IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

IN RE: DAVID AND KAYLA DWELLE, Debtors **No. 6:12-bk-71728**
Ch. 13

DAVID DWELLE **PLAINTIFF**

v. **AP No. 6:13-ap-7081**

ARVEST BANK et al. **DEFENDANTS**

CORRECTED ORDER
(to refer to separate debtor properly as plaintiff on page 2)

Before the Court is the debtors' *Complaint Against the Arvest Family of Companies, (A Private Employer and Creditor) For Violation of 11 U.S.C. § 525(b)(1), (b)(2) and/or (b)(3) and For Compensatory and Punitive Damages* filed on October 16, 2013, and the debtors' *First Amended Complaint Against the Arvest Family of Companies, (A Private Employer and Creditor) For Violation of 11 U.S.C. § 525(b)(1), (b)(2) and (b)(3) and 11 U.S.C. § 362(a) and For Compensatory Damages, Punitive Damages, and Reasonable Attorney's Fees and Costs* filed on February 5, 2015. The defendants [collectively, Arvest] responded to the complaints on February 12, 2014, and March 4, 2015, respectively. The Court held a trial on the merits on March 25, 26, and 27, 2015. For the reasons stated below, the Court denies the debtors' complaint alleging violation of the automatic stay under 11 U.S.C. § 362, denies the debtors' complaint alleging violation of § 525(b)(1) and (b)(2), and grants the debtors' complaint alleging § 525(b)(3).

Jurisdiction

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b). The following opinion constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052.

Background Facts

The plaintiff–separate debtor David Dwelle [Dwelle]–was employed by Central Mortgage Co., a subsidiary of Arvest Bank, in December 2009. His paychecks were issued by Arvest Bank Operations. When he was employed, he opened an associate account at a branch Arvest Bank and obtained a Visa credit card from Security Bank Card Corp. [SBCC], another subsidiary of Arvest Bank. On April 30, 2012, when the debtors filed their bankruptcy petition, they owed approximately $2000.00 on the card. Dwelle was described by his manager as an employee that "accomplished performance requirements" with a few areas rated "noticeably better than required."

In March 2012, Dwelle asked his human resources [HR] contact about how he should handle Arvest as a creditor if he were to file bankruptcy, apparently referencing the credit card obligation. On March 16, the HR contact replied:

> This is the information I obtained concerning how to handle a bankruptcy that included Arvest:
>
> Please see the Associate Handbook pg. 19, next to the last paragraph.
>
> The handbook explains that associates have an obligation to honor all of his or her credit obligations. No Arvest debt (loans/credit cards/mortgages...) can be included in the bankruptcy without reaffirming the debt. If there is Arvest debt and it is including [sic] in the filing and not reaffirmed, it will be caused [sic] for termination.
>
> If you have, are declaring, or have declared bankruptcy, we request documentation to prove that Arvest debt either has not been included in the bankruptcy or if it has, that the Arvest debt has been reaffirmed and that you are making payments based on the agreed upon terms.
>
> I hope this helps in your decision making process. Please let me know if you have any further questions.

(Pls.' Ex. 8.)[1] Dwelle testified that he started the bankruptcy process around April 1,

[1] The language contained in this email chain is also included in the debtors' exhibits 48, 49, 50, and 52.

2012. On April 25, 2012, Dwelle emailed his wife and stated that he had reread the email from the Arvest HR contact and "wonder[ed] if I should pull it out of the BK instead of battling the issue." (Pls.' Ex. 8.) He was referencing the obligation he had on his Visa credit card but the Court is not clear what specific "issue" he was battling. When the debtors filed their bankruptcy petition on April 30, 2012, they did not list either Arvest or SBCC in their schedules. Dwelle testified that they did not include the obligation to Arvest or SBCC because of the instructions from Arvest to either list the debt and reaffirm it or not include the debt in their bankruptcy.[2]

On June 5, 2012, two days before the debtors' meeting of creditors, Dwelle emailed Trudy Newsom at SBCC to inquire about the credit card:

> Can you please help me with information about our credit card? I would like to have access to the account online since the account was not included in the BK Filing. Also, please provide me any additional information that will assist me with this account.

