

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK**

---

**In Re:**

**Robert F. & Joanne S. Ruggiero,**

**BK. NO. 91-21368**

**Debtors.**

---

**George M. Reiber, Trustee,**

**Plaintiff,**

**A.P. NO. 95-2381**

**vs.**

**Richard G. Baxter, National Bank of  
Geneva, Robert F. Ruggiero and Joanne S.  
Ruggiero,**

**DECISION & ORDER**

**Defendants.**

---

**BACKGROUND**

On May 15, 1991, Robert F. Ruggiero and Joanne S. Ruggiero (the "Debtors") filed a petition commencing a Chapter 13 case. On their schedules, the Debtors: (1) listed the National Bank of Geneva ("NBG") on their schedule of unsecured debts as having a claim of \$16,000.00 against Robert F. Ruggiero as a guarantor; (2) listed their jointly owned residence at Selborne Chase, Fairport, New York (the "Selborne Residence") as having a value of \$110,000.00 and an unpaid mortgage against it of \$48,000.00; and (3) claimed a \$20,000.00 homestead exemption in the Selborne Residence.

Thereafter, the Office of the United States Trustee designated George M. Reiber as the Trustee in the Debtors' Chapter 13 case (the "Trustee").

A May 14, 1991 plan filed with the Debtors' petition (the "Chapter 13 Plan") proposed to pay the Trustee \$100 per month for five years. This payment was to be used to pay priority claims in full, secured creditors, who were to retain their liens, pro rata until they were paid in full and unsecured creditors a pro rata dividend after the payment of priority and secured claims.

A copy of the Court's May 22, 1991 Order for a Meeting of Creditors, Combined with Notice Thereof and of Automatic Stays (the "Order for Meeting of Creditors") was mailed on or about that

date to all of the Debtors' scheduled creditors, including NBG. The Order advised that a meeting of creditors and a hearing on confirmation of the Chapter 13 Plan would be conducted on June 19, 1991.<sup>1</sup> The Order also contained the following relevant provisions:

PLEASE TAKE FURTHER NOTICE THAT ALL CLAIMS, INCLUDING THOSE CLAIMS PURPORTING TO BE A LIEN UPON REAL PROPERTY, MAY BE DEEMED TO BE UNSECURED UNLESS PROOF OF THE DEBT, THE PERFECTION OF THE LIEN AND THE VALUE OF THE SECURITY IS FILED WITH THE COURT AT OR BEFORE THE ABOVE MEETING OF CREDITORS.

A HEARING TO DETERMINE THE VALIDITY AND THE VALUE OF ANY CLAIMED SECURITY INTEREST IN PROPERTY OF THE DEBTOR WILL BE HELD AT THE HEARING ON CONFIRMATION.

Along with the Order for Meeting of Creditors, it appears that each of the Debtors' creditors received a proof of claim form with the creditor's name on it which contained a brief summary of the Chapter 13 Plan and a statement of how that creditor's claim was listed. Although a copy of the specific proof of claim form sent to NBG in connection with the Debtors' Chapter 13 case has not been provided to the Court, a proof of claim form completed and filed by another creditor listed as unsecured on the Debtors' schedules (a department store) stated that: (a) "the plan proposes payments to the Trustee of \$100.00 monthly"; and (b) "this claim is listed as unsecured".

After a Motion to Dismiss by the Trustee was resolved, an adjourned hearing on confirmation was conducted by the Court on October 30, 1991.

On June 12, 1991, prior to the June 19, 1991 initial meeting of creditors and hearing on confirmation and prior to the adjourned hearing on confirmation conducted on October 30, 1991, NBG filed a secured proof of claim in the amount of \$10,713.48 based upon an attached March 28,

---

<sup>1</sup> In the Western District of New York, copies of Chapter 13 plans are not required to be sent to creditors. As a result the general practice is not to send copies to creditors, even secured creditors. There is nothing in the Court's file which indicates that before April, 1993 NBG received a copy of the Chapter 13 Plan.

