

ENTERED  
OCT 13 2002  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA



IN RE: )  
 )  
George E. Mitchum and )  
Gloria P. Mitchum, )  
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 )  
Debtors. )  
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\_\_\_\_\_ )

Bankruptcy Case No. 02-7573-W  
Chapter 13  
ORDER

This matter came before the Court upon the motion of Chase Manhattan Mortgage Company ("Chase") to vacate the Order granting the Debtors' a discharge and to reinstate the Debtors' Chapter 13 plan. This is a core proceeding and this Court has jurisdiction pursuant to 28 U.S.C. § 157; 28 U.S.C. § 1334(b); and Local Civil Rule 83.IX.01 DSC. Venue is proper pursuant to 28 U.S.C. § 1409. After hearing the parties' arguments, the Court makes the following findings of fact and conclusions of law pursuant to FED. R. CIV. P. 52, made applicable to the proceeding by FED. R. BANKR. P. 7052.<sup>1</sup>

**FINDINGS OF FACT**

1. The Debtors filed a bankruptcy petition under Chapter 13 of Title 11 on June 26, 2002.
2. At the time the Debtors filed their petition, Chase held a security interest in the Debtors' 1999 Fleetwood mobile home, VIN No. NCFLX46AB08787 ("Home").
3. The Court confirmed the Debtors' plan of reorganization on September 13, 2002. The Debtors' plan provided, in part, that the Debtors would pay Chase directly

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<sup>1</sup> To the extent any of the following Findings of Fact constitute Conclusions of Law, the Court adopts them as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

beginning in August, 2002 and that the Debtors would pay their unsecured creditors one hundred (100%) percent of such creditors allowed claims.

4. Chase timely filed a proof of claim in the Debtors' bankruptcy case on September 18, 2002

5. Chase filed a motion for relief from the automatic stay on June 30, 2003 based on the Debtors' failure to make scheduled payments to Chase and the Court entered an Order on July 18, 2003 granting Chase relief from the automatic stay.

6. Chase foreclosed on its security interest in the Home and sold the Home by private sale on March 30, 2004. A deficiency of \$42,644.00 existed after the sale of the Home in a commercially reasonable manner. Chase amended its previously filed proof of claim on April 15, 2004 to assert this deficiency balance against the Debtors' estate as a general unsecured claim.

7. On April 16, 2004, the Chapter 13 Trustee filed a final report which certified that the Debtors completed their payments of all previously filed claims pursuant to their confirmed plan and that the Debtors were entitled to a discharge.

8. Based on the Trustee's final report and certification, the Court entered an Order on April 19, 2004 granting a discharge to the Debtors pursuant to 11 U.S.C. § 1328(a).

9. On June 3, 2004, the Trustee filed an objection to Chase's amended proof of claim alleging that allowance of Chase's amended proof of claim would interfere with the orderly distribution of funds to the Debtors' other creditors. The Debtors did not file an objection to Chase's amended proof of claim.

10. Chase responded to the Trustee's objection alleging that its amended claim should be allowed.

11. After a hearing on the merits of the Trustee's objection and Chase's response, the Court issued an Order on August 25, 2004 which overruled the Trustee's objection and allowed Chase's amended proof of claim as filed. The August 25, 2004 Order did not address the Order for discharge issued April 19, 2004.

12. On September 16, 2004, Chase moved pursuant to FED. R. CIV. P. 60(a) and (b)(1), (4), and (6), made applicable by FED. R. BANKR. P. 9024, to vacate the Order for discharge entered April 19, 2004 and for an order reinstating the Debtors' confirmed Chapter 13 plan.

13. The Debtors objected to Chase's motion on grounds that a discharge may only be revoked by means of an adversary proceeding and only on the conditions specified in 11 U.S.C. § 1328(e).

14. The Trustee did not respond to Chase's motion but was present at the hearing on Chase's motion, as was counsel for the Debtors and Chase.

