

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
at _____ O'clock & _____ min _____ M
JUL 25 2002
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (3)

IN RE:

Grindl Bonita Alexander,

Debtor.

Grindl Bonita Alexander,

Plaintiff,

v.

Orangeburg Calhoun Technical College,

Defendant.

C/A No. 01-12241-W

Adv. Pro. No. 02-80042-W

JUDGMENT

Chapter 13

ENTERED
JUL 26 2002
V. L. D.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Motion to Reopen Adversarial Proceeding (the "Motion") is granted to be effective upon payment to Orangeburg Calhoun Technical College ("Defendant") of \$1,250.00 within ten days of the date of this Order. Upon submission by Grindl Bonita Alexander's ("Plaintiff") counsel of an affidavit to the Court that she has paid this amount to Defendant, the Court will restore the adversary proceeding. The restoration of the adversary proceeding will restore the entire proceedings, including Defendant's counterclaim. Upon Plaintiff's failure to pay the costs and fees to Defendant and to timely submit the affidavit, the Motion is denied, and the adversary proceeding shall be closed.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 26, 2002.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
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JUL 27 2002
BRIAN K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (3)

IN RE:	
Grindl Bonita Alexander,	Debtor.
Grindl Bonita Alexander,	Plaintiff,
v.	
Orangeburg Calhoun Technical College,	Defendant.

C/A No. 01-12241-W
Adv. Pro. No. 02-80042-W

ORDER
Chapter 13

ENTERED
JUL 26 2002
V.L.D.

THIS MATTER comes before the Court upon Grindl Bonita Alexander's ("Plaintiff") Motion to Reopen Adversarial Proceeding (the "Motion"). Plaintiff seeks to reopen an adversary proceeding wherein she alleges Orangeburg Calhoun Technical College ("Defendant") violated the automatic stay of 11 U.S.C. §362 by refusing to release Plaintiff's student transcript, which she needed in order to enroll at Claflin College, until Plaintiff paid Defendant in full for a debt owed.¹ On June 18, 2002, the Court held a final pre-trial conference; however, Plaintiff and her counsel did not attend it.² Upon Plaintiff's and counsel's failure to appear, Defendant requested

¹ Further references to the Bankruptcy Code shall be by section number only.

² The Court notes that a pre-trial conference is an important event in an adversary proceeding. At this conference, the Court sets the day certain for a trial, handles outstanding motions, and concludes all pre-trial matters. Because these conferences are essential to the Court's efficient management of its case load, the Court requires parties to attend them. See McGuire v. McGuire (In re McGuire), C/A No. 01-05872-W, Adv. Pro. No. 01-80234-W, slip op. at 7 (Bankr. D. S.C. Mar. 20, 2002) ("In sum, these conferences are the last step where the parties and the Court organize for trial. . . . These conferences are valuable, and they cannot be flouted or ignored.") Moreover, the Court's scheduling orders provide that the Court may proceed with the trial at the pre-trial conference's conclusion and that the Court may determine a

that the Court call the matter for trial and dismiss it for Plaintiff's failure to prosecute. On June 18, 2002, the Court entered an order dismissing the adversary proceeding.

On July 8, 2002 and more than ten days after the entry of the order dismissing the adversary proceeding, Plaintiff filed the Motion and argued that the adversary should be reopened pursuant to Federal Rule of Bankruptcy Procedure 9024.³ Plaintiff's counsel argues that she failed to attend the pre-trial conference because she mistakenly entered an incorrect date for the conference in her calendar and that this mistake constitutes inadvertence and excusable neglect. In response, Defendant filed a Memorandum of Law in Opposition to Debtor-Plaintiff's Motion wherein it argues that this mistake is not excusable neglect, especially when viewed in the following context of the case's history: (1) Plaintiff had notice of the pre-trial conference via this Court's Scheduling Order entered on March 28, 2002 (the "Scheduling Order"); (2) Plaintiff has failed to cooperate with discovery requests, which has materially restricted Defendant's ability to defend its position; and (3) Plaintiff failed to submit a memorandum of authorities pursuant to Local Rule 9014-1 with its Motion. Moreover, Defendant asserts that Plaintiff failed to demonstrate a meritorious claim or compelling circumstances that justify reopening the case.⁴

failure to prosecute pursuant to Federal Rule of Civil Procedure 41, applicable in bankruptcy proceedings by Federal Rule of Bankruptcy Procedure 7041, in the event a party fails to abide by the terms of the scheduling order or to appear and be prepared in accordance with the terms of the scheduling order.

³ References to the Federal Rules of Civil Procedure shall be by Rule number only. Further references to the Federal Rules of Bankruptcy Procedure shall be by Bankruptcy Rule number only.

⁴ Defendant points out that Plaintiff's damages are minimal in light of the facts that (1) Plaintiff requested the transcript after the enrollment date deadline at Claflin College expired and (2) Defendant timely processed the transcript request in its ordinary course of business after it received a proper request from Plaintiff. Plaintiff's counsel acknowledges that the damages

To frame the analysis of whether it is appropriate to grant relief from a judgment or order, the Court notes that a movant seeking relief must establish that (1) its motion is timely; (2) the nonmoving party will not suffer unfair prejudice if the judgment or order is set aside; and (3) there is a meritorious defense. After establishing this prong, the movant must then show a ground exists for relief under Rule 60(b). See Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp., 843 F.2d 808, 811 (4th Cir. 1988).