1991 Default Judgment entered against the Debtors in the original amount of \$16,836.37 (the "NBG Secured Claim").<sup>2</sup>

At the October 30, 1991 adjourned hearing on confirmation, now retired Bankruptcy Judge Edward D. Hayes confirmed a plan in the Debtors' Chapter 13 case. The Trustee's Findings of Fact and Summary of 341 Hearing presented to Judge Hayes at the adjourned hearing on confirmation: (1) indicated that the Debtors were to pay \$100.00 per month over three years and sell the Selborne Residence within one year; and (2) did not list NBG as the holder of a secured claim notwithstanding the filed NBG Secured Claim and what appeared to be sufficient equity in the Selborne Residence to make the judgment lien held by NBG fully secured.<sup>3</sup>

On November 20, 1991, an Order Confirming Chapter 13 Plan was entered (the "Confirmation Order") which provided that: (1) the Debtors would pay the Trustee \$100.00 per month plus sell the Selborne Residence within one year; (2) certain specifically listed creditors would be paid as secured creditors (NBG was not listed as one of these secured creditors); (3) any timely and properly filed claims subsequent to the first meeting would be allowed as unsecured only, except as otherwise might be agreed to by the Debtor(s) and the Court;<sup>4</sup> (4) "The provisions of the

---

<sup>2</sup> In New York State a judgment docketed with the County Clerk's Office becomes a lien on all real property owned by the judgment debtor in that county.

<sup>3</sup> There is nothing in the Court's file which indicates that a modified plan proposing to sell the Selborne Residence was ever signed and filed by the Debtors or served upon the Debtor's creditors.

<sup>4</sup> On March 28, 1994, an Order Approving Claims was entered approving the Trustee's motion to allow claims. The NBG Secured Claim was listed with the Trustee's notation classifying it as "Direct," the same treatment as that specified for the mortgage on the Selborne Residence. The order specified:

Pursuant to 11 U.S.C. 502(a), the claims which have been filed as recited above are deemed allowed unless objection is made by the debtor or other party in interest; it is therefore,

ORDERED, that within five (5) days, a copy of this order and of the annexed motion be mailed to the debtor(s) and to the debtors' attorney of record, and that the debtor(s)

Plan bind the Debtor(s) and each creditor, whether or not such creditor has objected to, has accepted, or has rejected the Plan"; and (5) "All of the Debtor(s) wages and property, of whatever nature and kind and wherever located, shall remain under the exclusive jurisdiction of this Court; and title to all of the debtor's property, of whatever nature and kind and wherever located is hereby vested in the debtor during the pendency of these Chapter 13 proceedings pursuant to the provisions of 11 U.S.C. Section 1327."<sup>5</sup>

On April 24, 1992, an Order was entered approving the Trustee's motion to retain a real estate broker to sell the Selborne Residence and on November 18, 1992 an Order was entered modifying the automatic stay to allow the first mortgage holder to foreclose on the Selborne Residence.

On March 31, 1993, an Order was entered approving the sale by the Debtors of the Selborne Residence for a purchase price of \$127,000.00 (the "Sale Order"). The application of the Debtors indicated that the first mortgage holder had consented to the sale. The Sale Order was consented to by the Trustee who included a provision that his consent was subject to all non-exempt proceeds being paid to the Trustee. The Sale Order also provided that any proceeds of the sale would be administered in accordance with the Confirmation Order. The Affidavits of Service filed with the Court by the attorney for the Debtors indicated that the application to sell the Selborne Residence was served upon the Trustee and the Office of the United States Trustee, but not upon any of the Debtor's creditors.

The Court's file contains a copy of a March 30, 1993 letter from the Bankruptcy Court Clerk's

---

be given thirty days from the date of this order within which to examine the proofs of claim and to file a written objection to any claim which may be improper. The absence of a timely written objection will be deemed as approval by the debtor(s) of the claim as recited above.

<sup>5</sup> In the Western District of New York, Chapter 13 confirmation orders are not required to be served on creditors. As a result the general practice is not to send copies to creditors, even secured creditors. There is nothing in the Court's file which indicates that before April, 1993 NBG received a copy of the Confirmation Order.

