UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:	)	
	)	
MADGE LEBRUN	)	Case No. 95-10124-AM
	)	Chapter 7
Debtor	)	

MEMORANDUM OPINION

This matter is before the Court on the debtor's motion for sanctions against a judgment creditor, the debtor's employer, and the clerk of a state court for failure to terminate a wage garnishment after the debtor filed a chapter 7 petition in this Court. In effect, the debtor has invited this Court to issue a "standing order" to the state courts, and in particular to the General District Court of Fairfax County, Virginia, requiring that garnishments be dismissed when the judgment debtor files a bankruptcy petition.

Factual Background

The essential facts in this case are not contested. The debtor, Madge Lebrun, filed a voluntary petition under chapter 7 of the Bankruptcy Code in this Court on January 13, 1995. At that time, she was the subject of a wage garnishment as a result of a garnishment summons issued by the General District Court of Fairfax County, Virginia, at the request of a judgment creditor, Montgomery Ward Credit Corp. ("Montgomery Ward"), and directed to the debtor's employer, Mobil Oil Corporation ("Mobil"). The return date of the garnishment summons was March 22, 1995. The attached wages, in

the then-amount of $87.00, were claimed by the debtor as exempt on schedule C (Property Claimed as Exempt) filed with her petition.

At some point not fully disclosed by the record, Montgomery Ward was notified of the bankruptcy filing. A standard "Notice of Commencement of Case" was mailed by the clerk of this court to all creditors, including Montgomery Ward, on January 26, 1995 and presumably was received within a few days of that date. Among other information, the notice advised creditors as follows:

> CREDITORS MAY NOT TAKE CERTAIN ACTIONS. * * * Under the Bankruptcy Code, the debtor is granted certain protection against creditors. Common examples of prohibited actions by creditors are * * * starting or continuing * * * wage deductions.

On February 20, 1995, Montgomery Ward, in response to the Bankruptcy filing, sent to the General District Court a standard state court "Garnishment Disposition" form requesting, without assigning a specific reason, that the garnishment be dismissed.[1] The General District Court, however, having learned of the bankruptcy filing, refused to dismiss the garnishment and did not instruct the employer to cease withholding from the debtor's wages. The standard practice of the Fairfax County General District Court—apparently not followed, however, in this case—is to send a form letter to the clerk of the bankruptcy court stating "We will await an order from the Bankruptcy Court so that the Garnishee may be notified concerning proper disbursement of the funds." A copy of the form letter is mailed to the garnishee. While the letter contains no explicit direction to the garnishee, it can reasonably be read as instructing the garnishee to continue holding any funds until an order is received from the Bankruptcy Court, and some garnishees are apparently led to believe that they should continue

[1] The form stated, "I, the undersigned, respectfully request this Court to advance the Garnishment in this case on the docket of this Court and [X] release the Garnishment against the Garnishee named in this request and I certify that: * * * [X] the judgment creditor desires its action against the garnishee to be dismissed."

honoring the garnishment even as to wages paid post-petition. There is no evidence before the Court as to what, if anything, Mobil was advised by the General District Court in this particular case. However, Mobil, although notified by debtor's counsel prior to March 3, 1995, of the bankruptcy filing, withheld wages in the amount of $183.04 from the debtor's March 3, 1995, payroll check, in addition to $234.61 withheld between the date the debtor filed her petition and the date Montgomery Ward requested the garnishment be dismissed.

On March 20, 1995, the debtor filed in this court a "Motion to Quash Garnishment & Impose Sanctions," naming as respondents Montgomery Ward, Mobil, the chapter 7 trustee, and the Clerk of the Fairfax County General District Court. Only the Clerk of the Fairfax County General District Court, represented by the Attorney General of Virginia, appeared in opposition. On April 4, 1995, this court entered an order quashing the garnishment and ordering the return of the funds to the debtor. The issue of sanctions was continued to May 2, 1995, and argued on that date. At the hearing, the debtor abandoned her request for sanctions against Montgomery Ward and the Clerk of the Fairfax County General District Court but reiterated her request for an award of sanctions against Mobil and for an order which would, in effect, instruct the state courts that pending garnishments must be dismissed when the debtor files a bankruptcy petition.

