

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

**FILED**  
O'clock & min  
NOV 20 2003  
BRENDA K. ARGOE, CLERK  
United States Bankruptcy Court  
Columbia, South Carolina (11)

IN RE:

Billy Lee Davis, Sr., and Carolyn Ann Davis

Debtor

C/A No. 03-09126-W

**JUDGMENT**

Chapter 13

**ENTERED**  
NOV 21 2003  
K.E.P.

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Court Orders sanctions against John A. Pincelli in the amount of \$500.00, payable to the Clerk of Court within ten (10) days of entry of the Order.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
November 20, 2003.

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FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Billy Lee Davis, Sr., and Carolyn Ann Davis,

Debtor(s).

Case No. 03-09126-W

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ORDER

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**BRENDA K. ARGOE, CLERK**  
United States Bankruptcy Court  
Columbia, South Carolina (11)

This matter comes before the Court upon an Order to Show Cause entered October 16, 2003, which required John A. Pincelli ("Pincelli") and Citifinancial, Inc. ("Citifinancial") to appear and show cause why sanctions should not be entered against them for their failure to appear at the hearing on Citifinancial's Objection to Chapter 13 Plan or Related Motions (the "Objection") on October 14, 2003.

Citifinancial's Objection was filed on August 20, 2003, approximately 2 months before the hearing on the Objection, and asserted that the real property on which it asserted a lien had a value greater than that proposed by Bill Lee Davis, Jr. and Carolyn Ann Davis (the "Debtors") in their Chapter 13 Plan. At the hearing on the Order to Show Cause, Pincelli, Citifinancial's Attorney, and Robert H. Cooper, Debtors' Counsel, indicated that they did not discuss certain issues raised by Citifinancial until after 5:00 p.m. on the last business day before the hearing<sup>1</sup> and that they could not resolve the Objection or inform the Court of their desire to continue the hearing pursuant to the Local Rules of this Court or the continuance procedures of this Judge. Neither party advised the Court in advance of their desire to continue the hearing. Neither Pincelli nor other representation of Citifinancial attended the hearing on the Objection and Mr.

<sup>1</sup> The hearing was held on Tuesday, October 14, 2003 in Spartanburg, South Carolina, a location in which the Court conducts Chapter 13 hearings once a month and to which Pincelli would have to travel from his office in Columbia, South Carolina. Counsel indicated that they discussed, in relation to the Objection, a potential issue regarding the Debtors' title to the subject property after 5:00 p.m. on Friday, October 10, 2003 and that on Monday, October 13, 2003, the Court was closed due to a federal holiday.

Cooper stated that there was an issue whether Citifinancial actually had a mortgage lien on real property which was property of the estate. Since neither Debtors nor Citifinancial were present and prepared to proceed to address the Objection, Mr. Cooper requested the matter be continued until November 10, 2003.

The continuance delayed consideration of the confirmation of Debtors' Chapter 13 Plan and therefore delayed distribution to creditors.

The problems and waste of resources caused by counsels' failure to appear at hearings and the failure to properly seek continuances or other resolutions in advance of hearing dockets have been addressed in prior Orders.

This Order should serve to caution these counsel specifically and other members of the bar in this District generally that the regular failure to appear at scheduled hearings or to submit settlement orders or withdrawals or otherwise effectively communicate the resolution of matters wastes judicial resources and creates a significant burden on the Court and case administration system in this District. This waste cannot continue and will no longer be tolerated. This Order places the Bar on notice. If counsel practices in such a manner whereby hearings are unattended and settlement orders or withdrawals are not timely filed, this matter of practice will expose counsel to sanctions and threaten counsel's ability to practice and appear before this Court. In re Mathis, C/A No. 02-14636, Slip op. at 3 (Bankr. D.S.C. March 3, 2003).

Pincelli is a primary offender in this area. The Court in Mathis addressed Pincelli's failure to appear at a hearing on his client's objection to lien avoidance filed by him. Id.

It appears Pincelli specializes in representing consumer creditors in a volume of matters in which the dollar amount in controversy in each case may not justify the costs of representation, but which justify a discounted fee charged by him if such matters are handled in volume. Such discounted fees have lead to Pincelli limiting the time allocated to such representation as indicated by the

short, often unspecific form objections or motions he files on behalf of such creditors and a repeated inattention to the procedures and rules of this Court, as well as a failure to appear at the very hearings scheduled on the pleadings which he files. Over several years the undersigned Judge has frequently warned and complained to Pincelli that such deficiencies cause problems for the Court. For example, the failure to appear at hearings without compliance with the Court's settlement, withdrawal or continuance procedures cause the Court to spend its already overtaxed resources needlessly on preparation for the hearing, and/or to search its records for some last minute resolution which would explain counsel's absence at the hearing. Often this Court's consumer dockets have over 300 cases scheduled for the same time and date. Such numbers require streamlined procedures to address each matter in a fair, proper and timely manner. When counsel do not adequately address the issues raised by their pleadings until the very last moment and fail to attend the hearing, (either to avoid expense or inconvenience to themselves), the patience and limited resources of this Court are exhausted. The appearance of one unprepared counsel without the appearance of opposing counsel, without witnesses or parties, puts the Court in a position of limited choices – either grant the continuance forced upon it or deny the relief requested.

