

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

FILED  
at ..... O'clock & ..... min. .... M  
AUG 31 2001  
BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (3)

IN RE:  
  
Ronnie Emmitt Burris  
Tawanda Ruth Burris  
  
Debtors.

C/A No. 01-00776-W  
  
JUDGMENT  
  
Chapter 13

ENTERED  
AUG 31 2001  
V. L. D.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Objection to Allowance of Claim of Fidelity National Bank is overruled in part and sustained in part. The claim of Fidelity National Bank is allowed as a secured claim in the amount of \$8,000.00 and as an unsecured claim in the amount of \$1,359.02.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
August 30, 2001.

**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:

AUG 31 2001

*Edwards for et*  
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

VANNA L. DANIEL

Deputy Clerk

*via mail*

*kgmt index*

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IN RE:

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ORDER

Chapter 13

ENTERED  
AUG 31 2001  
V. L. D.

THIS MATTER comes before the Court upon the Objection to Allowance of Claim of Fidelity National Bank ("Fidelity") of \$9,626.91 by Ronnie Emmitt Burris and Tawanda Ruth Burris (collectively "Debtors") on the following grounds: (1) Debtors owe Fidelity only \$4,175.80; (2) Debtors detrimentally relied upon a mistake in Fidelity's payment book in making monthly payments lower than what the contract provided; and (3) the value of Debtors' collateral, a 1996 Dodge Ram Van, is less than the balance owed to Fidelity. On April 27, 2001, Fidelity responded to the Objection by denying all of Debtors' allegations, citing records confirming the amount Debtors owed Fidelity, and claiming that the value of the collateral is greater than the amount of Fidelity's claim. After considering the pleadings and counsels' arguments, the Court makes the following Findings of Fact and Conclusions of Law pursuant to Fed R. Civ. P. 52, made applicable in bankruptcy proceedings by Fed R. Bankr. P. 7052.<sup>1</sup>

**FINDINGS OF FACT**

1. On July 6, 1996, Debtors entered into a purchase money security agreement ("contract")

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<sup>1</sup> The Court notes that, to the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and, to the extent any Conclusions of Law constitute Findings of Fact, they are so adopted.

with Spartanburg Dodge. The contract provided for the sale of a 1996 Dodge Truck Ram Van to Debtors from Spartanburg Dodge and for Spartanburg Dodge and its assigns to retain a security interest in the van. The contract was apparently assigned to Fidelity National Bank.

2. The contract provided for Debtors to make sixty monthly payments of \$471.58, beginning on August 5, 1996.

3. Some time after the parties executed the contract and before August 5, 1996, Fidelity mailed Debtors a payment book with sixty coupons for each payment Debtors owed Fidelity.

4. The payment book erroneously listed the monthly amount due for each payment as \$417.58 instead of \$471.58.

5. Beginning in August 1996, Debtors made monthly payments to Fidelity of \$417.58, the amount provided in the payment book. Debtors regularly paid this amount or \$430.08 (monthly payment with a late assessment). Debtors never paid the amount provided in the contract with Spartanburg Dodge, \$471.58.

6. Fidelity never demanded Debtors pay the amount provided in the contract, and Debtors never reported the discrepancy to Fidelity. Fidelity realized the error in May 2001 while Debtors were in this bankruptcy proceeding.

7. Because Debtors failed to make a payment of any amount on a due date prior to the bankruptcy, Fidelity repossessed the van prior to Debtors' filing bankruptcy. Fidelity incurred repossession costs of \$915.00, and Debtors and Fidelity stipulate that \$915.00 should be included in Fidelity's claim.

### **CONCLUSIONS OF LAW**

Debtors argue that they relied upon the monthly amount presented in the payment book to

their detriment; consequently, they assert the amount they owe Fidelity is \$4175.80 (\$417.58 multiplied by ten remaining monthly payments).<sup>2</sup> In contrast, Fidelity argues that the contract governs the amount Debtors owe, and the balance on the note is \$9,626.91.<sup>3</sup> Fidelity asserts that the payment book is not a part of the contract; therefore, the payment book and its representations do not alter the amount due under the contract. Responding to Debtors' claim that they relied upon Fidelity's representation in the payment book to their detriment, Fidelity argues that, in fact, Debtors received a benefit because Debtors saved money using the payment coupons with the reduced payment amount and Fidelity did not assert any default as long as payments in that amount were being made.

Initially, the Court must determine whether Fidelity should be equitably estopped from asserting a claim in an amount greater than the remaining number of monthly payments at the rate of \$417.58.

Generally, when a party represents an existing fact to another party who reasonably relies on the representation, the representing party cannot later deny the representation if permitting the denial would result in injury or damage to the relying party. See 4 Samuel Williston & Richard A. Lord, Williston on Contracts § 8:3 (4th ed. 1992). Stated differently, equitable estoppel inhibits a party from asserting a right because of "mischief" caused by that party's own fault, and

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<sup>2</sup> Upon review of the payment history stipulated into evidence, it appears Debtors made forty-eight monthly payments to Fidelity through the date of filing, leaving twelve payments outstanding. Furthermore, the claim amount should be increased by \$915.00 in stipulated repossession costs.