Discussion

I.

As has been many times observed, the automatic stay is one of the fundamental protections provided by the Bankruptcy Code. *In re: Terry*, 7 B.R. 880 (Bankr.E.D.Va. 1980). Under Section 362(a) of the Bankruptcy Code, 11 U.S.C. § 362(a), the filing of a bankruptcy petition

> operates as a stay, *applicable to all entities*, of—
>
> > (1) the commencement *or continuation*, including the issuance or employment of process, of a judicial * * * proceeding against the debtor that was * * * commenced before the commencement of a case under this title, or to recover a claim against the debtor that arose before the commencement of a case under this title;
> >
> > (2) the *enforcement*, against the debtor or against property of the estate, of a judgment obtained before the commencement of a case under this title;

(emphasis added).[2] So fundamental is the automatic stay to the orderly administration of bankruptcy cases that it is effective even as to parties who had no notice of the filing. *In re: James*, 120 B.R. 802, 814 (E.D.Pa. 1990), aff'd 940 F.2d 46 (3rd Cir. 1991). No special action or request by the debtor is required to make the stay effective: as noted by the Fourth Circuit,

> The automatic stay is a *self-executing* provision of the Bankruptcy Code and begins to operate nationwide, without notice, once the debtor files its petition for relief.

In re: A. H. Robins Co. Inc., 63 B.R. 986, 988 (Bankr.E.D.Va. 1986) (emphasis added), aff'd *Grady v. A. H. Robins Co., Inc.* 839 F.2d 198 (4th Cir. 1988), cert. dismissed *Joynes v. A. H. Robins Co., Inc.*, 487 U.S. 1260 (1988). *Accord, NLT Computer Services Corp. v. Capital Computer Systems, Inc.*,

[2] Support garnishments present a separate issue and are discussed *infra*.

755 F.2d 1253, 1258 (6th Cir. 1985) (stay is "automatic and self-operating").

The nature of a garnishment under Virginia law has been well summarized in a recent Fourth Circuit opinion. Since I cannot improve on it, I will simply quote it:

> Under Virginia law, a money judgment is enforced by the issuance of a writ of fieri facias and delivery of the writ to a "proper officer" of the court for enforcement. See Va.Code Ann. § 8.01-466 (1992). The writ commands the officer "to make the money therein mentioned out of the goods and chattels of the person against whom the judgment is." Va.Code Ann. § 8.01-474 (1992). When the property is not subject to levy pursuant to the writ of fieri facias, it nevertheless becomes subject to a lien upon delivery of the writ to the sheriff or other officer. Va.Code Ann. § 8.01-501 (1992). And when the property is in the hands of a third person, the lien of execution may be enforced through a garnishment proceeding. See Va.Code Ann. § 8.01-511 (1992).
>
> Under Virginia law, a garnishment proceeding is a separate proceeding in which the judgment creditor enforces the "lien of his execution" against property or contractual rights of the judgment debtor which are in the hands of a third person, the garnishee. *Lynch v. Johnson*, 84 S.E.2d 419, 421 (1954); see also *Butler v. Butler*, 247 S.E.2d 353, 354 (1978). The summons issued in a garnishment proceeding "warns" the garnishee not to pay the judgment debtor's money to the judgment debtor, with the sanction that if the garnishee were to do so, it would become personally liable for the amount paid. *Lynch*, 84 S.E.2d at 421. Thus, "the creditor 'does not acquire a clear and full lien upon the specific property in the garnishee's possession, but only such a lien as gives him the right to hold the garnishee personally liable for it or its value.' " *Id*. at 421-22. In other words, by act of garnishment, the judgment creditor does not replace the judgment debtor as owner of the property, but merely has the right to hold the garnishee liable for the value of that property. * * *
>
> The garnishee can escape all garnishment liability, however, by surrendering the funds to the court for its proper disposition. See *In re Lamm*, 47 B.R. 364, 368 (E.D.Va.1984). The garnishee is required to respond to the garnishment summons by confessing the amount owed to the judgment debtor or by denying it has any property of the judgment debtor. It may also pay such monies into court as it confesses. If liability or the amount confessed is disputed, the court

