

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

IN RE: ) In Proceedings  
 ) Under Chapter 7  
CHRISTINA I. HOSIER and )  
JOHN R. HOSIER, ) No. BK 86-50586  
 )  
Debtors. )

MEMORANDUM AND ORDER

This matter is before the Court on R. Michael Fischer's Motion for Rehearing. On January 21, 1987, Mr. Fischer filed a Proof of Claim in the amount of \$1,340.34 for legal services that he rendered when he represented the Hosiers in a prior Chapter 13 bankruptcy proceeding. He claimed that this debt was secured by a certain "Promissory Note and Assignment," in which Mrs. Hosier allegedly assigned a portion of a judgment for child support to Mr. Fischer. Debtors objected to this claim on the basis that 1) the statutory requirements for creating a secured debt had not been satisfied, 2) Mr. Fischer was no longer a joint owner of the judgment held by Mrs. Hosier for back child support arrearages, and 3) an attachment of child support arrearages for payment of a debt owed by the custodial parent is contrary to the public policies of the State of Illinois. On May 27, 1987, the Court held that the assignment was given on account of an antecedent debt, and that under Ill.Rev.Stat., ch. 26, para. 9-203(1), the security interest did therefore not attach. Mr. Fischer now requests that the Court reconsider its Order.

Paragraph 9-203(1) of the Uniform Commercial Code provides, in pertinent part, that "a security interest is not enforceable against

the debtor or third parties with respect to the collateral and does not attach unless...value has been given...and the debtor has rights in the collateral." Ill.Rev.Stat., ch. 26, para. 9-203(1)(b) and (c). Mr. Fischer now claims that the assignment given by Mrs. Hosier was for past and future legal services, that new value was therefore given, and that the requirements of the Uniform Commercial Code were accordingly satisfied. In entering its previous Order, the Court assumed that the assignment was for past legal services only, and that the assignment was therefore given on account of an antecedent debt. After hearing additional arguments and upon further review of the documents submitted in this case, it appears that the "assignment" was for both past and future legal services. Therefore, the statutory requirement that new value be given was in fact satisfied in this case. See, Stanwood v. Community Bank of Homewood-Flossmoor, 24 B.R. 761, 763 (Bankr. N.D. Ill. 1982)(clear and unambiguous security agreement clauses extending collateral to secure past and future advances valid under the Uniform Commercial Code).

However, in order for a security interest to be enforceable, the debtor must have rights in the collateral. In this case, the judgment for child support was obviously intended to be for the support and benefit of Mrs. Hosier's minor children. The debtors, therefore, did not have rights in this within the meaning of the statute, and Mrs. Hosier could not assign the child support payments as security for a debt that she owed Mr. Fischer. Additionally, the Court believes that public policy considerations prohibit the assignment of child support payments as security for a debt.

Mr. Fischer argues that in any event, he is still an owner of the

judgment that was entered against Mrs. Hosier's husband, Mr. Brown, in the child support proceeding. (The judgment in Hosier v. Brown was a joint judgment in favor of Mrs. Hosier and Mr. Fischer, and indicated that of the total \$6,551.00 judgment, \$845.00 was for attorney's fees.) However, as counsel for debtors contend, Mr. Fischer admits that he has been paid all he was due for representing Mrs. Hosier in Hosier v. Brown. As such, his ownership claim in this judgment is extinguished. Although Mr. Fischer contends that he remains a joint owner because of Mrs. Hosier's "assignment," the language of the "assignment" does not indicate, and the Court does not believe, that Mrs. Hosier intended to assign her interest in child support to Mr. Fischer. Rather, it appears that this document merely established a method of payment for the attorney's fees owed by Mrs. Hosier.

Accordingly, for the reasons stated above, debtors' objection to the claim of R. Michael Fischer is allowed.

\_\_\_\_\_/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: August 11, 1987