

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

DAVID CLIFTON DODGE

BK 90-10878 K

Debtor

DECISION AND ORDER

Unit #1 Federal Credit Union apparently held a duly perfected lien on the debtor's boat. The balance on the note was approximately \$1687.00 at the time in question. Before filing a Chapter 13 petition, the debtor sold the boat and did not pay over the proceeds to the credit union. The credit union has released its lien on the boat in exchange for \$844 paid by the purchaser of the boat. The purchaser has now been scheduled by the debtor in that amount. The credit union has credited debtor only with \$633 against the balance on the note because its attorneys earned \$211 in negotiating the settlement with the purchaser. Consequently the credit union's claim for the balance of the note includes the \$211 which the credit union paid its attorney.

The debtor objects to the claim, arguing that he will be paying the \$211 twice -- once to the purchaser of the boat and again to the credit union. (The plan proposes full payment to unsecured creditors.)

The debtor's objection to the claim is denied.

Basically, the debtor wishes the \$844.00 payment made by the purchaser of the boat to be treated as if it were merely a

payment made on the debtor's account. That is not the case. Because of the debtor's conversion of the proceeds of the lender's collateral (an event of default), the lender was forced to pursue the collateral in the hands of the purchaser. The reasonable costs of doing so are no less allowable (where as here, allowance of such costs are provided for by the loan agreement) than would be the costs of enforcing the lender's lien on collateral still in the hands of the debtor.

The \$211.00 paid to the lender's attorney was reasonable in light of the difficulty in confronting one whom I presume to be an innocent purchaser of goods which she thought to be free and clear of liens.

The lender also seeks \$250 in attorneys' fees for the defense of this objection to its claim. Again, it is not disputed that the debtor's written contract with the creditor obliges the debtor to pay reasonable costs incurred by the credit union in the event of default. I will allow \$150 as reasonable costs.

Claim #6 is allowed in the amount of \$1,054.37 plus \$150 in attorney's fees.

SO ORDERED.

Dated: Buffalo, New York
November 26, 1991



U.S.B.J.