
In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division

In the matter of:)
)
JOHN K. HARDWICK) Adversary Proceeding
TINA L. HARDWICK) Number 97-2001
(Chapter 13 Case 96-21353))
)
Debtors)
)
)
)
JOHN K. HARDWICK)
TINA L. HARDWICK)
)
Plaintiffs)
)
)
)
v.)
)
INTERSTATE UNLIMITED)
FEDERAL CREDIT UNION)
)
Defendant)

MEMORANDUM AND ORDER

The above-captioned case was tried on April 10, 1997. After considering the evidence, I make the following Findings of Fact and Conclusions of Law pursuant to Bankruptcy Rule 7052.

FINDINGS OF FACT

Debtors' case was filed on November 21, 1996, at which time the balance they owed on a loan to the Defendant, Interstate Unlimited Federal Credit Union, was \$1,234.00. On November 20, 1996, the day before filing, Debtors had on deposit in their joint checking account \$582.54. On December 10, 1996, Defendant placed an administrative freeze on Debtors' account when the balance in the account was \$417.64.

On December 11, 1996, the following afternoon, Debtor/Wife went to the Credit Union to make a deposit of a paycheck in the amount \$272.44. The teller refused to accept the deposit stating that the account was frozen. No prior notice had been given by the Credit Union of its action. Moreover, prior to tendering the deposit, Debtors had written some checks relying on the fact that the December 11 deposit would be made to cover them. When the check was refused for deposit, Debtor cashed it and paid other bills rather than returning to the places of business where she previously had written checks in order to make them good. Subsequent to the placing of an administrative freeze on the account, a total of twenty-three checks were returned by the Credit Union totaling \$359.17. The evidence revealed that some checks were written prior to the administrative freeze and others were drafted subsequent. Even if the deposit had been made, only approximately eight of the twenty-three checks in issue would have been honored.

By letter dated December 9, 1996, Defendant, Credit Union, notified Debtors' attorney of the administrative freeze, although mistakenly representing that it had frozen up to \$582.54 when in fact only \$417.64 had been in the account. The notice was received after December 11, 1996. On December 12, 1996, Credit Union sent another letter to Debtors' attorney indicating that it only had frozen the combined balance of \$417.64 and enclosed an "Agreed Order Terminating Stay" to resolve the matter.¹ Debtors' attorney promptly notified the Credit Union that the order would not be signed and on January 9, 1997, approximately four weeks later, Credit Union filed a Motion for Relief. On January 6, 1997, Debtors' filed this action to recover damages for an intentional violation of the automatic stay.

Debtors first contend that the Credit Union violated Section 362(a)(6) by failing to bring an appropriate motion for relief within a reasonable time. Because the Credit Union filed its motion for relief approximately four weeks after freezing the account, Debtors contend that the Credit Union intended to harass the Debtors and coerce them into repaying the debt thereby violating the automatic stay. Through subsequent pleadings and during the trial, Debtors also claim that the Credit Union's post-petition refusal to deposit the Debtors' check amounts to an additional violation of the automatic stay. In opposition, the Credit Union denies any violation of the stay and, in the

¹ The balance in the joint checking account on December 9, immediately prior to the freeze being instituted, was \$360.79 and in Mrs. Hardwick's individual account was \$56.85.

alternative, contends that any violation was not willful and only committed negligently during its attempt to comply with the provisions of the Bankruptcy Code.

CONCLUSIONS OF LAW

In pertinent part, 11 U.S.C. Section 362(a)(6) and (7) provide that,

(a) , a petition under [this] section , operates as a stay, applicable to all entities, of--

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title;

Although the Bankruptcy Code prohibits any act to set off a debt, the Supreme Court has held that an administrative freeze is not a violation of the automatic stay. *See Citizens Bank of Maryland v. Strumpf*, --- U.S. ---, 116 S.Ct. 286, 113 L.Ed.2d. 258 (1995). Specifically, in *Strumpf*, the Supreme Court held that the placing of an administrative freeze on an account by a bank and filing of a subsequent motion for relief was not a violation of Section 362(a)(7). Thus, in this case, because the Credit Union only froze the Debtor's account and filed a subsequent motion for relief its actions did not violate Section 362(a)(7).