#### **CONCLUSIONS OF LAW**

The Bankruptcy Code provides that "[a]s soon as practicable after the completion by the debtor of all payments under the plan ... the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title ...." 11 U.S.C. § 1328(a). If granted, the discharge enjoins creditors from holding debtors personally liable for discharged debts. 11 U.S.C. § 524(a)(2). Under the limited circumstances set forth in 11 U.S.C. § 1328(e), a discharge may be revoked. The issue before the Court is whether an order granting the Debtors a discharge may be vacated

pursuant to FED. R. CIV. P. 60. Based on the particular facts of this case, this Court holds that Chase is entitled to the relief sought and that the Order entered April 19, 2004, granting the Debtors a discharge, should be vacated.

The Debtors argue that Chase may only have the Order granting discharge revoked pursuant to 11 U.S.C. § 1328(e) and must do so by means of an adversary proceeding. The Ninth Circuit has addressed a similar set of facts in the case of In re Cisneros and found that “[a] Chapter 13 debtor’s right to have his discharge revoked only for fraud ... is in no way infringed when a court vacates an order of discharge entered by mistake.” In re Cisneros, 994 F.2d 1462, 1466 (9th Cir. 1993). The Ninth Circuit reasoned that the Debtors should not be entitled to invoke the protection of 11 U.S.C. § 1328(e) when the Debtors had no right to receive the discharge in the first place. See id. at 1465-1466. This Court agrees with the Cisneros Court’s basic proposition that a bankruptcy court has the inherent power to correct its own mistakes; however, this Court also agrees that the holding of Cisneros should be limited in its application to errors and mistakes made by the Court and not to errors and mistakes made by creditors or debtors. See Nissan Motor Acceptance Corp. v. Daniels (In re Daniels), 163 B.R. 893 (Bankr. S.D.Ga. 1994); In re Puckett, 193 B.R. 842 (Bankr. N.D.Ill. 1996); In re Trembath v. U.S. (In re Trembath), 205 B.R. 909 (Bankr. N.D.Ill. 1997).

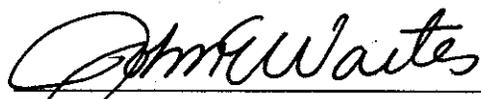
In this case, the error resulting in the Debtors’ discharge was not made by Chase but rather the Court granted the Debtors a discharge based upon the Chapter 13 Trustee’s final report and certification that all claims had been paid in accordance with the Debtors’ confirmed plan. The final report and certification did not account for

Chase's amended proof of claim, which was filed the day before the report and certification. The Court would not have granted the Debtors a discharge had it been aware of the fact that the final report did not account for Chase's amended claim. The Court has the inherent authority to correct these types of mistakes which result when the Court acts on a misapprehension of the facts. See Cisneros, 994 F.2d at 1467; In re Midkiff, 271 B.R. 383, 386 (B.A.P. 10th Cir. 2002); In re Stovall, 256 B.R. 490, 492 (Bankr. N.D.Ill. 2000).

Relief under Rule 60 is the exception to the general rule favoring final judgments and is not lightly granted. See In re Mcsby, 244 B.R. 79, 90 (Bankr. E.D.Va. 2000). Rule 60 is designed to prevent miscarriages of justice. See id. Under the facts of this case, it would be unjust to allow the discharge Order to stand when the Order was entered in reliance on an incomplete report that did not reflect Chase's timely filed amended proof of claim, which was not paid in accordance with the Debtors' plan and had not been disallowed pursuant to 11 U.S.C. § 502.

Based on the foregoing, the Order entered April 19, 2004 granting the Debtors a discharge is hereby vacated and the Debtors' Chapter 13 plan is reinstated. The reinstatement of the Debtors' Chapter 13 plan shall be stayed pending this Court's determination of whether the Debtors are entitled to a hardship discharge.

AND IT IS SO ORDERED.

  
The Honorable John E. Waites  
United States Bankruptcy Judge

Columbia, South Carolina  
October 13, 2004