<sup>3</sup> In its proposed order, Fidelity corrected its math and indicated its assertion of claim would be \$9,359.02 and not \$9,626.91 as stated in proof of claim #5 and argued at the hearing.

the doctrine may arise even though the estopped party did not intend to relinquish or change any existing right. See Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 415 S.E.2d 384, 387 (S.C. 1992). Equitable estoppel has been used in instances where representations have been by words, conduct, or silence, and its use is designed to work as a protection or shield, not to bring a positive gain to a party. See Faulkner v. Millar, 460 S.E.2d 378, 381 (S.C. 1995); Hubbard v. Beverly, 15 S.E.2d 740, 741 (S.C. 1941); 4 Williston & Lord supra, at § 8:3. In South Carolina, the elements of estoppel as related to the estopped party are (1) conduct that amounts to a false representation or concealment of material facts, or, at least, conduct calculated to convey the impression that the facts are otherwise than and inconsistent with those that the party subsequently attempts to assert, (2) the intent or expectation that its representation will be acted upon by the other party, and (3) knowledge, actual or constructive, of the real facts. See Southern Dev. Land & Golf Co., Ltd. v. South Carolina Pub. Serv. Auth., 426 S.E.2d 748, 750 (S.C. 1993).

Applying the facts of this case as to the above stated elements, the Court finds that the doctrine of equitable estoppel could apply. First, by mailing Debtors the payment book with the incorrect amount, Fidelity falsely represented that this figure would be an appropriate sum for Debtors to pay and must have expected Debtors to rely upon these materials. Indeed, it seems reasonable for a debtor who receives instructions from its creditor regarding payment of the debt owed to follow the creditor's instructions. Finally, Fidelity had actual knowledge that Debtors owed \$471.58 per month according to the contract between the parties rather than the \$417.58 it accepted.

Estoppel, however, also demands that parties seeking estoppel meet certain eligibility

requirements as well. The party seeking estoppel must (1) lack knowledge and the means to obtain knowledge of the truth as to the facts in question, (2) rely upon the conduct of the party to be estopped, and (3) change his or her position prejudicially. See id.

In this case, the knowledge of Fidelity and Debtors is equal as both had copies of the executed contract. However, Fidelity's sending the payment book with an incorrect monthly payment figure was an act that misled Debtors and since Fidelity was not asserting any failure to pay or default, Debtors had no reason to consult the contract. Therefore, the Court finds Debtors meet the first requirement.

Secondly, as previously noted, Debtors clearly relied upon Fidelity's representation that \$417.58 was an appropriate amount to pay monthly. Debtors illustrated this reliance by their course of performance of regularly submitting monthly payments of \$417.58.

The final element the Court must examine is whether the reliance on Fidelity's representation was to Debtors' detriment or prejudice. The Supreme Court of South Carolina classified this element as "essential" for raising a defense of estoppel. See Parker v. Parker, 443 S.E.2d 388, 391 (S.C. 1994). Courts have found detrimental reliance in a variety of situations. See Janasik, 415 S.E.2d at 388 (finding detrimental reliance where a horizontal property regime and its management company waited four years before demanding that its resident remove landscape improvements that violated the regime's restrictive covenants); Parker, 443 S.E.2d at 391 (finding detrimental reliance where parties waited four years after the death of a decedent to challenge the paternity of one of the decedent's heirs and thereby prejudiced the disputed heir by placing her in a position where she could no longer defend her parentage because of the paternity statute's timing requirements).

Fidelity argues that, instead of a detriment, its representation actually aided Debtors by permitting them to make lower payments over the life of the loan. Fidelity emphasizes that these lower payment amounts and Fidelity's failure to demand greater payments or place Debtors in default for failing to pay the contract amount must have benefitted Debtors, especially in light of Debtors' precarious financial state.

In this case, there is no evidence that the error in the payment coupon book was anything more than an innocent mistake. Fidelity is asserting the actual balance of an indebtedness remaining due under the contract, without added penalties, interest or attorney fees (other than the stipulated repossession cost). Furthermore, Debtors have retained and enjoyed the use of the van for nearly five years without having to pay the monthly payment amount called for by the contract. By their filing of bankruptcy, Debtors have recovered use of the van, which had been properly repossessed prepetition due to Debtors' failure to pay any payment. Through this objection, Debtors have also requested to value down Fidelity's claim to the replacement value of the van and, undoubtably, will propose to reduce the interest rate to be paid on the claim below the contract rate. Under the circumstances of this case, the Court finds that Debtors have not changed their position prejudicially based upon the representation of payment amount contained in the payment book, and for that reason, the defense of equitable estoppel must fail. Therefore, the objection to Fidelity's claim based on this ground is overruled and the claim amount is \$8,444.02, plus the stipulated repossession costs of \$915.00 for a total of \$9,359.02.

As an additional matter, Debtors object to Fidelity's secured claim based upon the ground that the van has a value of \$8,000 and therefore request the secured claim be reduced to that value, with any deficiency being allowed as unsecured. The parties stipulated to the evidence of

value introduced and based upon that evidence, the Court finds the van's value to be \$8,000.00. Therefore the objection to Fidelity's claim on this ground is sustained and Fidelity's secured claim is reduced to \$8,000.00 with \$1,359.02 remaining as an unsecured claim.

### CONCLUSION

From the arguments and evidence discussed above, it is therefore:

**ORDERED** that the Objection to Allowance of Claim of Fidelity National Bank is overruled in part and sustained in part. The claim of Fidelity National Bank is allowed as a secured claim in the amount of \$8,000.00 and as an unsecured claim in the amount of \$1,359.02.

**AND IT IS SO ORDERED.**

Columbia, South Carolina,  
August 30, 2001.

  
UNITED STATES BANKRUPTCY JUDGE

**CERTIFICATE OF MAILING**

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**AUG 31 2001**

*Edwards for CR*  
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE *via BNC*  
VANNA L. DANIEL *jgmt induw*  
Deputy Clerk