(Pls.' Exs. 13, 52.) Ms. Newsom responded:

> I have contacted to HR to verify how an associate would take care of a credit card account if they filed Ch#13. You will either need to include the card in your Ch#13 plan and reaffirm the debt, or list the card as being paid outside of the plan, but you will need to make sure you are abiding by the bankruptcy laws. If you are not telling the trustee about this account, I'm not sure you would be. If you make payments outside of the trustee's knowledge, there is a possibility the court can come back and take the payments away from the creditor, if they were not listed on your repayment plan and approved by the court.
>
> You want to stay within the guidelines according to the bankruptcy court. Keep everything legal so there are no problems, now or later.
>
> Once you have talked this over with your attorney and decide how you will be moving forward (reaff or paying outside the plan), please let me know if you will need a reaffirmation. I can email you [sic] it to you for

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[2] The Court must presume that, because all pre-petition debts must be listed in the debtors' schedules, the decision not to include the obligation to Arvest was done without advice of counsel and that the debtors' counsel was not aware of the pre-petition obligation.

quicker turn-around for you.

Online access at this time will be blocked until we get a copy of your Ch#13 repayment plan.

Please let me know if you need anything else.

(Pls.' Ex. 13, 52.)

The debtors' meeting of creditors was held on June 7, 2012. At the conclusion of the meeting, the chapter 13 trustee objected to confirmation of the debtors' plan because, among other reasons, the debtors' unsecured creditor schedule listed a debt to Sallie Mae for a student loan and the debtors' expense schedule listed a payment to Sallie Mae for $153/month that was not to be included in the plan. This, in effect, would allow Sallie Mae to be paid under the debtors' plan along with other unsecured creditors in addition to receiving $153/month outside the plan. Dwelle testified that he did not expect to be asked about other debts at the meeting of creditors and did not disclose the obligation to Arvest/SBCC at the meeting of creditors. However, he began to feel guilty about the failure to disclose the obligation and told his attorney about the Arvest/SBCC debt. On July 23, 2012, the debtors amended their plan and schedules to take care of the trustee's objection. At that time, they also included SBCC as an unsecured creditor on their schedules for the first time. The modified plan was confirmed on September 20, 2012. On July 31, 2012, SBCC filed its proof of claim in the amount of $1825.00. Neither the debtors nor the trustee objected to the proof of claim.

The debtors were current on their obligation to Arvest/SBCC at the time they filed their bankruptcy petition on April 30, 2012. Dwelle testified that even though they had filed their bankruptcy petition, because failure to pay the credit card debt would be in violation of Arvest policy, he continued to make payments to SBCC. On May 2, 2012, he paid $58.00; on June 7, 2012, he paid $57.00; on July 12, 2012, he paid $55.00; and on August 17, 2012, he paid $53.00. He testified that he stopped paying after that time because he realized he was breaking the law and was afraid that he and his wife would be

"kicked out of bankruptcy." On September 27, 2012, Ms. Newsom advised Arvest HR that the debtors' SBCC account was 15 days past due and subject to "charge off" on October 4, 2012. On October 9, 2012, the debtors' account appeared on the SBCC credit card charge-off spreadsheet. As a result of Dwelle's debt to Arvest being charged off, Arvest terminated Dwelle's employment on October 16, 2012, in accordance with Arvest policy. Dwelle testified, and Arvest agreed, that he was not fired when he filed bankruptcy; he was only terminated when he missed a payment and the account was charged off.

On October 18, 2012, Dwelle filed a claim for unemployment insurance benefits with the Department of Workforce Services. Arvest did not dispute Dwelle's claim and, according to the debtors' tax returns, Dwelle received $3850.00 unemployment compensation in 2012 and $4812.00 in 2013. On April 13, 2013, Dwelle was employed by Pharmacy Care of Arkansas, LLC, where he still works.

Violation of Automatic Stay

The debtors' counsel argues that Arvest violated § 362(a)(1), (a)(2), (a)(3), and (a)(6) when it allegedly required payment on the debtors' pre-petition obligation to Arvest/SBCC after the debtors filed their bankruptcy petition. Section 362(a)(1) addresses the commencement or continuation of an action or proceeding that could have been commenced before the debtors filed their petition. This subsection is not applicable. The debtors were current on their obligation to Arvest at the time they filed their petition and there was no action or proceeding that could have been commenced at the time the debtors filed. For this reason, the Court finds that the debtors failed to meet their burden of proving a violation of § 362(a)(1) and dismisses this count.

Section 362(a)(2) addresses an act to enforce a judgment that was obtained prior to the commencement of the debtors' case. There was no evidence before the Court of a pre-petition judgment in favor of Arvest. For this reason, the Court finds that the debtors failed to meet their burden of proving a violation of § 362(a)(2) and dismisses this count.

Section 362(a)(3) addresses an act to obtain property of the estate or from the estate or to exercise control over property of the estate. The debtors failed to prove that the voluntary payments made by the debtors to Arvest after the debtors filed their bankruptcy petition were made from property of the estate. The Court knows that the voluntary payments were made post-petition but does not know the origin of the money used for the payments–whether from wages, gifts, or a loan. Hence, the issue of whether Arvest exercised control over property of the estate was not before the Court. For this reason, the Court finds that the debtors failed to meet their burden of proving a violation of § 362(a)(3) and dismisses this count.

Section 362(a)(6) addresses an act to collect, assess, or recover a claim against the debtors that arose pre-petition. The evidence and testimony of the parties all indicate that the payments the debtors made to Arvest/SBCC post-petition were voluntary. The code permits a debtor to make voluntary payments to a creditor even if the obligation is dischargeable in bankruptcy and the debtor does not reaffirm the debt under § 524(c). 11 U.S.C. § 524(f) ("Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying a debt."). However, the debtors argue that Arvest's policy as stated in its handbook was a requirement to "pay at any cost," which is tantamount to an act to collect or recover a pre-petition claim. The "pay at any cost" mentality was supported by the debtors' own misguided interpretation of the law that neither of Arvest's suggested methods of repayment–reaffirm the debt or list the card as being paid outside of the plan–was "legally viable." As a result, initially the debtors apparently chose not to disclose the obligation to their counsel, the chapter 13 trustee, or their creditors.

In fact, either of Arvest's proposed options was viable. Even though debtors' counsel and counsel for the chapter 13 trustee each stated on the record that reaffirmation was not possible in a chapter 13 case, the bankruptcy code clearly contemplates such an action. The first requirement for reaffirmation of a dischargeable debt is that the agreement be made "before the granting of a discharge under section . . . 1328 of this title." 11 U.S.C.

§ 524(c)(1). If reaffirmation was not possible in a chapter 13 case, there would be no reason to include § 1328 in § 524(c)(1). Likewise, in § 524(d), "when the court has determined whether to grant or not grant a discharge under section . . . 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. . . . If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section [a reaffirmation agreement] and was not represented by an attorney . . . then the court shall hold a hearing . . . ." 11 U.S.C. § 524(d). At the hearing, the court is to inform the debtor that the reaffirmation agreement was not required and the legal effects and consequences of such agreement. *Id*. Again, this section unequivocally includes reaffirmation agreements under chapter 13. Despite the violative nature of Arvest's policy of termination, which will be discussed below, at Arvest's invitation the debtors could have reaffirmed their obligation to Arvest/SBCC and allowed Arvest to be treated in the same manner as Sallie Mae after the debtors modified their plan–in other words, as a creditor with a non-dischargeable, unsecured obligation that participates in the debtors' plan of reorganization. Therefore, to the extent the debt to Arvest was still owed at the completion of the debtors' plan, the obligation to pay that debt would not be discharged.[3]

Alternatively, the debtors could have classified the debt to Arvest in a separate class pursuant to § 1322(b)(1). This section permits the debtors to designate a separate class of unsecured creditors in their plan as long as the plan does not discriminate unfairly against such designated class. The debtors could have placed Arvest/SBCC in its own class under the rationale that the debtors wanted to pay the debt in full under the plan so that Dwelle could maintain his employment in accordance with Arvest policy and, as a result, maintain his then current earnings. Although simply proposing a separate class is no guarantee that the proposed plan can be confirmed, counsel for the chapter 13 trustee

[3] The Court acknowledges that it would be unusual under common practice to reaffirm a debt in a chapter 13 case because most chapter 13 plans set out treatment of all of the debtors' obligations. Nonetheless, this does not mean that reaffirmation agreements are not permitted in chapter 13 cases.

testified that special classes do exist when a debtor has a good reason to pay an entire unsecured debt. The debtors attempted neither reaffirmation nor placing Arvest in a separate class.