Office, addressed to the attorney for the Debtors, which indicated that an *ex parte* order presented to the Court to vacate a judgment lien was returned with advice to the attorney that a motion on notice was necessary to obtain such relief. There is nothing in the Court's file which indicates that such a motion on notice to vacate a judgment lien was subsequently made in the Debtors' Chapter 13 case.

On May 17, 1995, the Trustee commenced an Adversary Proceeding against the Debtors, the attorney for the Debtors and NBG (the "Adversary Proceeding"). The Complaint in the Adversary Proceeding alleged that: (1) because the judgment was *prima facie* avoidable as a preferential transfer under Section 547, the Court did not consider the Claim a valid secured claim for confirmation purposes; (2) NBG was not designated as a secured creditor in the Confirmation Order; (3) NBG had not filed an objection to the Chapter 13 Plan or appeared at any time at any of the meetings of creditors or hearings on confirmation; (4) the Sale Order indicated that the sale would be administered in accordance with the Confirmation Order, and that all non-exempt proceeds from the sale would be paid to the Trustee; (5) the Debtors' application to approve the sale of the Selborne Residence did not indicate that any judgments would be paid from the sale proceeds and the plan confirmed by the Court did not provide for the payment of any judgment liens from the sale of the Selborne Residence; (6) although the Trustee was served on or about June 2, 1993 with a motion pursuant to Section 1327<sup>6</sup> to remove the judgment lien held by NBG, it appeared that no order

---

<sup>6</sup> Section 1327 provides:

- (a) The provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.
- (b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.
- (c) Except as otherwise provided in the plan or in the order

avoiding the judgment lien was ever entered by the Court; (7) in a January 13, 1994 letter to the Trustee from the Debtors' attorney, the Trustee learned that in April, 1993 the Debtors' attorney had paid the balance due on the NBG Secured Claim from the proceeds of the sale of the Selborne Residence in order to obtain a release of the NBG judgment lien; (8) the Trustee had demanded that the attorney for the Debtors commence an action to recover the money paid to NBG and he notified the attorney that if he failed to do so, the Trustee would commence such an action; and (9) neither the Debtors nor their attorney had properly accounted to the Trustee for a possible additional \$5,000.00 deposit made in connection with the sale of the Selborne Residence.

The Trustee in his Complaint further alleged that: (1) the attorney for the Debtors had been guilty of malpractice and a breach of fiduciary duty in not having avoided the NBG judgment lien as a preferential transfer; (2) the Debtors and their attorney were guilty of converting the additional \$5,000.00 deposit; (3) the Debtors' attorney had wilfully caused damage to the Debtors and to the bankruptcy estate; (4) NBG had actual and constructive knowledge: (a) of the terms of the plan confirmed by the Court and the Confirmation Order; and (b) that its judgment lien was avoidable under the Bankruptcy Code; and (5) notwithstanding its actual and constructive knowledge, NBG had accepted the amounts due on the NBG Secured Claim from the Debtors' attorney in violation of the provisions of Section 549.<sup>7</sup>

---

confirming the plan, the property vesting in the debtor under subsection (b) of this section is free and clear of any claim or interest of any creditor provided for by the plan.

<sup>7</sup> Section 549 provides, in pertinent part:

(a) Except as provided in subsections (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) made after the commencement of the case; and

(2)(A) that is authorized only under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

The Trustee, in his Complaint, requested: (1) judgment against the Debtors' attorney for the \$14,001.89 paid to NBG, the \$5,000.00 additional deposit, and \$100,000.00 as punitive damages; and (2) judgment against NBG for the \$14,001.89 it received.

NBG interposed an Answer to the Trustee's Complaint which alleged that: (1) the NBG judgment lien was no longer avoidable under Section 547 since the time within which to bring an adversary proceeding to avoid the judgment lien pursuant to Section 546(a)<sup>8</sup> had expired prior to commencement of the Adversary Proceeding; and (2) the proceeds of the sale of the Selborne Residence to the extent necessary to pay the unavoidable first mortgage lien and the NBG judgment lien were not property of the estate within the meaning and intent of Section 549.