> determines whether the garnishee holds property belonging to the judgment debtor and the property's value.

United States f/u/o Global Bldg. Supply, Inc. v. Harkins Builders, Inc. 45 F.3d 830, 833-4 (4th Cir. 1995). Where the garnishment is directed against wages, no more than 25 percent of an employee's wages can be withheld, except where the garnishment is issued to satisfy a support obligation, in which event as much as 65 percent can be withheld, depending on whether the employee has a duty to support other dependents and whether the support with respect to which the garnishment is issued is more than twelve weeks in arrears. Va.Code Ann. § 34-29.

It is abundantly clear, from a plain reading of § 362, that except for support garnishments,[3] any *enforcement* of a garnishment summons after the date a debtor files a bankruptcy petition is barred by the automatic stay. *In re: Baum*, 15 B.R. 538 (Bankr.E.D.Va. 1981) (State court's act in turning over garnisheed wages to judgment creditor and judgment creditor's action in retaining those funds violated the automatic stay.) Moreover, each actor involved in the garnishment process—the judgment creditor, the court, and the garnishee—has an independent, affirmative duty to comply with the stay. *Elder v. City of Thomasville, Ga. (In re: Elder)*, 12 B.R. 491, 494 (Bankr.M.D.Ga. 1981) ("all who have a part in the garnishment must take such *positive action* as necessary to give effect to the automatic stay.")

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[3] The effect of the automatic stay on support garnishments is unfortunately more complicated. Under § 362(b)(2)(B) of the Bankruptcy Code the automatic stay does not apply to "the collection of alimony, maintenance or support *from property that is not property of the estate*." (emphasis added.) In a chapter 7, 11, or 12 bankruptcy case, wages earned *after* the date of the bankruptcy filing are not property of the estate. 11 U.S.C. § 541(a)(6). Accordingly, enforcement of a support garnishment against post-petition wages would not violate the automatic stay. The enforcement of the garnishment against wages earned pre-petition would be stayed, however, since pre-petition wages are property of the estate, even though under § 522(c)(1) of the Bankruptcy Code the debtor could not hold them as exempt against a claim for support. In a chapter 13 wage-earner case, by contrast, post-petition earnings *are* property of the estate. 11 U.S.C. § 1306(a)(b). Consequently, a support garnishment is stayed in a chapter 13 case against both pre- and post-petition wages.

II.

The question before this court, however, is whether the automatic stay, in barring *enforcement* of the garnishment, also requires—as the debtor argues—that the garnishment be *dismissed*. There is certainly direct authority in this district for that proposition. In *In re: Baum*, *supra*, Judge Bonney of this court, following *Elder*, *supra*, provided a short and simple road-map:

> Any creditor who has instituted garnishment proceedings against a debtor who filed a petition in bankruptcy should be aware of the following:
>
> (1) The automatic stay of § 362 prevents the commencement or continuation of any collection efforts from the time of filing. *Garnishment proceedings commenced prior to filing must be dismissed.* It is the creditor's responsibility to stop the downhill snowballing of a continuing garnishment.
>
> (2) Wages that have been withheld by the garnishee *and retained by the garnishor* within 90 days of the petition are preferential payments and must be turned over to the debtor or the trustee as each's interest may appear.
>
> (3) Failure to take these actions by a garnishing creditor is a violation of the automatic stay provisions of § 362, and may be punishable by contempt.

