

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

FILED
at _____ O'clock & _____ min _____ M
MAY - 5 2004
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (4)

IN RE:

Timothy D. Williams and
Terry E. Williams,

Debtors.

Timothy D. Williams and
Terry E. Williams,

Plaintiffs,

v.

Household Automotive Finance Corp.,
Action Recovery Services, Inc., and Ramsey
Law Firm, P.C.,

Defendants.

C/A No. 03-15082-W

Adv. Pro. No. 04-80093

ENTERED

MAY - 5 2004

ORDER

Chapter 13

B. R. M.

This matter comes before the Court upon Action Recovery Services, Inc.'s ("Defendant") Demand for a Jury Trial. Timothy D. Williams and Terry E. Williams (collectively, the "Plaintiffs") are debtors in a pending Chapter 13 bankruptcy case currently being administered by the Court. Plaintiffs filed their Chapter 13 Petition on December 1, 2003. Plaintiffs then filed a Complaint against Defendant on April 5, 2004. In the Complaint, Plaintiffs allege that they suffered damages because Defendant violated the automatic stay provisions of 11 U.S.C. § 362 by repossessing Plaintiffs' vehicle without obtaining stay relief before the repossession. In response to Plaintiffs' Complaint, Defendant filed an Answer and its Demand for a Jury Trial. Plaintiffs object to Defendant's Demand for a Jury Trial.

Generally, the Court reviews the individual claims that are being asserted to determine if causes of action are legal or equitable in nature in order to determine whether a party has a right to a trial by jury pursuant to the Supreme Court's analysis in Granfinancera S.A. v. Nordberg, 492 U.S. 33 (1989). Anderson v. Simchon (In re Southern Textile Knitters), 236

B.R. 207, 209 (Bankr. D.S.C. 1999). Plaintiffs have brought an action alleging violation of the automatic stay against Defendant. Because a proceeding to prosecute a violation of stay is equitable in nature, Defendant has no Seventh Amendment right to a jury trial. Clayton v. King (In re Clayton), 235 B.R. 801, 804 (Bankr. M.D.N.C. 1998). See also Anderson v. Simchon (In re Southern Textile Knitters), 236 B.R. at 212-13 (finding no right to trial by jury for equitable claims); In re Harrison 185 B.R. 607, 610 (Bankr. D. Kan. 1995)(holding that there is no right to a jury trial in a civil contempt proceeding); Valley Steel Products Co., Inc. v. DARCO (In re Valley Steel Products Co., Inc.), 147 B.R. 189, 192 (Bankr. E.D. Mo. 1992)(denying defendants' motion for jury trial by holding that a breach of automatic stay action is a public-right cause of action associated with the functioning of the bankruptcy process).

In light of the authorities cited, the Court denies Defendant's demand for a trial by jury.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
May 5, 2004