Thereafter, NBG made a Motion for Summary Judgment returnable November 1, 1995 and the Trustee made a Cross-Motion for Summary Judgment against NBG.

Included as exhibits in the Trustee's Cross-Motion for Summary Judgment were copies of forms of Acknowledgements of Claim which the Trustee advised the Court are routinely sent by the

---

(c) The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to the interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

<sup>8</sup> Applicable to this case filed prior to amendments which became effective October 22, 1994, Section 546(a) provided:

(a) An action or proceeding under section 544, 545, 547, 548, or 553 of this title may not be commenced after the earlier of-

(1) two years after the appointment of a trustee under section 702, 1104, 1163, 1302, or 1202 of this title; or

(2) the time the case is closed or dismissed.

Trustee's office to creditors who file claims within a few months after the confirmation of a plan. These "Acknowledgements of Claim" are entitled "Acknowledgement of Claim and Notice of the Manner of the Proposed Treatment of Your Claim and of an Opportunity to Request a Hearing". Although the Trustee was not able to produce a copy of any Acknowledgement of Claim that may actually have been sent to NBG in the Debtors' Chapter 13 case, he asserted that an Acknowledgement of Claim would have been sent and it would have notified NBG that its claim was classified as unsecured by the Trustee and that if NBG disagreed with the proposed treatment, it:

"may request the Trustee to specify the nature of the objections and to set those objections for a hearing before the Court. Unless you notify the Trustee in writing of a disagreement or file a request for a hearing with the Court with notice to the Trustee within thirty (30) days following the date of this notice, the Trustee will assume the proposed allowance to be correct and the claim will be treated accordingly."

At the November 1, 1995 return date, the Court heard the arguments of the parties and reserved decision on the Motions for Summary Judgment.

### **DISCUSSION**

On or about April 30, 1993 when NBG received the balance due on the NBG Secured Claim in consideration of the release of its judgment lien, NBG was the holder of an allowed secured claim, deemed allowed by Section 502(a) since not properly objected to, and a valid judgment lien on the Selborne Residence. The Bankruptcy Code and the Rules of Bankruptcy Procedure do not contemplate that a valid judgment lien, such as the judgment lien held by NBG in this case, can be avoided as a preferential transfer pursuant to Section 547 of the Bankruptcy Code, or otherwise, without NBG ever having been given reasonable notice that its judgment lien was to be avoided on that basis and a reasonable opportunity for it to be heard on the issue of avoidability. NBG was afforded no such reasonable notice and opportunity to be heard on the issue of avoidability.

The question then becomes whether the Bankruptcy Code and Rules of Bankruptcy Procedure now require NBG to return the consideration it received for the release of its then valid judgment lien against the Selborne Residence because: (1) the judgment lien can still be avoided pursuant to

Section 547 as a preferential transfer; (2) a valid objection can still be made to the NBG Secured Claim notwithstanding that NBG was paid in full on the Claim and released its judgment lien at a time when the Claim was deemed allowed; or (3) the payment of the NBG Secured Claim is a transfer of property of the estate which can be avoided under Section 549.

**I. Due Process**

**A. The Chapter 13 Plan**

There is nothing in the Court's file or in the pleadings or proceedings in this case which indicate that NBG ever received a copy of the Chapter 13 Plan or the apparently orally modified plan that was confirmed by the Court. Even if NBG had received a copy of the Chapter 13 Plan, it would not have clearly disclosed to NBG whether or not it was being treated as a secured creditor, since none of the secured creditors, of which there were several, were separately classified or specifically treated in the Chapter 13 Plan, which also provided for secured creditors to retain their liens. Further, the Chapter 13 Plan did not state that the valid judgment lien held by NBG was to be avoided.

**B. The Order for Meeting of Creditors**

The Order for Meeting of Creditors notified NBG that if it claimed a security interest in any of the Debtors' property, it was important for it to file a proof of claim before the initial meeting of creditors.<sup>9</sup> As suggested by the Order, NBG filed its Secured Claim prior to the first meeting of creditors. The Claim showed that NBG held a valid judgment lien on the Debtors' real property.