The main issue presented is whether the Credit Union violated Section 362(a)(6) either because of the four-week delay between the date of the administrative freeze, December 10, 1996, and the filing of the motion for relief, January 9, 1997, or through its refusal to allow the Debtor to deposit her check in an alleged attempt to harass or coerce repayment of the obligation to the Credit Union. After considering the evidence, I hold that the Credit Union did not violate Section 362(a)(6) because any inconvenience caused by the Credit Union was not so unreasonable as to harass the Debtor nor committed intentionally in an attempt to coerce repayment of a debt.

Section 362(a)(6) is often construed broadly in order to prevent creditors from coercing or harassing the debtor in order to collect pre-petition debts. *See In re Sechuan City, Inc.*, 96 B.R. 37, 41 (Bankr.E.D.Pa. 1989). Additionally, when construing Section 362(a)(6), courts focus both on whether a creditor's actions are aimed at collecting pre-petition debt and whether they also amount to harassment and coercion. *See Divane v. A & C Electric Co., Inc.*, 193 B.R. 856, 861 (N.D.Ill. 1996). However, in this case, neither factor is present. Specifically, within two days of issuing the administrative freeze, Credit Union's counsel sent an "Agreed Order Terminating Automatic Stay" to Debtors' counsel in an attempt to resolve the matter.² Although Debtor's counsel responded in a

² Although this Court realizes that the Credit Union initially attempted to resolve the matter under terms most favorable to it, there is no indication that any attempt to resolve this matter prior to commencing litigation was not done in good faith.

prompt manner, Mr. Michael Prince, President of the Interstate Credit Union, testified that the Christmas and New Year's holidays soon followed effectively delaying the filing of the Motion for Relief until January 9, 1997. While in some instances a four-week delay may be considered a form of harassment, in the present case the evidence does not support a finding that the Debtor was harassed by such a delay or that the Credit Union acted either intentionally or wantonly so as to coerce repayment. The evidence supports a finding that as soon as the freeze was instituted, the Credit Union attempted to resolve the dispute by contacting Debtors' counsel to prevent further inconvenience for both parties. When those efforts proved unsuccessful, a motion for relief was filed shortly thereafter. Because no additional evidence presented supports any inference that the Credit Union's actions were committed in an attempt to coerce repayment of a debt and because the delay was not coercive, the four-week delay between the date of the administrative freeze and the filing of the motion for relief is not a violation of Section 362(a)(6).

Further, there was no violation of Section 362(a)(6) in refusing to accept the deposit which was tendered by the Debtor/Wife. As indicated by the testimony offered by Mr. Prince, although the Credit Union's refusal to permit Debtor to deposit the check was a "wrong decision," it was not an attempt to collect on a debt. Mr. Prince admitted that the Credit Union's refusal to accept the check for deposit was a mistake in their administrative freeze procedure and stated that the incident should not have occurred.

Despite this admission, I am aware of no authority which requires a bank or credit union to continue a checking account relationship with a debtor and I am not willing to so hold. More importantly, the Credit Union's actions did not deprive Debtors of the ability to deal with their creditors directly and accordingly did not have the effect of coercing or harassing the Debtors. At all times, Debtors could have contacted their creditors and redeemed the outstanding checks. Instead, Debtors continued to write checks after the Credit Union had refused to permit the deposit knowing that the checks would be dishonored. Accordingly, Credit Union did not violate Section 362(a)(6) because it did not knowingly coerce repayment of the debt nor did it act in such a manner as to prevent the Debtor from meeting its obligations.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law,
IT IS THE ORDER OF THIS COURT that Debtors request for sanctions and attorneys' fees is DENIED.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of June, 1997.