Id. at 541 (emphasis added; citation omitted). Thus, the rule would appear to be straight-forward: any pending garnishments must be dismissed, and any funds already paid over to the judgment creditor within 90 days of the bankruptcy filing must be turned over to the debtor or the trustee "as their interest may appear."

III.

As the Attorney General of Virginia points out, however, the analysis may not be that simple. While the Attorney General agrees that no sums can properly be withheld from wages paid post-

petition, he points out that the *Baum* decision does not address wages or other funds withheld *prior* to the date of the bankruptcy filing, but not yet paid over to the judgment creditor. Such funds, the Attorney General correctly notes, are property of the bankruptcy estate under § 541(a) of the Bankruptcy Code.[4] Under § 542(a) of the Bankruptcy Code,

> an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell or lease * * * or that the debtor may exempt * * * *shall deliver to the trustee*, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

(emphasis added). The term "custodian" is defined in § 101(11) of the Bankruptcy Code and includes court-appointed receivers and trustees. While a custodian is not subject to § 542(a), he or she is subject to similar obligations imposed by § 543 of the Bankruptcy Code:

> (a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor * * * or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.
>
> (b) a custodian shall—
>
> > (1) *deliver to the trustee* any property of the debtor held by or transferred to such custodian * * * that is in such custodian's possession, custody or control on the date that such custodian acquires knowledge of the commencement of the case * * *.

Accordingly, it is suggested, a state court, regardless of whether it is characterized as a "custodian" in the sense of 11 U.S.C. § 543 or simply an "entity * * * in possession, custody, or control" of funds withheld under garnishment prior to the date of the bankruptcy filing, has a positive duty to deliver

[4] "The commencement of a case under * * * this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held: (1) * * * all legal or equitable interests of the debtor in property as of the commencement of the case."

such funds to the *trustee*.[5] Simply dismissing the garnishment in such a case would effectively result in the funds being returned to the debtor rather than being delivered to the trustee, to the potential fraud of creditors and in express violation of the statute. It is for that reason that the General District Court does not dismiss a garnishment when a bankruptcy has been filed but instead sends a form letter to the bankruptcy court (or apparently in some cases to the trustee) requesting an order from the bankruptcy court as to the proper disposition of the funds. Indeed, this court is advised that one of its sister courts, the United States Bankruptcy Court for the Western District of Virginia, routinely issues, on application of debtors whose wages or bank accounts are the subject of garnishment action, a form order which directs the garnishee as follows:

> (1) Any employer holding funds under garnishment shall pay to the employee (debtor) all wages earned following the date the petition was filed and file with the Trustee in Bankruptcy shown above a statement of all funds previously withheld from debtor's wages under garnishment or other process pending and any other funds being withheld from debtor, and/or levies of property of the debtor, to-wit: *{wages/bank accounts etc.}* garnished at *{name of employer}* by *{name of creditor(s)}*, creditor garnishing debtor. Further, the employer shall deliver to the Trustee in Bankruptcy the garnished funds no later than the date of the § 341 Meeting of Creditors on *{341 meeting date}*.
>
> (2) The employer shall file a copy of this Order with its answer and report to the appropriate State Court Clerk's Office which issued said garnishment. This Order shall be sufficient authority for the employer to so act hereunder and said employer is hereby held harmless for its action pursuant to this Order.