To the extent the debtors are arguing that Arvest's stated policy for repayment or termination is a violation of the stay, the argument is misplaced. As will be discussed below, enforcement of Arvest's current policy that addresses when an employee files for protection under the bankruptcy code has the potential to violate § 525; however, the printed policy itself is not a violation per se. Through negotiation, the policy could have led to a confirmable plan in which the debtors reaffirmed their obligation to Arvest or placed Arvest in a special payment class of unsecured creditor for a non-discriminatory reason. However, if during that negotiation Arvest became predatory and tried to harass or coerce the debtors into payment–perhaps by threatening their violative policy of termination–the negotiation itself could be considered a violation of the automatic stay. *See, e.g., In re Jamo*, 283 F.3d 392 (1st Cir. 2002). In *Jamo*, the credit union had a written policy that members could reaffirm debts to the credit union in their bankruptcy cases. However, if the debtors had more than one debt with the credit union, the debtors would have to reaffirm all of their debt. The debtors tried to reaffirm their obligations but their attorney did not sign agreement. Because the attorney did not sign the reaffirmation agreement, the court did not approve the agreements. Regardless, the court found that the negotiation between the debtors and the credit union was not coercive and that the credit union's policy to reaffirm all debt did not violate the automatic stay without evidence of coercion.

In this case, there is no evidence before the Court of coercion or harassment by Arvest. Dwelle initiated both the pre-petition and the post-petition discussions concerning payment of the debtors' credit card. In the most relevant post-petition response by Arvest/SBCC to Dwelle's inquiry, Arvest told Dwelle to "talk this over with your attorney and decide how you will be moving forward." In the same email, Arvest/SBCC told Dwelle to make sure he was "abiding by the bankruptcy laws" and staying "within

all guidelines according to the bankruptcy court." For these reasons, the Court finds that the debtors failed to meet their burden of proving a violation of § 362(a)(6) and dismisses this count.

Violation of § 525

In 2009, after consultation with outside counsel, Arvest revised its employment policy concerning repayment of obligations owing to Arvest relative to an employee's continued employment with Arvest. The policy was revised to be non-discriminatory with regard to all employees. However, federal bankruptcy law is contrary to that policy. The Arvest policy states:

> Due to the nature of employment with Arvest, an associate's ability and willingness to honor his or her financial commitments is of great importance. Credit issues, both with Arvest credit and other creditors, may affect employment. Accordingly, it is the policy of Arvest that any associate to whom Arvest has extended credit must repay the obligations(s) [sic] according to the current terms of repayment. Failure to comply with this policy for any reason whatsoever will result in termination of employment.

(Pls.' Ex. 1.) The bankruptcy code states:

> (b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title . . . solely because such debtor or bankrupt—
>
> > (1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;
> >
> > (2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or
> >
> > (3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

11 U.S.C. § 525(b).

Even though the debtors brought their action under subsections (b)(1), (b)(2), and (b)(3),

the Court finds that subsections (b)(1) and (b)(2) are not applicable in this instance. Dwelle testified that he was terminated because he stopped making payments to Arvest/SBCC and Arvest charged off that debt, not because he filed a petition in bankruptcy or because he was insolvent. Likewise, Arvest's director of HR stated that Dwelle was terminated because the debtors' debt to Arvest/SBCC was charged off, not because he filed a bankruptcy petition. The debtors filed their petition on April 30, 2012. More than five months later, on October 9, 2012, the debtors' account appeared on the SBCC credit card charge-off spreadsheet and on October 16, 2012, Arvest terminated Dwelle. Accordingly, the Court finds that the debtors failed to meet their burden of proving a violation of § 525(b)(1) and (b)(2) and dismisses these counts.

However, it is apparent from the testimony of both parties that Dwelle was terminated when the debtors' debt to Arvest/SBCC was charged off. This action violated § 525(b)(3) of the code. The evidence and testimony reflects that Dwelle's non-payment of the debt was the sole reason for Dwelle's termination. Additionally, because the obligation is an unsecured debt that was not excepted from discharge under § 523, the debt is dischargeable in this case. There are simply no other elements that need to be proven and the Court finds that the debtors met their burden of proving a violation of § 525(b)(3).

Damages:

The debtors requested separate damages for violation of § 362 and violation of § 525. For § 362, relying on subsection (k)–the damages subsection that allows a debtor to bring a private right of action for a stay violation–the debtors requested compensatory damages in the amount of $892.00, punitive damages in the amount of $22,000.00, plus attorney fees and costs. Because the Court finds that the debtors failed to meet their burden of proof for any of the § 362 causes of action that were pled and tried, the Court denies any award of damages under § 362.

