

DOCKET NUMBER: 98-10935

ADV. NUMBER: 99-1121

JUDGE: M. A. Mahoney

PARTIES: Michael F. Powe, Chrysler Financial Corp., L.L.C.

CHAPTER: 13

ATTORNEYS: S. Olen, D. J. Stewart, C. L. Reeves

DATE: 5/25/00

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

IN RE

MICHAEL F. POWE

Case No. 98-10935-MAM-13

Debtor.

MICHAEL F. POWE

Plaintiff,

v.

Adv. No. 99-1121

CHRYSLER FINANCIAL CORP., L.L.C.

Defendant.

**ORDER DENYING MOTION OF CHRYSLER FINANCIAL CORP., L.L.C.  
FOR JUDGMENT ON THE PLEADINGS**

Steve Olen, Donald J. Stewart, Mobile, Alabama, Attorneys for the Debtors  
C. Lee Reeves, Birmingham, Alabama, Attorney for Chrysler Financial Corp., L.L.C.

This matter is before the Court on the motion of Chrysler Financial Corp., L.L.C. (CFC) for judgment on the pleadings. This suit brought by Michael F. Powe (debtor or plaintiff) is a class action for alleged violations of federal bankruptcy law. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court has the authority to enter a final order.<sup>1</sup> For the reasons indicated below, the motion for judgment on the pleadings is denied.

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<sup>1</sup>The basis of the Court's jurisdiction is explained in its Order entered February 15, 2000 in this adversary proceeding.

## FACTS

The complaint of Michael F. Powe consists of the following four counts:

1. Fees and charges assessed by the defendants postpetition are not reasonable, authorized, or allowable under the Bankruptcy Code and defendants' claims for any of these fees or charges should be disallowed and any of these fees or charges actually collected by defendants should be reimbursed with interest.

2. Fees and charges assessed by defendants postpetition are assessable only with specific bankruptcy court approval pursuant to § 506(b) of the Bankruptcy Code, defendants failed to obtain such approval, and these fees and charges collected by defendants after the filing of a bankruptcy petition, which would not have been claimed absent bankruptcy, should be disallowed, and any of these fees or charges collected should be reimbursed with interest where defendants have failed to obtain specific approval of the bankruptcy court as required by law.

3. Defendants violated the automatic stay of § 362 of the Bankruptcy Code by assessing and/or collecting postpetition, fees or charges which would not have been claimed absent bankruptcy, without specific approval of the bankruptcy court and these fees or charges should be disallowed and any of these fees or charges actually collected should be reimbursed with interest where the defendants have failed to obtain specific approval of the bankruptcy court.

4. Plaintiffs are entitled to an order declaring defendant's acts and practices to be in violation of bankruptcy law, an order permanently enjoining the defendants from engaging in such acts and practices in the future with respect to any debtor who is, or could become, a member of the class, and an order requiring the defendants to disgorge all amounts collected by defendants as a result of such illegal fees and charges with interest.

Five class action suits with identical claims were filed by debtors against five other defendants (parallel proceedings).

Pursuant to the request of CFC, the Court takes judicial notice of the following documents in the bankruptcy case of Michael F. Powe:<sup>2</sup> (1) Powe's proposed chapter 13 plan; (2) CFC's proof of claim--this form indicates that the claim of CFC includes \$225.00 for attorney's fees; (3) CFC's objection to confirmation with attached exhibits; (4) meeting of creditors' bench sheet dated July 2, 1998; (5) CFC's statement as to value; (6) CFC's withdrawal of objection to plan; (7) Powe's amended chapter 13 plan; and (8) order dated September 9, 1998, confirming Powe's chapter 13 plan (Confirmation Order).<sup>3</sup> The Confirmation Order valued the collateral of CFC at \$14,580 and provided CFC with a preference payment of \$250 per month. The duration of the plan was set at sixty months.

The motion of CFC to dismiss provides the following bases: (1) issue and/or claim preclusion or alternatively, the attorney's fees requested by CFC were reasonable; (2) settlement or compromise; (3) standing; (4) waiver and/or estoppel; (5) failure to state a claim; (6) comity; (7) assuming fees were illegal, debtor willingly participated in actions resulting in assessment of the fees; and (8) law of the case.

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<sup>2</sup>A Court may consider judicially noticed facts in ruling on a motion pursuant to Rule 12(c). *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998). However, the Court may not infer the truth of the facts contained in the documents simply because they were filed with the Court. HON. BARRY RUSSELL, BANKRUPTCY EVIDENCE MANUAL § 201.5 (2000 edition) (cites omitted).

<sup>3</sup>The truth of facts asserted in orders and judgments in the files of this debtor may be judicially noticed. BANKR. EVID. MAN., *supra*, note 2, § 201.7.

By oral ruling on October 15, 1999, and order dated February 15, 2000, this Court denied the motions to dismiss of the defendants in the parallel proceedings. The legal conclusions in these opinions are incorporated by reference.

#### LAW

Judgment on the pleadings may be granted pursuant to Fed. R. Civ. P. 12(c), which is applicable to this proceeding pursuant to Fed. R. Bankr. P. 7012, “when there are no material facts in dispute, and judgment may be rendered by considering the substance of the pleadings and any judicially noticed facts.” *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998) (cites omitted). The Court must accept the facts in the complaint as true and view them in a light most favorable to the nonmoving party. *Id.* The complaint may not be dismissed “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Id.* This is the same standard applicable to Rule 12(b) motions. *See, Heck v. Deloitte & Touche et al.*, 144 F.3d 732 (11th Cir. 1998) (analyzing Rule 12(b)(6) motion).

The Court acknowledges that notwithstanding the sameness of the claims made by the debtors in the parallel proceedings, CFC was permitted to file a motion to dismiss after the Court ruled on the other defendants’ motions to dismiss. In permitting CFC to move for dismissal at a later date, the Court also informed CFC that its rulings would be consistent to the extent that this situation is the same as the parallel proceedings. Each basis for dismissal of CFC was raised by a defendant in at least one of the parallel proceedings. This motion essentially reiterates the arguments presented by the other defendants. Thus, for the same reasons the motions to dismiss in the parallel proceedings were denied, this motion is denied.

In recognition of the Court's advisement regarding consistency, CFC attempts to distance itself factually from the parallel proceedings. The Court cannot find any factual difference of consequence between CFC and the other defendants from the pleadings or the documents judicially noticed. The proof of claim of CFC indicates that it requested an attorney's fee of \$225. Even assuming this is true, numerous questions, including what this fee covers, how CFC calculates this fee, whether it was reasonable, whether it was authorized, whether it was agreed to, cannot properly be disposed of pursuant to Rule 12(c). As the Court found in its order denying the other defendants' motions to dismiss, the novel legal and factual issues presented render dismissal or final adjudication premature at this stage. Pretrial discovery is warranted so that the parties may more completely investigate the issues presented. 5A WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE § 1367 *et seq.* (1990) (judgment on the pleadings).

THEREFORE IT IS ORDERED that the motion of Chrysler Financial Corp., L.L.C. for judgment on the pleadings is DENIED.

Dated: May 25, 2000

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MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE