

11 U.S.C. § 506(b)  
attorney fees

In re Hoover, Civil No. 96-1633-HA

4/1/97

Haggerty (Dist. Ct.),  
(affirming ELP)

unpublished

When a claim is oversecured, allowance of contractual attorney fees and costs is mandatory as long as the fees and costs are reasonable. 11 U.S.C. § 506(b). The Ninth Circuit decision in In re Fobian, 951 F.2d 1149 (9th Cir. 1991), which held that contractual attorney fees should not be awarded absent a showing of bad faith or harassment, did not apply, because that case did not include an oversecured creditor and therefore did not implicate section 506(b).

See P98-9(3) for Ninth Circuit decision affirming the District Court.

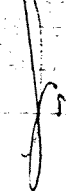
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PORTLAND, OREGON  
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FOR THE DISTRICT OF OREGON

CLERK, U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON

APR - 1 1997 <sup>ced</sup> 115417

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In re:

STEVEN D. HOOVER and  
ANA LUZ HOOVER,

Debtors.

Civil No. CV 96-1633-HA

OPINION and ORDER

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Certified to be a true and correct  
copy of original filed in my office.

Date: JUL 08 1997

Donald M. Cinnamon, Clerk

By: , Deputy

1 - OPINION and ORDER

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HAGGERTY, District Judge:

Steven Duane Hoover and Ana Luz Hoover ("Debtors") appeal from the Order of the U.S. bankruptcy court granting attorneys' fees in the amount of \$7,780.00 to Janet M. Briggs, attorney for Archie Reed ("Creditor"). As of the date of this Opinion and Order, no brief in opposition has been filed by either Creditor or Robert W. Myers, the Chapter 13 Trustee ("Trustee"). Accordingly, Debtor's appeal is considered unopposed. For the reasons that follow, the Order of the bankruptcy court is AFFIRMED.

### BACKGROUND

Debtors entered into a land sale contract (the "Contract") on October 25, 1989, to purchase a parcel of land in Lewis County, Washington, from Creditor. Under the terms of the Contract, Debtors were to pay Creditor \$58,000 for the parcel, which was ultimately subdivided into three parcels. Paragraph 24 of the Contract provides:

24. ATTORNEYS' FEES AND COSTS. In the event of any breach of this Contract, the party responsible for the breach agrees to pay reasonable attorneys' fees and costs, including costs of service of notices and title searches, incurred by the other party. The prevailing party in any suit instituted arising out of this Contract and any forfeiture proceedings arising out of this Contract shall be entitled to receive reasonable attorneys' fees and costs incurred in such suit or proceedings.

Debtors filed for relief under Chapter 13 of the Bankruptcy Code on June 19, 1992. At the time of filing, the balance on the Contract was \$29,064.88.

In April 1994, Creditor filed a motion for relief from the automatic stay of execution. Creditor also submitted a claim to the Debtors for the balance due under the Contract. That claim was subsequently filed in the bankruptcy court by Debtors. At that time, the exact amount remaining due on the Contract was unclear. It is undisputed, however, that the remaining balance on the Contract was less than \$24,000. The value of collateral securing the Contract, by contrast, exceeded \$24,000. Hence, Creditors' interests under the Contract with Debtors were oversecured from the time his motion for relief from the automatic stay was filed up until the final disposition of that motion.

Creditor's motion for relief from stay was settled by stipulation. Debtors subsequently failed to adhere to the terms of the stipulation and Creditor renewed his motion for relief from the

automatic stay.

After several hearings on the propriety of Creditor's claim and the disposition of the land securing the Contract, the bankruptcy court lifted its stay against Creditor. Creditor thereafter commenced action to collect amounts remaining due under the Contract. Because Creditor's interests under the Contract was oversecured, Creditor sought reimbursement for attorneys' fees plus costs pursuant to 11 U.S.C. § 506(b).

By letter opinion dated April 16, 1996, the bankruptcy court considered Creditor's request for attorneys' fees. That request exceeded \$13,000. Finding the requested amount unreasonable, the bankruptcy court ruled that Creditor be awarded attorneys' fees in the amount of \$7,780, in addition to costs, late fees, and the principal balance due under the Contract.