For § 525, which does not include a private right of action within the statute, the debtors

requested compensatory damages between $565,890.00 and $2,613,940.00; punitive damages between $14,415,234.00 and $65,372,025.00; plus attorney fees and costs.[4] Although the Court finds that Arvest violated § 525 of the code, that section, unlike § 362, does not provide a remedy for its violation. As the Supreme Court recognizes, "the fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979); *Bessette v. Avco Fin. Servs., Inc.*, 240 B.R. 147, 156 (Bankr. D.R.I. 1999) (Section 105(a) "is not to be used for the purpose of creating private remedies that are not expressly or impliedly created in other provisions of Title 11."). In this instance, there is no statutory authority under § 525 for the Court to award either attorney fees, costs, or punitive damages to the debtors.[5] As stated by a district court in New York: "If Congress had intended to award punitive damages or attorneys' fees under § 525(b) it could have said so, but it did not." *Leary v. Warnaco, Inc.*, 251 B.R. 656, 659 (D.S.D.N.Y. 2000); *see also Hicks v. First Nat'l Bank of Harrison* (*In re Hicks*), 65 B.R. 980, 984-85 (Bankr. W.D. Ark. 1986) ("There is no authority in § 525 for an award of attorney's fees to the prevailing party.").[6]

However, the Court does find that compensatory damages for back wages are warranted under § 105(a) for the unlawful termination of Dwelle in contravention of § 525. *In re Hopkins*, 66 B.R. 828, 833-34 (Bankr. W.D. Ark. 1986) (listing cases in which courts have awarded equitable remedies under § 105 to enforce provisions of bankruptcy code).

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[4] The debtors calculated their punitive damages by multiplying the alleged compensatory damages by the ratio between Dwelle's annual salary at Arvest and the amount of debt owed to Arvest. That ratio is 25.009. The debtors cited no authority for such an analysis.

[5] Even if punitive damages were allowed, the Court finds in this instance that punitive damages are not warranted. Arvest relied on outside counsel to draft its employment policy concerning this bankruptcy issue and instituted the policy in what it believed to be a non-discriminatory manner.

[6] The Court is not deciding the appropriateness of attorney fees or costs under Federal Rule of Bankruptcy Procedure 7054 at this time.

Section 105 allows the court to issue any judgment "that is necessary or appropriate to carry out the provisions of this title [tit. 11]." 11 U.S.C. § 105(a). In this instance, the Court finds that back wages less mitigation are appropriate to carry out the provisions of § 525. To determine Dwelle's reasonable damages for back wages, rather than attempt to address the unsubstantiated arguments of counsel at trial,[7] the Court will rely, instead, upon Dwelle's testimony and the evidence introduced at trial.

The proper time period for the Court to consider back wages is from the date of Dwelle's termination of employment to the date of trial. Wages beyond the date of trial are not warranted because they are speculative. At the time of his termination, Dwelle was earning $15.90 per hour for an annual income of $33,072.00. In addition to his wages, Dwelle testified that he received benefits worth approximately 38% of his total income while he was employed at Arvest. This figure seems to be generally in agreement with the information provided by Arvest in its Associate Handbook. According to the handbook, the benefits offered by Arvest "are significant and generally amount to more than 30% of your base salary." (Pls.' Ex. 1.) However, the debtors failed to introduce any evidence to support an argument that Arvest continued to pay benefits at the rate of 38% after Dwelle's employment was terminated. In fact, Arvest's HR director testified that certain benefits, such as awards, incentives, and profit sharing, are discretionary, while others are standard, such as various insurance policies. Based on the Associate Handbook, the Court finds that Dwelle would have been entitled to benefits totaling at

[7] For instance, counsel for the debtors argued that Dwelle is entitled to lost wages until the year 2032, at which time Dwelle would turn age 62. This argument is based entirely on speculation, for instance: (1) that Dwelle will hold the same job in which he is now employed for the next 17 years, (2) that Dwelle will live for another 17 years, (3) that the retirement age in 2032 will be age 62, (4) that this particular job will still exist in the future, and (5) that Arvest would not terminate Dwelle for some other reason. Further, counsel's argument for lost wages included benefits for which Dwelle may have been entitled had he remained employed; however, counsel offered no evidence as to what those benefits actually were between the date of Dwelle's termination and the date of the trial. He simply extended the benefits that Dwelle was paid when Dwelle was employed by Arvest through the trial and then into the future.

least 30% of his total income, despite the lack of evidence on this subject by the debtors. In sum, the Court finds that Dwelle's compensation for back pay, without adjustment for mitigation, would consist of $33,072.00 per year plus benefits totaling $9921.60 per year for a total amount of $42,993.60 per year, or $20.67 per hour ($165.36 per day).