The Order for Meeting of Creditors further indicated that there would be a hearing on the validity and the value of any claimed security interest. When NBG filed its judgment in Monroe

---

<sup>9</sup> The Order provides that if a secured claim is not filed before the initial meeting, the creditor's claim "may" be deemed unsecured. Whether to deem such a claim as unsecured would still be a matter of discretion to be exercised by the Court only in appropriate circumstances.

County against the Debtors, it became a valid lien on the Debtors' real property in that county, including the Selborne Residence. That such an otherwise valid judgment lien might be avoided as a preferential transfer pursuant to Section 547, either as the result of an adversary proceeding commenced pursuant to Rule 7001 of the Rules of Bankruptcy Procedure, or a claim objection subsequently converted to an adversary proceeding pursuant to Rule 3007 if it was joined with a request for such relief,<sup>10</sup> does not make a valid judgment lien such as the one held by NBG invalid, it simply means it may be avoidable. Therefore, the validity provision in the Order did not give NBG notice that its otherwise valid judgment lien could be summarily avoided as a preferential transfer. The Bankruptcy Code and Rules require reasonable notice and an opportunity for NBG to dispute the avoidability of its otherwise valid judgment lien.

Furthermore, the fact that the Order provided that its judgment lien might be valued did not constitute reasonable notice to NBG that its judgment lien might be valued as zero because it appeared to be avoidable as a preferential transfer. The "value" referred to in the Order could only reasonably be interpreted to refer to the establishment of a monetary value, one based upon the value of any collateral and the amount due on other valid liens. It could not reasonably be interpreted to refer to the establishment of a value after a determination of avoidability without notice.

**C. Proof of Claim Form**

To the extent that a proof of claim form sent by the Trustee to NBG prior to the initial meeting of creditors and hearing on confirmation indicated that its claim was scheduled as unsecured, this was not reasonable notice to NBG that its claim was scheduled as unsecured because

---

<sup>10</sup> Rule 3007 provides:

An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

the Debtors believed that NBG held a judgment lien that was otherwise avoidable as a preferential transfer pursuant to Section 547.

The schedules filed by the Debtors with the Court did not state that the claim of NBG was listed as unsecured for that reason. Furthermore, it is not uncommon for attorneys for debtors to list a creditor as unsecured when that creditor has obtained a judgment shortly before the filing of the petition, because, in many cases, petitions are filed before judgment searches are obtained. This is especially true if the judgment was taken by default and the schedules are prepared before the creditor has taken significant steps to enforce the judgment.

Therefore, it would not be unreasonable for NBG to assume that it was scheduled in error as an unsecured creditor by the Debtors. It would also not be unreasonable for NBG to further assume that this error would be noted by the Debtors' attorney and the Trustee when it filed the NBG Secured Claim.

**D. Confirmation Order**

\_\_\_\_\_ There is nothing in the Court's file or in the pleadings or proceedings in this case which indicate that NBG ever received a copy of the Confirmation Order, or even a summary of its provisions, which would have indicated to NBG that it had been treated in the confirmed plan as an unsecured creditor. Even if NBG had been served with a copy of the Confirmation Order, the Order did not provide that the NBG judgment lien had been avoided as a preferential transfer.

**E. Acknowledgement of Claim**

Although the Acknowledgement of Claim utilized by the Trustee may serve some useful administrative function for the Trustee, the Court does not consider it to be a valid objection to claim as provided for in Rule 3007. If an Acknowledgement of Claim was sent to NBG in connection with the Debtors' Chapter 13 case, from the examples provided to the Court, it clearly did not provide specific notice to NBG that its claim was being objected to because the Trustee believed that its otherwise valid judgment lien was avoidable under the provisions of Section 547 as a preferential

transfer.

Furthermore, Rule 3007 requires an objection to be in writing and filed with the Court. The Court's file does not indicate that any Acknowledgements of Claim were filed with the Court in the Debtor's Chapter 13 case.