The Court concludes there are sufficient grounds for setting aside the order. Plaintiff filed the Motion timely and within the year after the order was entered. Plaintiff has proffered a meritorious claim as she argues Defendant violated the automatic stay by demanding that Plaintiff first pay a prepetition debt before it would deliver the transcript.⁵ Regarding unfair prejudice of the nonmoving party, the Court believes that Defendant will not suffer prejudice by having to defend the adversary on the merits; however, the Court recognizes that Defendant has incurred unnecessary costs by virtue of defending against this Motion. Indeed, in responding both formally and informally to the Motion, Defendant participated in a conference call with Plaintiff and the Court after the dismissal order was entered, and Defendant prepared its

sought are minimal and are for the inconvenience Plaintiff experienced in making repeated attempts to obtain the transcript and for her attorney's fees.

⁵ The Court notes that there may be an issue as to the nature of the debt in this case and whether it falls within §523(a)(8) and therefore is presumed nondischargeable unless undue hardship is addressed in an adversary proceeding or in the confirmed Chapter 13 plan. There is a split of case law regarding whether an institution may withhold a transcript for a nondischargeable student loan debt. Compare In re Billingsley, 276 B.R. 48 (Bankr. D. N.J. 2002) with Loyola Univ. v. McClarty, 234 B.R. 386 (E.D. La. 1999).

Memorandum and appeared before the Court to argue its opposition to the Motion.⁶ Defendant's counsel submitted an affidavit listing the fees and costs attendant to this work, and the fees total \$1,250.00.⁷ The bottom line is that, had Plaintiff and her counsel attended the final pre-trial conference as ordered, Defendant would have incurred none of these costs. Because Defendant has suffered prejudice to the extent of these additional fees it incurred, the Court conditions setting aside the order upon the payment of these fees and costs to Defendant. See Dove v. Codesco, 569 F.2d 807, 810 (4th Cir. 1978) (recommending the district court on remand sanction the blameworthy attorney for the costs and fees opposing counsel incurred as a result of the dismissal); Hovis v. ITS, Inc. (In re Air South Airlines, Inc.), C/A No. 97-07229-W, Adv. Pro. No. 99-80166-W, slip op. at 4 (Bankr. D. S.C. Sept. 2, 1999) (granting relief from default judgment but conditioning it upon the movant paying the non-movant trustee the fees and costs incurred in defending the motion for relief from judgment); see also In re Crawford, C/A No. 02-01266-W slip op. at 7 (Bankr. D. S.C. May 22, 2002); In re Dorsett, C/A No. 99-04798-D slip op. at 4-5 (Bankr. D. S.C. Sept. 9, 1999) (conditioning the reconsideration of judgments that granted relief from the automatic stay upon the movants paying non-movants their costs and legal fees incurred in connection with obtaining default judgments and defending the Bankruptcy Rule 9024 motions).

Finally, the Court concludes that Plaintiff's counsel mistakenly entered an incorrect date

⁶ Based upon Plaintiff's informal request to restore the adversary, the Court facilitated a teleconference wherein the parties discussed the resolution of the adversary.

⁷ Defendant submitted a statement of fees and costs incurred in defending the Motion, and it lists the total as \$1,490.00. After reviewing the statement, the Court concludes that a reasonable amount of fees for defending the Motion is \$1,250.00.

for the pre-trial conference in her calendar and that this mistake constitutes excusable neglect. See Pioneer Inv. Serv. Co. v. Brunswick Associates Ltd. P'ship, 507 U.S. 380, 394 (1993) (“[A]t least for purposes of Rule 60(b), ‘excusable neglect’ is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence.”); see also Augusta Fiberglass, 843 F.2d at 811 (setting aside a default judgment where the movant’s attorney handled an amended complaint carelessly and did not file an answer).

Accordingly, the Court grants Plaintiff’s Motion to be effective upon payment within ten days of the date of this Order to Defendant of \$1,250.00 representing the costs and fees Defendant incurred in defending the Motion. Upon submission by Plaintiff’s counsel of an affidavit to the Court that she has paid this amount to Defendant, the Court will restore the adversary proceeding. The restoration of the adversary proceeding will restore the entire proceedings, including Defendant’s counterclaim. Upon the restoration of the adversary by the filing of the affidavit, Plaintiff is ordered to formally answer or respond within seven days to discovery requests that Defendant previously served upon her. Defendant shall have ten days after Plaintiff’s response to its discovery requests to file any motions as allowed in the Scheduling Order. Thereafter, the Court will set further hearings on Defendant’s motion(s) or the trial of the adversary. Upon Plaintiff’s failure to pay the costs and fees to Defendant and to timely submit the affidavit, the Motion is denied, and the adversary proceeding shall be closed.

AND IT IS SO ORDERED.

Columbia, South Carolina,
July 26, 2002.


UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

JUL 25 2020

Osborne Boykin jgmt indiv
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

VANNA L. DANIEL

Deputy Clerk