Any award would need to be reduced by wages earned through mitigation or other money paid to Dwelle because of his employment termination between his date of termination and the date of trial. This would include unemployment compensation Dwelle received in 2012 and 2013. According to the debtors' tax returns for these years, Dwelle was paid unemployment compensation in the amount of $3850.00 in 2012 and $4812.00 in 2013. On April 13, 2013, Dwelle was employed by Pharmacy Care of Arkansas, LLC, [Pharmacy Care] where he was paid $1346.16 every two weeks. This amounts to $35,000.16 per year. Dwelle initially testified that Pharmacy Care does not offer any benefits. However, on cross-examination, Dwelle said that he does receive a 2% match for a retirement package. The Court also takes judicial notice that an employer pays 7.65% of an employee's wages for Social Security and Medicare. This employer contribution was included in Arvest's computation and should, likewise, be included in Pharmacy Care's computation. In sum, the Court finds that Dwelle's compensation at Pharmacy Care is $35,000.16 per year plus benefits totaling $3377.52 per year for a total amount of $38,377.68 per year, or $18.45 per hour ($147.60 per day).

Dwelle's employment was terminated by Arvest on October 16, 2012. The trial on the merits was held 889 days later, on March 25, 2015. Of those 889 days, Dwelle was unemployed for 178 days and was employed at Pharmacy Care for 711 days:

	889 days @ $165.36/day (if not terminated)	=	$147,005.04
less	unemployment compensation received	=	($8662.00)
less	711 days @ $147.60/day (Pharmacy Care)	=	($104,943.60)
	total		$33,399.44

For violating § 525(b)(3) of the bankruptcy code, the Court finds in favor of the separate

debtor, David Dwelle, and against Arvest and will enter judgment for back wages and benefits in the amount of $33,399.44. Arvest shall pay the judgment for back wages to the chapter 13 trustee in the debtors' case pursuant to § 1306 and the debtors' confirmed plan, which states that "property of the estate shall continue to be property of the estate until such time as a discharge is granted or the case is dismissed." Because the debtors' plan is a pro rata plan, the debtors' projected disposable income, of which the past due wages are a part, is property of the estate and should be paid into the plan for the benefit of unsecured creditors. This should not come as a surprise to the debtors because the debtors recognized that any recovery obtained would be a recovery *for the estate*. On page 97 of their 100 page amended complaint (not including 366 additional pages of exhibits), paragraph 239 states:

> That neither secured nor unsecured creditors in the bankruptcy estate case no. 6:12-bk- [sic] shall be negatively impacted should this Court enter its Judgment in favor of the plaintiff for compensatory damages, punitive damages, or reasonable attorney's fees and costs. In fact the debtors maintain $103,749.34 in allowed unsecured claims and only have approximately $23,585.00 in 11 U.S.C. § 522(d)(5) exemption value with which to exempt any justifiable and deserving award this Court may see fit to find for Mr. Dwelle. In fact, depending upon the amount of any such damages and awards requested herein *the creditors may well benefit from Mr. Dwelle's cause of action* which only seems fitting where as pled through the complaint to the extent the debtor was intentionally and most wrongly deprived of his protected interest by the several black letter and spirited violations of 11 U.S.C. § 362(a) and 11 U.S.C. § 525(b) *so too was the bankruptcy estate intentionally and most wrongly deprived* of its same interest in the very life blood and marrow of the Chapter 13 re-organization.

(emphasis added).

Further, because counsel for Dwelle was not hired by the trustee under § 327 to pursue this cause of action for the trustee, the debtors' counsel is neither permitted to be paid compensation from the estate under § 330 nor allowed an administrative expense under § 502(b)(2) for the services provided. However, counsel for Dwelle shall have fourteen days from the entry of this order to file with the Court their motion for attorney fees and costs pursuant to Federal Rule of Bankruptcy Procedure 7054, paying particular attention

to Rule 54(d)(2)(B)(ii), which states that the motion for attorney fees must "specify the judgment and the statute, rule, or other grounds entitling the movant to the award." The motion and any brief in support **shall not exceed 10 pages double-spaced**, excluding a specific itemization of fees and costs. Arvest shall have fourteen days from the filing of the motion within which to respond.

IT IS SO ORDERED.

Ben Barry
United States Bankruptcy Judge
Dated: 04/20/2015

cc: Travis L. Starr
Marc Honey
John C. Calhoun Jr.
Randy Grice
Jack W. Gooding