It also appears that if an Acknowledgement of Claim was sent to NBG it would not have set forth in detail the nature of any objection and it would have purported to place the burden on NBG to demand a hearing, contrary to the framework established by Rule 3007 which requires that the objector notice the matter for a hearing.

At any time up to the payment of the NBG Secured Claim in consideration for the release of the NBG Judgment Lien, an objection to the NBG Secured Claim, deemed allowed by Section 502(a) unless objected to, could have been made pursuant to Section 502(d) which provides that the Court shall disallow a claim of any entity that is a transferee of a transfer (in this case the judgment lien) avoidable under Section 547.<sup>11</sup> *See, e.g., In re McLean Industries, Inc.*, 184 B.R. 10 (Bankr. S.D.N.Y. 1995) (following the majority view that in an appropriate case such a claim objection can be brought even after the time set by Section 546(a) to avoid a transfer pursuant to Section 547 has

---

<sup>11</sup> Section 502(a) provides:

A claim of interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

Section 502(d) provides:

Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

expired). If such a claim objection had been contested by NBG, it could have been, if appropriate, converted to an adversary proceeding pursuant to Rule 3007.

**F. The Sale Order**

The Court's file indicates that the Debtors' Motion to Sell the Selborne Residence was not served upon NBG even though at the time of the motion NBG held a valid judgment lien against the Residence which had not been specifically avoided by any order of the Bankruptcy Court. NBG should have received notice of the proposed sale pursuant to Section 363. The provisions of Section 363(f) would have otherwise required NBG to consent to the sale or be paid in full from the proceeds of the sale.<sup>12</sup> If NBG had received notice of the proposed sale and the issue of the avoidability of the NBG judgment lien had been raised and contested at that time, an appropriate adversary proceeding could still have been commenced, since in March of 1993 the time to commence such a proceeding had not yet expired, or a claim objection filed pursuant to Rule 3007, as discussed above.

**II. Avoidability of the NBG Judgment Lien**

\_\_\_\_\_ In the Debtors' Chapter 13 case, which was filed before October, 1994, the time within which an action or proceeding under Section 547 to avoid the NBG judgment lien, two years after the

---

<sup>12</sup> Section 363(f) provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

appointment of the Trustee, has expired. Furthermore, the lien has been released by NBG. If the Court were to require NBG to return the consideration it received for the release of its judgment lien and reinstate the lien which could no longer be avoided under Section 547 it would be unduly prejudicial and inequitable to the buyer of the Selborne Residence. To require NBG to return the consideration it received for the release of its then valid judgment lien without allowing the now unavoidable lien to be reinstated would be unduly prejudicial and inequitable to NBG.

**III. Claim Objection Pursuant to Section 502(d)**

To: (1) require the return of the consideration received by NBG for the release of its judgment lien; (2) reinstate the NBG Secured Claim and the judgment lien; (3) disallow the NBG Secured Claim pursuant to Section 502(d); and (4) void the lien under Section 506(d), as *In re McLean Industries, Inc., supra*, might suggest is possible, in this Court's opinion would also be unduly prejudicial and inequitable to NBG.

**IV. Recovery of the Payment to NBG**

\_\_\_\_\_The Court is not aware of any legal basis to support directing NBG to return the consideration it received for the release of its judgment lien, and the Court does not believe that it would otherwise be equitable to require NBG to return the consideration. It appears from the pleadings in this case that NBG was paid its Secured Claim in full on April 30, 1993. If the monies paid to NBG were property of the estate improperly paid and recoverable under Section 549, the time to recover the payment as provided for under Section 549(d) expired two years after the date of the payment. That was a date prior to the Trustee's commencement of the Adversary Proceeding on May 17, 1995.

**V. Future Chapter 13 Proceedings**

In the future, the Court will not sign Chapter 13 confirmation orders where creditors have filed secured claims and hold valid liens which can be but have not been avoided pursuant to Sections 522(f), 544, 545, 547 or 548, or where the Court is otherwise aware of such valid liens. Only when such avoidable liens have been voluntarily removed by the creditor or avoided pursuant

