

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

CHARLES & TENA ALBRIGHT

Debtors.

In Proceedings  
Under Chapter 7

Case No. 03-41878

AMERICAN GENERAL FINANCIAL  
SERVICES, INC.

Plaintiff,

v.

CHARLES & TENA ALBRIGHT

Defendants/Debtors.

Adv. No. 03-4139

OPINION

This matter is before the Court on the plaintiff's motion to reconsider filed on June 23, 2004. At hearing on July 28, 2004, the Court granted the plaintiff's motion in part and denied it in part. The Court specifically ruled that as of January 1, 2004, the plaintiff's position was no longer substantially justified and that the debtors were entitled to attorney fees and costs incurred after that date pursuant to 11 U.S.C. § 523(d). The Court directed debtors' attorney to submit an itemized statement of fees and costs incurred after January 1, 2004.

In its response to the statement of fees and costs filed by debtors' counsel, plaintiff takes issue with the Court's determination that its complaint was no longer substantially justified as of January 1, 2004, and asserts that counsel's fees billed prior to plaintiff's receipt of debtors' discovery answers

on February 27, 2004, should be disallowed.

Upon review, the Court finds no reason to alter its ruling. Debtors filed their Chapter 7 case on August 1, 2003, and their 341 meeting of creditors was held on September 19, 2003. Plaintiff's counsel could have attended the creditors' meeting to examine the debtors concerning the factual basis for its complaint but did not. After filing its complaint on October 30, 2003, plaintiff took no steps to conduct discovery until after the Court granted the debtors' motion to dismiss the complaint on January 6, 2004. The sixty-day period between the filing of plaintiff's complaint until the complaint was dismissed was sufficient time for plaintiff to have investigated whether its complaint was substantially justified.

While plaintiff asserts that it was unable to determine that its position was not substantially justified until after it received debtors' answers to discovery on February 27, 2004, plaintiff could have initiated discovery before its complaint was dismissed on January 6, 2004. Indeed, given the allegations in debtors' motion to dismiss that plaintiff's complaint failed to specify what fraudulent misrepresentations or omissions were made or to indicate what was false about the debtors' financial statement, it would have behooved the plaintiff to investigate concerning the basis of its complaint before the debtors' motion to dismiss was granted on January 6, 2004. Accordingly, the Court finds no merit in plaintiff's argument that its imposition of

sanctions for attorney fees incurred by debtors after January 1, 2004, was arbitrary and in error.<sup>1</sup>

With regard to plaintiff's further allegations concerning the reasonableness of the fee statement submitted by debtors' counsel, the Court agrees that the total fees to debtors' counsel should be reduced by the amount relating to counsel's failure to file his answer to the amended complaint on time (0.2 hours), counsel's retrieval and review of independently obtained credit reports (4.7 hours and \$35.00 in costs), and counsel's preparation of discovery requests directed to plaintiff (1.8 hours). Accordingly, the Court finds that the fees requested by debtors' counsel should be reduced by the amount of \$1,040.00 (6.7 hours @ \$150.00 per hour and \$35.00 in costs), for a total amount of \$3,453.19 in fees and costs to be paid to the debtors pursuant to 11 U.S.C. § 523(d).

SEE WRITTEN ORDER.

ENTERED: September 30, 2004

/s/ Kenneth J. Meyers  
UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> The Court notes that the fee statement for debtors' counsel does not include any fees assessed between January 1, 2004, and January 6, 2004.