UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FILED

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U.S. DISTRICT COURT
W.D.N.Y. - ROCHESTER

JAMES I. WYNN, SR.,

Appellant,

DECISION AND ORDER

96-CV-6512L

v.

SOURCE ONE MORTGAGE SERVICES CORP.,[1]

Appellee.

James I. Wynn, Sr. ("Wynn") appeals from an order of United States Bankruptcy Judge John C. Ninfo, II dated October 11, 1996 awarding, *inter alia*, Source One Mortgage Services Corp. ("Source One") $7,329.31 in post-petition mortgage arrearage. By order dated November 7, 1996, Judge Ninfo denied Wynn's application for a stay pending resolution of this appeal.

The October 11, 1996 Decision and Order of Judge Ninfo is affirmed in all respects. The standard of review concerning factual findings made by a bankruptcy judge is whether the decision was "clearly erroneous." Fed. R. Bank. P. 8013. In this case, Judge Ninfo's findings are amply

[1]The action was originally maintained against Empire of America Realty Credit Corp., which has now been merged into Source One. Pursuant to Fed. R. Civ. P. 25(c), Source One should be substituted for Empire of America Realty Credit Corp.

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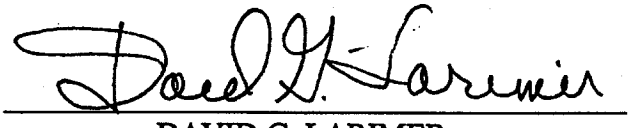
supported by the record. Judge Ninfo carefully considered all of Wynn's arguments and took special care to determine the exact amount of the monthly payment due from Wynn pursuant to his Chapter 13 Plan. Evidence was presented in the case concerning the conditional order and Judge Ninfo's October 11, 1996 Order on four separate days over several months. Wynn was given every opportunity to provide proof that the contested payments had been made and that he was not in arrears. Judge Ninfo had more than sufficient reason to rule as he did and to reject Wynn's claims and his assertions that all of his "records" had been lost in a flood. On the facts of this case, there is no basis whatsoever to modify or alter Judge Ninfo's decision and, therefore, the order appealed from is affirmed.

CONCLUSION

The Decision and Order of Bankruptcy Judge John C. Ninfo, II, dated October 11, 1996 awarding, *inter alia*, Source One Mortgage Services Corp. a judgment for $7,329.31 is affirmed in all respects.

IT IS SO ORDERED.



DAVID G. LARIMER
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: Rochester, New York
December 18, 1997.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Wynn

Plaintiff(s)

v. 6:96-cv-06512

Source One Mortgage

Defendant(s)

PLEASE take notice of the entry of an ORDER filed on 12/18/97, of which the within is a copy, and entered 12/18/97 upon the official docket in this case.

Dated: Rochester, New York
December 18, 1997

RODNEY C. EARLY, Clerk
U.S. District Court
Western District of New York
2120 U.S. Courthouse
100 State Street
Rochester, New York 14614

Enclosure
TO:

James I. Wynn Sr.
George M. Reiber
Ronald R. Zackem, Esq.