While such an order is unquestionably useful in providing guidance (as well as an obvious

[5] In a chapter 11 reorganization case, a trustee is ordinarily not appointed except in those rare situations where the court finds "fraud, dishonesty, incompetence, or gross mismanagement" or other good cause. 11 U.S.C. § 1104(a). Rather, in the large majority of cases, the debtor remains in possession of its own assets and has, with certain very limited exceptions, all the powers of a trustee. 11 U.S.C. § 1107(a). In a chapter 11 case where a trustee has not been appointed, therefore, property must be turned over to the debtor itself in its capacity as debtor in possession.

measure of comfort) to garnishees, the fact remains that, at bottom, it should not be necessary for the debtor to have to apply to the bankruptcy court for an order enforcing the automatic stay. As noted above, an essential characteristic of the stay is precisely that it is automatic—or, to use the Fourth Circuit's phrase, "self-executing." Judgment creditors, state courts, and garnishees are all responsible for taking prompt, affirmative action to stop the enforcement of a garnishment. It is not sufficient simply to do nothing—thereby allowing the garnishment to continue—and await an order from the bankruptcy court. *Elder, supra*.

The vice of requiring an order from the bankruptcy court and in the interim simply holding funds the debtor may need to pay for the basic necessities of life is that it improperly burdens a specific statutory protection granted by Congress. It does not require much imagination to recognize that frequently the sums held under garnishment, though important to a financially-strapped debtor, may be small in magnitude compared to the attorneys fees that would be incurred in preparing and filing a formal motion with the bankruptcy court for their release, obtaining an order from the bankruptcy court,[6] filing such an order with the state court, and obtaining an order from the state court directing the payment of the funds to the debtor. It would not be out of the question for as much as two hours of attorney time to be required. In the Northern Virginia area (which includes Fairfax County) $150 per hour is a modest rate for attorney time. Accordingly, if the debtor were forced in every case to obtain an order from this Court before funds held under garnishment were released—even though the

[6] In the Western District of Virginia, orders terminating garnishments and directing turnover of the funds already withheld to the bankruptcy trustee are entered on application of the debtor without a hearing. In this District, unless the order is endorsed by counsel for the judgment creditor and by the trustee, the motion would ordinarily be set down for hearing, and a court appearance would be required. The bar liaison committee for the Alexandria Division of this District has proposed changes to the local practice that, if adopted, would eliminate the need for a court appearance, unless the trustee or judgment creditor specifically requested a hearing after notice.

creditor had requested that the garnishment be dismissed—debtors could well find themselves forced to pay their attorney an amount that is practically equal to—and in some cases exceeds—the funds withheld.

In a great many, and probably the large majority, of cases, a consumer debtor's pre-petition wages or bank deposits held under garnishment are properly claimed as exempt, and the trustee has no interest in them. Consequently, a rule that routinely requires such sums to be turned over to the bankruptcy trustee imposes what will often be an unwelcome burden on the trustee. The debtor in the present case argues that in practice trustees have so little occasion to administer attached wages and bank accounts, and so many remedies if the debtor's claim to the funds ultimately turns out to be unfounded or invalid, that the better policy would be simply to require such funds be released to the debtor. Such a procedure would ensure prompt receipt of the funds by the debtor, without diminishing the trustee's right, if the funds or some portion of them should prove not to be exempt, to demand that the debtor turn them over, with the sanction that the debtor, if he or she does not do so, may be denied a discharge and is subject to criminal prosecution. 11 U.S.C. § 727(a)(2)(B) and (a)(6)(A); 18 U.S.C. § 152.

There is no question that requiring turnover to the trustee of pre-petition funds held under garnishment substantially delays a debtor's receipt of those funds. The first meeting of creditors in a chapter 7 liquidation case must be held no fewer than 20 and no more than 40 days after the bankruptcy filing. Fed. R. Bankr. P. 2003(a). The deadline for filing objections to a debtor's claim of exemptions is 30 days after the meeting of creditors. Fed. R. Bankr. P. 4003(b). Consequently, it would be no fewer than 50 and could be as many as 70 days after the commencement of a bankruptcy case before the debtor's right to exempt funds held under garnishment becomes incontestable. As a

practical matter, however, the delay would seldom be that great. Assuming the debtor has properly filed a homestead deed prior to the meeting of creditors, there would appear to be no reason why the trustee, if in possession of the funds and satisfied that the claimed exemption is valid, could not release them to the debtor at the meeting of creditors. In any event, given the clear mandates of §§ 542 and 543 for turnover of property of the estate, any delay experienced by the debtor in gaining access to the exempted funds, although unfortunate, is the result of a deliberate policy decision by Congress designed to protect creditors of the estate.