### STANDARD OF REVIEW

In reviewing the bankruptcy court's decision, this Court reviews its findings of fact under a clearly erroneous standard and its conclusions of law de novo. In re Alpine Group, Inc., 151 B.R. 931, 934 (9th Cir. B.A.P. 1993). In a dispute over attorneys' fees, "[i]f the court applied the correct legal standard . . . both the decision to award fees and the amount of fees to be awarded are reviewed for an abuse of discretion." Price v. Seyel, 961 F.2d 1470, 1475 (9th Cir. 1992), (citing Perry v. O'Donnell, 759 F.2d 702, 704 (9th Cir. 1985)).

### DISCUSSION

Debtors challenge whether the bankruptcy court correctly concluded that it was required as a matter of law to grant Creditor its costs and reasonable attorneys' fees under Bankruptcy Code § 506(b). Section 506(b) provides:

To the extent that an allowed secured claim secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement under which such claims arose.

11 U.S.C. § 506(b). Under this section, allowance of contractual attorneys' fees and costs as part of an oversecured creditor's claim is mandatory as long as such fees and costs are reasonable. In re Alpine Group, Inc., 151 B.R. at 935.

Debtor admits that Creditor was an oversecured creditor when the bankruptcy court

awarded attorneys' fees and costs pursuant to § 506(b). Nevertheless, Debtor asserts that the bankruptcy court's award contravenes the holding of In re Fobian, 951 F.2d 1149 (9th Cir. 1991). In that case, the Ninth Circuit held that, as a matter of law, where the litigated issues of a case involve not basic contract enforcement questions, but issues peculiar to federal bankruptcy law, attorneys' fees should not be awarded absent a showing of bad faith or harassment by the losing party. Id. at 1153. Because many of the issues litigated by the parties to the present case addressed issues peculiar to bankruptcy law, Debtor asserts that Creditor was not entitled to attorney fees stemming from the litigation of such issues.

In Fobian, the Ninth Circuit refused to award the prevailing party attorneys' fees despite the fact that the underlying contracts (a note and deed of trust) provided for payment of such fees incurred in collection of amounts due or enforcement of rights. Those facts are similar to the present case in which the Contract provided for payment of attorneys' fees related to breach of the Contract. Unlike the present case, however, the creditor in Fobian was undersecured rather than oversecured. Accordingly, § 506(b)'s provision regarding attorneys' fees did not apply to the Fobian creditor and § 506(b) was not considered by the Fobian court.

In cases where § 605(b) applies, the Ninth Circuit Bankruptcy Appeals Panel has held the standard regarding attorneys' fees set forth in Fobian does not apply where a specific section of the Bankruptcy Code allows for the payment of attorneys' fees and the requirements of that section are satisfied. In re Alpine Group, Inc., 151 B.R. at 934. In In re Alpine, the B.A.P. explained its ruling as follows:

[Cases following the standard regarding attorneys' fees set forth in Fobian] merely restate what is known as the American Rule, that in absence of a specific statute awarding attorney's fees, each party bears its own costs in litigation. Here, however, there is a specific provision in the Bankruptcy Code that allows for the payment of attorney's fees.

Id. The B.A.P. therefore held that post-petition attorneys' fees "may be allowed under § 506 provided that the requirements of § 506(b) are met." Id.

After a careful reading of Fobian, I am convinced that the Ninth Circuit did not intend its holding to limit recovery of attorneys' fees under § 506(b). A contrary reading would render § 506(b) ineffectual. Moreover, the Ninth Circuit B.A.P.'s decision in Alpine is directly applicable

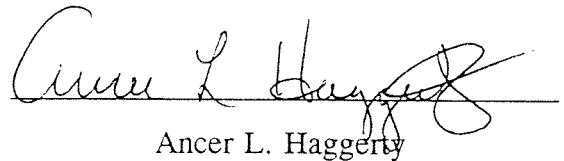
to the present case. Accordingly, I do not find the "standard" set forth in Fobian applicable in the present case.

### CONCLUSION

Because § 506(b) specifically provides for recovery of attorneys' fees and costs for a prevailing, oversecured creditor, it acts as an exception to the American Rule as set forth in Fobian. Further, Debtor does not dispute that Creditor met the requirements for recovery under § 506(b). Accordingly, the bankruptcy court properly awarded reasonable attorneys' fees and costs to Creditor.

The order of the bankruptcy court granting Creditor's request for attorneys' fees is AFFIRMED.

Dated this 1 day of April, 1997.

A handwritten signature in cursive script, reading "Ancer L. Haggerty", written over a horizontal line.

Ancer L. Haggerty

United States District Judge