tools of the trade. See Plaintiffs Exhibits 19, 20, and 71.

12. Defendant was granted a full and final discharge from this Chapter 7 bankruptcy.

CONCLUSIONS OF LAW

1. Plaintiffs allowed claim in bankruptcy was \$13,000.

2. Defendants cannot “strip down” Plaintiffs’ lien or real property to the value of the collateral at the time of the bankruptcy filing. Dewsnup v. Timm, 502 U.S. 410, 112 Superior Court 773 (1992).

3. In order to redeem the property, Defendants must pay the value of Plaintiffs’ allowed claim, i.e., \$13,000.

4. Interest, fees, costs and charges are only recoverable if provided for under the agreement between the parties and to the extend the value of the property exceeds the amount of Plaintiffs’ allowed claim. 11 U.S.C. §506(6).

5. “Costs of suit” does not include Plaintiffs’ time and expenses nor their attorney fees 42 PA.C.S. §1726; 42 Pa.C.S. §21001 et. sq.; See also Merlino v. Delaware County, 622, 436 Pa. 718 A.2d 949 (1999); Kaufmann v. Kirker, 22 Pa.Super. 201 (1903).

6. “Collection fees” are expenses involved in endeavoring to collect the debt, including attorney fees. See Wrenfield Homeowner’s Ass’n Inc. v. DeYoung, 410 Pa.Super. 621, 628 n.3, 600 A.2d 960, 964 n.3 (1991).

7. Pursuant to the Judgment Note, “collection fees” are limited to 10% of the debt, i.e., \$1,300.

DISCUSSION

Defendants assert the amount necessary to redeem the balloons is \$5,000,

because the value of the balloons is \$6,500 and Defendants have an exemption of \$1,500. Defendants argument is that since Plaintiff's claim is only secured in the amount of \$5,000, that amount is the most they have to pay to redeem the property. This Court cannot agree. In Dewsnup v. Timm, 502 U.S. 410, 112 S.Ct. 773 (1992), the Supreme Court held that section 506(d) of the Bankruptcy Code does not allow the debtor to "strip down" the creditors' lien, because the creditors' claim was secured by a lien and had been fully allowed pursuant to section 502. Id. at 417, 112 S.Ct. at 778. The purpose behind this ruling was to ensure that the creditor would not lose the benefit of any increase in value between the date of the bankruptcy filing and the date of foreclosure. Thus, the debtor could not redeem the property for the amount that would represent only the secured portion of the creditors' claim. Based on this ruling, the Court finds that Defendants would have had to pay Plaintiffs the full amount of their allowed claim of \$13,000 to redeem the property during the bankruptcy proceeding.¹

Plaintiffs contend they are entitled to interest, attorney fees, and fees for their expenses and loss of time in attempting to collect the debt. This Court cannot agree. These items are allowed under the Bankruptcy Code only to the extent the value of the property is greater than the amount of the allowed secured claim. 11 U.S.C. §506(b). The amount of Plaintiffs' claim is \$13,000. The value of the property is \$6,500. Since the value of the property does not exceed the amount of the claim, interest, fees, and costs are not

¹If either party wished to dispute the amount of this claim, they should have done so in the bankruptcy proceedings.

allowed.²

VERDICT

AND NOW, this _____ day of May 2001, after a non-jury trial held May 21, 2001 in the above-captioned matter, it is ORDERED and DIRECTED as follows:

1. Defendant, William A. Smith, shall have the right to redeem the balloon inventory and costumes by paying the sum of \$13,000 to Plaintiff, Douglas W. Fries, within thirty (30) days from the date of this Verdict.

2. Until the redemption amount is paid, Defendant shall keep the balloons in storage and shall not use, damage or decrease the value of the balloons in any way or move them from their current location.

3. In the event Defendant does not redeem the balloons as specified in paragraph 1, Defendant shall deliver the balloons (approximately 50 in all) and costumes to Plaintiff, Douglas W. Fries and Automatic Sprinkler Protection, Inc. at the Plaintiffs' business located in Mosquito Valley, Williamsport, Pennsylvania on the 31st day after the date of this Verdict unless an appeal and a bond or other security is filed in accordance with paragraph 4.

Plaintiffs may sell the balloons through any appropriate manner. The proceeds of the sale shall be allocated as follows: The first \$1,500 shall be paid to

²The Court also notes that even if such fees were recoverable, Plaintiffs' claim for attorney fees, expenses and their loss of time would be considered "collection fees" and not costs of suit. See Merlino v. Delaware County, 556 Pa. 422, 728 A.2d 949 (1999); Kaufmann v. Kirker, 22 Pa.Super. 201 (1903). The Judgment Note permits the addition of 10% for collection fees. Therefore, even if the Plaintiffs' "costs" and attorney fees were recoverable, they would be limited to \$1,300.

Defendant William A. Smith, and the next \$13,000 shall be paid to Plaintiff Douglas W. Fries.

4. In the event an appeal is filed to this Verdict, Plaintiff Douglas W. Fries shall have the right to possession of the balloons and costumes unless and until Defendant files appropriate security with the Prothonotary in the amount of \$15,600.³ If Defendants post the security as Order, Plaintiffs may not sell the property until final resolution of any appeal. If Defendants do not post security, the filing of an appeal will not act as a stay or supersedeas and Plaintiffs may sell the property.

By The Court,

Kenneth D. Brown, J.

cc: Vanessa Danielle, Esq.
Lee Roberts, Esq.
Work File
Gary Weber, Esquire (Lycoming Reporter)
Law Clerk

³Since the parties agreed Plaintiff was entitled to possession of the property unless Defendants paid the redemption amount, the Court set the amount of security in accordance with Rule 1731 of the Rules of Appellate Procedure.