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JUDGE: M. A. Mahoney

PARTIES: Voncile Lett Pritchett, Household Financial Corporation of Alabama, Inc.

CHAPTER: 7

ATTORNEYS: M. B. Smith, R. S. Terry

DATE: 3/28/00

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

In re

VONCILE LETT PRITCHETT

Case No. 99-11822-MAM-7

Debtor.

VONCILE LETT PRITCHETT

Plaintiff,

v.

Adv. No. 99-1142

HOUSEHOLD FINANCIAL
CORPORATION OF ALABAMA, INC.

Defendant.

Michael B. Smith, Mobile, Alabama, Attorney for Voncile Lett Pritchett
Russell S. Terry, Mobile, Alabama, Attorney for Household Financial

This matter is before the Court on the motion for summary judgment and the motion to strike affidavit of Household Finance Corporation of Alabama, Inc. (Household). The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §§ 1334 and 157 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. For the reasons indicated below, the motion for summary judgment and the motion to strike of Household are denied.

FACTS

The facts are based on the affidavits of Richard Ferroni, an employee of Household, and of Voncile Lett Pritchett, the debtor/plaintiff, and other submissions of the parties. A hearing was held on March 14, 2000, after which the matter was taken under advisement.

On July 26, 1996, Household loaned Ms. Pritchett \$55,199.75 with interest at an annual rate of 16.309%. The loan consolidated Ms. Pritchett's prior indebtedness to several different

entities. Ms. Pritchett executed a loan and security agreement and she granted Household a mortgage on her home as security for the loan. On the loan and security agreement, Ms. Pritchett signed the line indicating that she did not want credit insurance. Credit insurance premiums are set forth as “none” on the agreement.

In conjunction with the loan and mortgage, Household provided Ms. Pritchett with a credit insurance disclosure form. The first page indicates that credit insurance was “not available.” The second page was signed by Ms. Pritchett. The signature is next to the “You Want Credit Life & Disability Insurance,” although this option is not checked. The “You Want No Insurance” option is checked. Ms. Pritchett was never charged any insurance premiums in conjunction with this loan.

Ms. Pritchett avers that she requested credit insurance when she executed the loan documents. She states that the agents and employees of Household assured her that insurance was placed on this loan.

On August 8, 1996, Ms. Pritchett and Household executed a second loan and security agreement evidencing a loan to Ms. Pritchett in the amount of \$2,018.35 with interest at an annual rate of 29.381%. Ms. Pritchett avers that she obtained this loan at the request of Household because the first loan was insufficient to pay off all of her prior indebtedness. Ms. Pritchett clearly indicated on the second loan and security agreement that she wanted credit life and disability insurance. Ms. Pritchett was charged an insurance premium as part of her monthly payment on this second loan. The second loan does not cross-reference or refer in any manner to the first loan or the mortgage.

Ms. Pritchett filed for relief pursuant to chapter 13 of the Bankruptcy Code on May 25, 1999. She converted her case to chapter 7 on August 3, 1999. According to Household, Ms. Pritchett has not made a payment on either loan since December 1998.

Ms. Pritchett filed this adversary proceeding on July 15, 1999. She requests reformation of her first loan agreement in accordance with the alleged intent of the parties to include credit insurance coverage. Ms. Pritchett contends that she is currently disabled.

LAW

A.

Motions for summary judgment are controlled by Rule 56 of the Federal Rules of Civil Procedure, which has been made applicable to bankruptcy proceedings pursuant to Fed. R. Bankr. P. 7056. A court shall grant summary judgment to a party when the movant shows that “there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.” Fed. R. Bankr. P. 7056(c). In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), the Supreme Court found that a judge’s function is not to determine the truth of the matter asserted or weight of the evidence presented, but to determine whether or not the factual disputes raise genuine issues for trial. *Id.* 106 S. Ct. at 2510-511. In making this determination, the facts are to be looked upon in the light most favorable to the nonmoving party. *Id.*; *Celotex Corp. v. Catrett*, 106 S. Ct. 2548, 91 L. Ed.2d 265, 477 U.S. 317, 323 (1986).

B.

A contract or mortgage may be revised or reformed by a court to express the true intent of the parties when the written contract does not truly express their intention because of “fraud, a mutual mistake of the parties or a mistake of one party which the other at the time knew or

suspected.” ALA. CODE § 8-1-2 (1993) (applies to contracts), and § 34-4-153 (1991) (applies to deeds, mortgages and other conveyances). The party seeking reformation must prove by clear and convincing evidence that the true agreement of the parties is different from the written agreement. *Marx v. Long*, 631 So.2d 983, 988 (Ala. 1994).

Ms. Pritchett contends that she requested credit insurance when she entered into the first loan agreement and that Household knew this. Household contends that the plain language of the documents speak for themselves and cannot be altered by parol evidence, which includes Ms. Pritchett's affidavit.

The Court finds that Ms. Pritchett has raised a genuine conflict as to the material facts in this case. Her affidavit raises an issue about the true nature of the agreement and whether it was accurately recorded in the documents. Parol evidence is admissible to reform a written agreement to make it express the true intent of the parties. *Infiniti of Mobile, Inc. v. Office*, 727 So.2d 42 at n.3 (Ala. 1999); RESTATEMENT (SECOND) OF CONTRACTS § 155 cmt. a (1979) (a written contract may be reformed notwithstanding that it purports to embody the parties' entire agreement since parol evidence does not preclude a showing of mistake). Ms. Pritchett is not attempting to use parol evidence to help interpret the meaning of the documents, rather she is offering it to show that the documents do not evidence the true intent of the parties.

Household's reliance solely on the documents is insufficient to rebut Ms. Pritchett's version of the parties' intent for purposes of this motion for summary judgment. Interpreting the facts in a light most favorable to Ms. Pritchett, the Court finds that there is a genuine issue as to whether Household knew or suspected that Ms. Pritchett intended to purchase credit insurance and Household did not note this on the first loan documents, either by mistake or intentionally.

At trial the Court will judge the credibility of the witnesses and weigh Ms. Pritchett's evidence under the clear and convincing standard or proof.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. The motion of Household Financial Corporation of Alabama, Inc. for summary judgment is DENIED.

2. The motion of Household Financial Corporation of Alabama, Inc. to strike the affidavit of Ms. Pritchett is DENIED.

3. A trial of the complaint in this proceeding is set for **April 18, 2000, at 10:00 a.m.**

Dated: March 28, 2000

MARGARET A. MAHONEY
CHIEF BANKRUPTCY JUDGE