Moreover, there is the additional concern that a debtor may, for whatever reason, fail properly to exempt funds held under garnishment. If the bankruptcy trustee determines that the value of the funds is insufficient to justify the expense of administration, he or she may abandon them. 11 U.S.C. § 554(a). In that event, the judgment creditor would retain its execution lien under Va. Code Ann. § 8.01-501 (1992) against wages and bank deposits withheld under the garnishment pre-petition, and such lien could be enforced after the automatic stay is terminated, since valid liens, unless avoided, pass through bankruptcy unaffected. 11 U.S.C. § 522(c)(2); *Johnson v. Home State Bank*, 501 U.S. 78, 111 S.Ct. 2150, 2153, 115 L. Ed. 2d 66 (1991). In such a case, the release to the debtor of funds withheld pre-petition would improperly defeat the judgment creditor's lien. When the funds are turned over to the trustee, by contrast, the judgment creditor's lien would ordinarily be protected in the event the debtor cannot or fails to claim the attached funds as exempt, and either the trustee abandons the funds or the debtor's case is dismissed.

Nevertheless, it cannot be stressed too much that whether or not a garnishment should be *dismissed* by the state court is a wholly separate issue from whether it must be *terminated*. As to the latter, there is no question: all enforcement of the garnishment must immediately cease once the debtor

has filed bankruptcy, with the very limited exception of support garnishments in a chapter 7, 11, or 12 bankruptcy case. Furthermore, the *creditor's* obligation is clear: immediately upon learning of the bankruptcy filing, it must take all reasonable steps to dismiss the garnishment. *In re: Baum, supra.* It is only as to funds withheld from a debtor's wages *prior* to the bankruptcy filing that any issue of turnover to the trustee arises. On that point, there is no need to await an order from the bankruptcy court: the duty to turn over property of the estate to the trustee is imposed by statute and does not require demand.

IV.

To summarize, there is a straight-forward path through the Bankruptcy Code that is consistent both with the automatic stay under § 362 and with the duty under §§ 542 and 543 to turn over property of the estate to the trustee. It is as follows:

1. All *enforcement* of a garnishment must stop immediately, effective as of the filing date of the debtor's petition. The judgment creditor must immediately seek dismissal of the garnishment. An employer served with a wage garnishment may not withhold any sums whatsoever from an employee's pay after a bankruptcy petition is filed, and any sums inadvertently withheld after such filing must be promptly returned to the employee. A bank served with a garnishment summons may not withdraw or segregate any funds deposited into the account after the date of the bankruptcy filing, and any funds so withheld or segregated must be returned to the depositor. The *only* exception to the requirement that enforcement of a garnishment must stop is a support garnishment in a chapter 7, 11, or 12 case. In a chapter 13 case, however, the enforcement even of a support garnishment is stayed.

2. If funds have been withheld from an employee's pay or depositor's bank account *prior* to the bankruptcy filing but not yet paid over to the judgment creditor or the clerk of court, the garnishee must promptly pay such funds to the bankruptcy trustee, unless notified by the trustee that such funds may be released to the debtor.

3. The garnishee should file with the court issuing the garnishment process an answer setting forth all amounts withheld prior to the date of the bankruptcy petition and stating that such sums have been paid to the bankruptcy trustee in compliance with 11 U.S.C. § 542(a). The answer should also state that no sums have been withheld subsequent to the date of the bankruptcy filing because of the automatic stay under 11 U.S.C. § 362.

4. If funds have been deducted from an employee's wages or depositor's bank account prior to the bankruptcy filing and are being held by the clerk of the court that issued the garnishment process, the clerk of court should pay or deliver them to the bankruptcy trustee, unless notified by the trustee that they should be released to the debtor.

