

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

WILLIAM J. MAXSTADT, JR.,
Debtor.

Case No. 04-10959

APPEARANCES:

WILLIAM J. MAXSTADT, JR.
Debtor Pro Se
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Chapter 13 Standing Trustee
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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

The current matter before the court is the motion of William J. Maxstadt, Jr. (“Debtor”) to disallow the secured claim of American Business Mortgages Services, Inc. (“ABMS” or “Creditor”). (Doc. 12.) As set forth *infra*, this motion was partially settled by Interim Order dated November 10, 2004 (Doc. 18), but the Debtor filed subsequent affidavits, *see Debtor’s Dec. 30, 2004 Aff. in Supp. of Objection to Claim of ABMS and in Supp. of Request to Conduct Additional Disc.* (Doc. 22); *Debtor’s Jan. 5, 2005 Supplemental Aff. in Supp. of Objection to Claim of ABMS and in Supp. of Request to Conduct Additional Disc.* (Doc. 23), and a second motion captioned “Motion to Have

ABMS Proof of Claim Dismissed as a Nullity [as] Claim is not in Compliance with the Federal Rules of Bankruptcy Procedure” (Doc. 43), which appears to request reconsideration of the Interim Order and disallowance of the Creditor’s claim in its entirety. ABMS opposes the Debtor’s request to have its claim disallowed in whole or in part.

JURISDICTION

The court has jurisdiction over the parties and subject matter of this proceeding pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2)(B), and 1334.

FACTS

- 1) The Debtor filed a Chapter 13 petition on February 20, 2004.
- 2) On or about April 6, 2004, ABMS filed a secured proof of claim in the amount of \$166,257.96, with prepetition arrears to be paid by the Chapter 13 Trustee (“Trustee”) totaling \$35,046.93. The prepetition arrears are itemized as follows: monthly payment arrears – \$17,882.62; late fees – \$255.50; real estate taxes – \$8,444.31; attorney’s fee – \$8,327.50; and collections expenses – \$137.00.
- 3) On September 2, 2004, the Debtor filed an objection to the claims of the Internal Revenue Service and ABMS (the “Claims Objection”).
- 4) Prior to the October 7, 2004 return date of the Claims Objection, the Internal Revenue Service matter was settled.
- 5) On November 10, 2004, the ABMS objection was partially settled, and an Interim Order was entered allowing prepetition mortgage arrears in the amount of \$17,882.62, late fees of \$255.50, and real estate taxes of \$8,444.31.
- 6) A further hearing was ordered for November 18, 2004 for a determination as to approval of any additional claim amount to be paid to ABMS based upon attorney’s fees and costs.
- 7) The Trustee received sufficient funds in July 2004 to pay the ordered amount;¹ pursuant to the

¹ From information available at the Trustee’s website.

Interim Order, the Trustee has disbursed \$26,552.43 to ABMS.² The remaining monies needed to satisfy the balance of the Creditor's claim amount are being held in escrow.

8) ABMS filed a Chapter 11 petition in the District of Delaware on January 21, 2005 and was assigned Case No. 05-10208.

ARGUMENTS

The Debtor's initial motion papers stated that ABMS is not the proper lien holder on his residence and that ABMS has not produced documentation in support of the validity of its lien. *See Debtor's Objection to Claims of IRS and ABMS* ¶ 7. Moreover, the Debtor alleges that ABMS has improperly included charges for services that have never been performed or advances that have never been made. *Id.* ¶¶ 8–9. ABMS responded with the requested documentation, *see Affirmation of Andrew Tureud in Opp'n* ¶¶ 4–7 (Doc. 16), and a statement that all charges itemized in the Creditor's claim, including closing costs and charges paid out of the loan and the 2001-2002 property taxes, are actual, legitimate, and properly included in its request for payment. Despite partial settlement of the matter, the Debtor now alleges that the claim should be disallowed in its entirety because the charges were incurred through fraudulent inducement, predatory lending, fraud, bad faith, and abuse of process.

DISCUSSION

After issuance of the Interim Order partially allowing the Creditor's claim, the narrow issue to be decided was the amount of attorney's fees to be awarded pursuant to 11 U.S.C.

² The Trustee disbursed \$26,552.43, the total amount required by the Interim Order, but the court notes that the Interim Order contained a mathematical error; the order allowed separate amounts of \$17,882.62, \$255.50, and \$8,444.31 (or a total of \$26,582.43). Thus, the disbursement was short \$30.

§ 506(b).³ If the court were to treat the Debtor’s subsequent submissions as a request for reconsideration, however, the court’s inquiry would necessarily expand.⁴

However, because ABMS has filed its own bankruptcy petition, this court is stayed from either reconsidering the earlier allowance of the Creditor’s claim or disallowing the attorney fee portion of the claim. 11 U.S.C. § 362 stays all entities from “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. §362(3). “Entity” is defined to include a “governmental unit.” 11 U.S.C. § 101(15). “Governmental Unit” is defined to include the “United States . . . or instrumentality of the United States.” 11 U.S.C. § 101 (27). Bankruptcy courts are therefore “entities” within the meaning of § 362(a) because they are governmental units. *In re Miller*, 397 F.3d 726, 730 (9th Cir. 2005).

Without a stay modification, no further action on the claim dispute is possible. *In re Shared Technologies Cellular, Inc.* 293 B.R. 89, 94 (D. Conn. 2003). Clearly, the funds transferred from the Trustee to ABMS pursuant to the Interim Order would be property of the Creditor’s bankruptcy estate. A bankruptcy estate is comprised of “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). When ABMS filed its bankruptcy

³ This section provides as follows:

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claim arose.

11 U.S.C. § 506(b).

⁴ “A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case.” 11 U.S.C. § 502(j).

petition in January 2005, the Trustee was holding in escrow enough money to satisfy the ABMS claim in full, including all fees and costs. At the very least, upon confirmation of the Debtor's plan, ABMS obtained an equitable interest in the funds to be disbursed by the Trustee. That equitable interest became property of the Creditor's bankruptcy estate. Thus, any action by this court concerning the claim of ABMS against the Debtor would necessarily involve either the funds obtained from the Trustee or funds being held by the Trustee. Either way, the automatic stay prevents this court from adjudicating the present matter without a lift stay order from the Delaware Bankruptcy Court. Nothing on this court's docket indicates the existence of any such order.

Because this court is stayed, both of the Debtor's motions are denied without prejudice.

It is so ORDERED.

Dated: 10/26/05
Albany, New York

/s/ Robert E. Littlefield, Jr.
Hon. Robert E. Littlefield, Jr.
U.S. Bankruptcy Judge