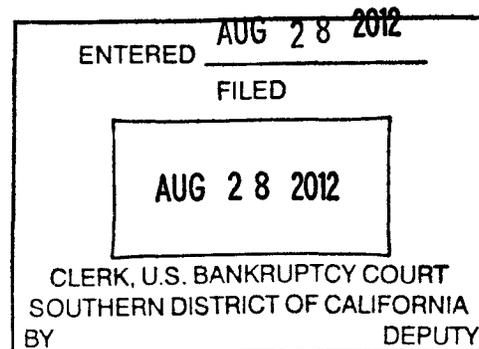


1 **WRITTEN DECISION - NOT FOR PUBLICATION**



9 UNITED STATES BANKRUPTCY COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11 In re) Case No. 11-03644-PB13
12)
12 MAMADY BINTA CISSE,) ORDER ON APPLICATION FOR
13) FEES AND EXPENSES
13 Debtor.)
14)
14 _____)

15 This debtor has had a difficult history in bankruptcy.
16 He filed a Chapter 7 (09-05362) on April 23, 2009, which was
17 dismissed May 15, 2009. Then he filed another Chapter 7
18 (09-06791) on May 8, 2009. That case proceeded to discharge.
19 Then he filed a Chapter 13 (10-08858) on May 24, 2010, which was
20 dismissed on February 24, 2011. The instant Chapter 13 case was
21 filed March 6, 2011.

22 In asking this Court to extend the automatic stay after the
23 prior dismissal of the Chapter 13 case, debtor stated in his
24 declaration:

25 5. I have had a substantial change in my
26 financial or personal affairs since the dismissal
of the last case, and I believe that this case

1 will result in a confirmed plan that will be fully
2 performed. Specifically, as of November 29, 2010
3 I was unrepresented by counsel in the prior case.
4 Many of the issues preventing confirmation of a
5 plan in the prior case appear to have been
6 avoidable with proper representation. I have
7 retained new counsel to represent me in the
8 present case. . . .

9 Debtor's initial plan proposed to make substantial monthly
10 payments, and did not include any proposal to strip off, or down
11 any real estate liens. As structured with step-up payments,
12 debtor's plan did not provide enough in monthly payments for the
13 trustee to cover the installments to be paid to the real estate
14 creditors on their arrears in the first 12 months (the proposed
15 installments totalled \$2,383.33 while the monthly payment to the
16 trustee was set at \$2,000).

17 U.S. Bank objected to debtor's motion to extend the stay
18 pointing out that in the prior case it had been granted relief
19 from the stay. The Court continued the hearing on the motion,
20 and continued the stay in effect in the interim. Meanwhile,
21 JP Morgan Chase Bank filed an objection to confirmation, followed
22 by OneWest Bank. Debtor filed an objection to the U.S. Bank
23 claim, and a motion to extend time to file lien strip motions
24 against Deutsche Bank and OneWest Bank. In the interim a
25 noncontested order was entered, providing debtor was not eligible
26 for a discharge in this Chapter 13 case.

On August 8, 2011, debtor filed lien strip motions against
Deutsche Bank, Residential Funding, OneWest Bank, and Household
Finance. Then Saxon Mortgage and the Chapter 13 trustee filed

1 objections to confirmation, as did Bank of America. The lien
2 strip motions were ordered continued by the Court for
3 insufficient service of process. The next day, all four lien
4 strip motions were formally withdrawn, and a week later debtor's
5 attorney filed her motion to withdraw as counsel. In that
6 motion, counsel stated debtor directed her to cease all work on
7 the case on August 15, 2011, and reiterated that direction in
8 open court on October 5.

9 At the hearing on counsel's motion to withdraw, debtor
10 reiterated his concerns over counsel's handling of his case.
11 The Court allowed counsel to withdraw, recognized that counsel
12 had agreed to accept \$4,000 for the basic case and had received
13 \$3,050, and the Court authorized the additional \$950 and
14 authorized counsel to file a supplemental application within
15 30 days for any additional fees sought.

16 Counsel did file a supplemental application, seeking
17 additional fees of \$2,550, comprised of the guideline fees of
18 \$500 for a contested motion to extend stay, \$250 for the
19 objection of U.S. Bank's claim, and \$450 each for four lien strip
20 motions. After hearing argument, the Court took the matter under
21 submission.

22 Debtor signed a "Rights and Responsibilities" form used in
23 this district, which specifies what a debtor can expect to pay
24 for a routine Chapter 13 case, and what services are included in
25 that fee. In addition, the agreement sets out a list of services
26 not included in the basic fee, and sets forth generally allowed

1 fees for performance of routine services not otherwise included
2 in the basic fee. Among those additional services are a
3 contested motion to extend the stay, a claim objection, and lien
4 strip motions (authorized at \$450 as "other" activity).

5 On the face of the application, counsel should be authorized
6 the additional \$2,550. Counsel's pleading indicates the fees
7 were discussed with debtor at the time the various motions were
8 contemplated, as well as when the "Rights and Responsibilities"
9 form was signed. Debtor filed no written opposition to counsel's
10 application, but he did state his opposition orally. That
11 opposition centered around debtor's apparent belief that he could
12 not get a lien strip because he was not eligible for a Chapter 13
13 discharge under 11 U.S.C. § 1328(f). He seemed to feel that
14 counsel's efforts on his behalf were a waste of time and fees
15 because of what he thought was the position of this Court with
16 regard to lien strips in "Chapter 20" cases.

17 Whatever debtor may have thought this Court's position is on
18 "Chapter 20" cases, the issue was not presented to the Court
19 because at debtor's direction the lien strip motions were
20 withdrawn. As an academic matter, the Court's position has been
21 set out in a series of published opinions. In re Burnett,
22 427 B.R. 517 (2010); In re Casey, 428 B.R. 519 (2010);
23 In re Victorio, 454 B.R. 759 (2011). Nothing in those opinions
24 holds that a debtor is necessarily wasting his time and money
25 seeking a lien strip when he is not eligible for a discharge.

26 ///

1 Eligibility for a discharge is not a condition-precedent to
2 succeeding on a lien strip motion.

3 In any event, counsel did prepare and file four lien strip
4 motions, a claim objection, and a motion to extend the stay, and
5 debtor signed the "Rights and Responsibilities" agreement which
6 listed the presumptive fees for the effort. Based on the facts
7 and circumstances of this case, the Court finds and concludes
8 that attorney Powell has earned, and is hereby authorized to
9 receive the original agreed amount of \$4,000 not including filing
10 fee, plus \$2,550 for the additional services as already
11 discussed. She received \$3,050 prior to filing, and was
12 authorized \$950 more at an earlier hearing. If that has not yet
13 been paid, she is entitled to receive whatever portion of the
14 \$950 that has not been paid, plus the additional \$2,550.

15 IT IS SO ORDERED.

16 DATED: AUG 28 2012

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18 _____
19 PETER W. BOWIE, Chief Judge
20 United States Bankruptcy Court
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