5. Upon being notified of a bankruptcy filing by a judgment debtor, the clerk of court should advise garnishees of their duties as set forth in paragraphs 1, 2 and 3, above. Under no circumstances should the state court give any instruction to the garnishee that directs or implies that a garnishment should continue after the filing date of the bankruptcy petition (except, as noted above, in the case of a support garnishment in a chapter 7, 11, and 12 case).

The Debtor's Request for a "Standing Order"

The debtor, although withdrawing her request for sanctions against the state court, continues to press for the issuance of a "standing order" directed to the state court. Counsel for the debtor represents that the problem experienced by his client in terminating the garnishment and obtaining the release of the wages wrongfully withheld after her petition was filed is a recurrent one, and that without authoritative direction from this court, future debtors will encounter similar difficulties. The Attorney General of Virginia has assured this court that the state court would welcome guidance as to the proper procedure to be followed.

Putting to one side the unsettled question of whether a bankruptcy court has the authority to enjoin another court, as distinguished from enjoining the litigants before that court,[7] the circumstances

[7] *See*, 1 Collier, *Bankruptcy* (15th ed.), ¶ 3.01[6][b] (discussing split of authority). *Compare, In re: Johns-Manville Corp.*, 801 F.2d 60 (2d Cir. 1986) (bankruptcy court may enjoin state court action that threatens to interfere with the administration of the bankruptcy estates); *Browning v. Navarro*, 887

of this case simply do not present an appropriate occasion for exercising such power. Each case will necessarily present its own facts and circumstances, and while certain broad principles are clear enough, drafting an order sufficiently comprehensive to embrace every possible factual variation is not feasible. More importantly, given the assurances of the Attorney General of Virginia, this court is confident that the guidance provided by this opinion will be sufficient to prevent a repetition of the situation, such as that experienced by the debtor in this case, where a garnishee improperly continues to withhold sums from a debtor's wages after the bankruptcy petition is filed. Accordingly, the court declines to issue a "standing order."

Sanctions Against Mobil

There remains the issue of whether the debtor should be awarded sanctions against Mobil for continuing to withhold money from the debtor's wages even after it was advised of the bankruptcy filing. Such action clearly violated the automatic stay and is not excused because done in compliance with state court garnishment process. *Elder*, *supra.* Mobil's action was undertaken with full knowledge of the automatic stay; moreover, Mobil is a large and sophisticated employer that can hardly claim it lacked the ability to obtain proper legal advice if it was unsure how to resolve the apparently conflicting demands of obedience to Federal bankruptcy law on the one hand and obedience to state court process on the other.[8] To obtain the release of $183 that was improperly deducted from

(..continued)
F.2d 553 (5th Cir. 1989) (only U.S. District Court, not bankruptcy court, has power to enjoin proceeding in another court).

[8] There is, of course, no real conflict. Under Article I, Section 8, of the United States Constitution, Congress is granted the explicit power "To establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." Under the Supremacy Clause (Art.VI), "This Constitution, and the Laws of the United States made in Pursuance thereof * * * shall be the supreme

the debtor's wages after Mobil had actual knowledge of the bankruptcy filing, the debtor's attorney was required to prepare and file a motion in this court to quash the garnishment and to appear in court to argue the motion. Although it is true that the debtor would have to have done so in any event because of the action of the General District Court in refusing to dismiss the garnishment, the debtor's situation was unquestionably aggravated by having the extra $183 tied up for an extended period of time while she sought its release. For that reason, the court concludes that $250.00 is an appropriate sanction to be paid to the debtor by Mobil for its willful violation of the automatic stay.

An order will be entered consistent with this opinion.

Date: May 23, 1995

_____ Stephen S. Mitchell _____
Stephen S. Mitchell
United States Bankruptcy Judge

Alexandria, Virginia

(..continued)
Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

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