

In Re: William E. Hoey
James A. Bonfiglio, Esq vs. William Hoey and Shirley Hoey, Donald Baltrus, Mortgage Works
Unlimited, Inc., Gordon Kenyon, Rochelle Kenyon, Gary W. Fox, Francis V. Childs, Trustee,
and Deborah Menotte, Trustee
Case No: 00-35503-BKC-SHF
Adversary Case No: 03-3064-BKC-SHF-A

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTION FOR FINAL SUMMARY JUDGMENT AS TO COUNT I OF THE AMENDED
COMPLAINT AND DENYING IN PART AND GRANTING IN PART THE CHILDS
GROUP'S CROSS-MOTION FOR SUMMARY JUDGMENT**

An attorney, James Bonfiglio, Esq., held a valid charging lien against a debtor in bankruptcy resulting from a previous state court litigation involving the debtor's real property. Mr. Bonfiglio was successful in that litigation and, according to the state court settlement, should have been paid from the subsequent refinance of the real property. However, Mr. Bonfiglio was never paid and the bankruptcy court determined that the attorney's lien was superior to the new mortgage holder's lien based on proper recording and notice of the attorney's charging lien. In the administration of the bankruptcy, the Trustee was permitted to sell the property and was holding \$380,000 in proceeds. The question before the Court was how to divide those proceeds among the lien holders, specifically, the Mr. Bonfiglio was now seeking additional attorney's fees and interest owed for enforcing his charging lien.

The Court determined that based on the principle of equitable subrogation, the mortgage company should first be reimbursed \$95,894.29 to account for the creditors that were paid as a result of the refinance. Those creditors included the IRS, Palm Beach County Tax Collector and homeowner's association fees. James Bonfiglio, Esq. was awarded \$227,133.14 to account for the amount of his charging lien. The remainder was to go to the mortgage company. Mr. Bonfiglio was not awarded additional attorney's fees as the evidence was lacking as to the reasonableness of those additional fees.