In situations such as this case where counsel for both parties are unprepared, it is difficult to choose which party should bear the consequence of such a blatant disregard for the efforts of others. The Court is reluctant to levy the consequences of denial of confirmation or denial of an objection upon the parties

when it is apparently their counsel who have acted so deficiently. Inevitably, it appears that either the Court must accept the continuance forced upon it or seek sanctions against the responsible counsel. The Court attempted to alleviate the difficult dilemma imposed upon it and the consequences arising therefrom by its issuance of the Mathis decision in order to alert and caution the bar against such deficient practices.

Pincelli has been the subject of several admonitions, both informal and formal. Recent examples of orders addressing his deficient practices include:

1. On June 12, 2003, Pincelli did not appear for two scheduled hearings; instead, Pincelli sent his associate to the hearing to request a continuance. The stated basis for failure to proceed was that counsel had been busy or otherwise unable to discuss the matters. Pincelli was admonished by letter from the Court for his failure to appear or otherwise properly seek a continuance in advance of the hearing. In re Hill (C/A No. 03-03717-W) and In re Kirkland (C/A No. 03-03718-W).
2. On May 14, 2003, the Court issued an Order in the case of In re Bradwell (C/A No. 01-04441-W). The Order denied a Motion for Relief from the Automatic Stay submitted by Pincelli for lack of prosecution since Pincelli failed to appear at the hearing on the motion.
3. On May 1, 2003, Pincelli failed to follow Local Bankruptcy Rule (SLBR) 3011-1, Clerk's Instructions 3011-1, and Local Official Forms 3011-1(a)-(d) when filing two Applications for Unclaimed Funds. Pincelli failed to disclose required information about the original creditor and did not include a brief history of the creditor from the filing of the claim to the date of the filing of the application. As a result of the deficiencies, on June 20, 2003, the Court issued Orders in the following two cases, In re Hammond Enterprises, Inc. (C/A No. 00-05133-W) and In re Vohs, (C/A No. 96-75731-W), denying Pincelli's Applications with prejudice for six months. Furthermore, the Court ordered the Clerk of Court to strike any other deficient Applications from Pincelli with prejudice for a period of six months. The Court also instructed the Clerk of Court to issue an Order to Show Cause why sanctions should not be imposed if Pincelli were to submit any other deficient Applications.

4. On March 3, 2003, the Court issued a Supplemental Order in the case of In re Mathis (C/A No. 02-14636-W). In the Order, the Court admonished Pincelli for failing to appear at a scheduled hearing concerning his client's objections to debtor's Motion to Avoid Judicial Lien. Neither debtor, debtor's counsel, Pincelli, nor Pincelli's creditor-client appeared at the scheduled hearing. Furthermore, neither debtor, debtor's counsel, Pincelli, nor Pincelli's creditor-client properly filed a withdrawal or settlement order prior to the hearing. Thus, the Court denied the motion and warned that if attorneys do not attend hearings and timely file withdrawals or settlements, it may order sanctions.

Other Orders to Show Cause regarding Pincelli's failure to appear and/or properly prosecute matters include In re Howard, C/A No. 98-11092-W, slip op. (Bankr. D.S.C. Jul. 19, 2002), and In re Sandifer, C/A No. 98-10569-W, slip op. (Bankr. D.S.C. Jul. 20, 2002), in which the Court ordered Pincelli to follow certain specified procedures regarding the withdrawal or settlement of a matter on the docket or otherwise be present in Court on all matters in which he has made an appearance. These Orders were dissolved upon Pincelli's compliance and the Court declined to impose sanctions at that time.

There have been multiple instances of Pincelli's failure to appear at hearings on Motions for Relief from Stay and Objections to Lien Avoidance, Valuation and Confirmation which caused similar problems for the Court but for which the writing of an Order would only compound the waste of resources. The Court's efforts to advise, cajole, admonish and warn Pincelli have been to little avail.

The familiar adage "you get what you pay for" appears applicable. The inexpensive fee charged for "volume handling" of matters appears to translate into poor practices, including inattention to matters on both a substantive and procedural basis. While not an unauthorized practice, the operation of one's firm in such a manner does not excuse counsel from fully representing one's clients and complying with the Court's Orders and procedures. An abuse of the bankruptcy process and the legal system often results when counsel offers low cost

representation to attract business but then skirts the attendant duties to appear and produce pleadings of sufficient quality, to properly prepare for all hearings relating to their representation, and to comply with rules and procedures applicable to all counsel.

Believing that all efforts to deter such conduct short of sanctions have been exhausted, the Court finds it necessary to sanction John A. Pincelli in the sum of \$500.00 for his failure to attend the hearing on the Objection filed by him on behalf of Citifinancial.<sup>2</sup>

Sanctions shall be payable to the Clerk of Court within ten (10) days of this Order and are ordered pursuant to 11 U.S.C. § 105, Bankruptcy Rule 9011, 20 U.S.C. § 1927 and the Courts inherent authority.

AND IT IS SO ORDERED.

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina  
November 20, 2003

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<sup>2</sup> At the continued hearing, one month later, Pincelli merely withdrew his Objection.