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

In the matter of:)	
)	Adversary Proceeding
GREGORY MYRICK)	
(Chapter 7 Case <u>93-40749</u>))	Number <u>94-4064</u>
)	
<i>Debtor</i>)	
)	
)	
GREGORY MYRICK)	
)	
<i>Plaintiff</i>)	
)	
)	
v.)	
)	
KENNICKELL PRINTING)	
COMPANY)	
)	
<i>Defendant</i>)	

ORDER ON DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT

This proceeding comes before the Court on Defendant's Motion to Alter or Amend the Court's Judgment pursuant to Bankruptcy Rule 9023. On December 1, 1994, this proceeding was tried in Savannah, Georgia. On December 15, 1994, this Court entered an

Order and Judgment in favor of Plaintiff/Debtor, Gregory Myrick, for the amount of \$8,317.82. On December 23, 1994, Defendant, Kennickell Printing Company, filed the instant motion asking this Court to alter or amend the Judgment to take into account the Defendant's right to setoff or recoupment. The Motion is based upon the fact that Defendant has a claim in Debtor's Chapter 13 case in the amount of \$5,337.91. Defendant contends, therefore, that the debt should be setoff against the judgment this Court entered against it on December 15, 1994, thus leaving a net judgment against Defendant in the amount \$2,979.91.

Setoff in bankruptcy is governed by Section 553 of the Bankruptcy Code.

In relevant part Section 553 provides:

(a) Except as otherwise provided in this section and sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor *that arose before the commencement of the case* under this title against a claim of such creditor against the debtor *that arose before the commencement of the case . . .*

11 U.S.C. §553(a) (emphasis added). Section 553 thus requires a creditor to show that both debts arose prior to the debtor filing for bankruptcy. Upon an examination of the entire record in this case I conclude that the Defendant is unable to sustain this burden because no witness testified as to when the "color separations" at issue in this proceeding were disposed

of. There is, therefore, no way of determining whether the debt that Defendant owes to Debtor arose before the commencement of the Debtor's bankruptcy case. Because Defendant is unable to bear its burden of proving that the requirements of Section 553(a) have been met, its Motion to Alter or Amend Judgment is hereby denied, and its request for setoff is likewise denied.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of February, 1995.