

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

In the matter of:)	
)	Adversary Proceeding
SHUNTRELL L. SURRY)	
ASTASHIA B. SURRY)	Number <u>01-4045</u>
(Chapter 13 Case No. <u>00-40915</u>))	
)	
<i>Debtors</i>)	
)	
)	
SHUNTRELL L. SURRY)	
ASTASHIA B. SURRY)	
)	
<i>Plaintiffs</i>)	
)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA)	
and)	
THE UNITED STATES ARMY)	
)	
<i>Defendants</i>)	

FILED
at 10 O'clock & 19 min AM
Date 2/5/02

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia *MB*

MEMORANDUM AND ORDER

FINDINGS OF FACT

The Plaintiffs filed their Chapter 13 case on April 4, 2000.

Plaintiff, Shuntrell L. Surry, is employed by the United States Army.

Plaintiff scheduled the United States Army as a creditor in the case for debt owed to the

Advance Pay Department. Notice of the Chapter 13 filing was sent to the United States Army by the Clerk of this Court. A Salary Deduction Order was mailed to the United States Army on April 14, 2000.

Mr. Surry had several allotments being deducted from his salary at the time this case was filed whereby the Army would deduct money from his paycheck and mail it directly to certain creditors. The Salary Deduction Order issued by this Court directed the United States Army to "stop all deductions of every kind except those for state and federal income taxes, health insurance, social security contributions, union dues, and current child support." On May 12, 2000, Debtor completed and filed with the United States Army a form entitled "Authorization to Start, Stop or Change an Allotment," wherein he requested that all allotments from his monthly pay be stopped.

The United States Army did not comply with the terms of the Salary Deduction Order and ignored the form filed by the Debtor. The Army continued deducting allotments from Debtor's paycheck until December 2000.

The United States Army stopped deducting the allotments from Mr. Surry's paycheck in January 2001, but resumed in February 2001 and March 2001, ceasing only after this adversary proceeding was filed in April 2001. Total deductions for this period in violation of 11 U.S.C. § 362 was \$669.90. As a result of these unauthorized deductions Debtor's checking account had insufficient funds to cover a number of checks through this

period. A total of \$540.00 in return check charges were incurred by Debtors as a result, together with attorney's fees for prosecuting this action.

The United States Army's failure to stop deducting the allotments from Mr. Surry's pay was willful.

CONCLUSIONS OF LAW

11 U.S.C. § 362 prohibits a creditor from any action to recover a claim against the debtor that arose before the commencement of the Chapter 13 case. The United States Army violated 11 U.S.C. § 362 in continuing to collect directly from the Debtor's pay in satisfaction of the debt that was scheduled in his Chapter 13 case.

The Salary Deduction Order issued by this Court is lawful and binding upon the person or entity to which it is issued. The United States Army acted willfully in failing to stop the monthly allotment deductions after receipt of the Order directing it to do so. 11 U.S.C. § 362(h) authorizes the recovery of actual damages and attorney's fees for willful stay violations.

The Plaintiffs suffered actual damages in the amount of \$1,209.99 as the direct result of the acts and omissions of the Defendant. The Plaintiffs incurred attorney's fees in the amount of \$500.00 as the direct result of the acts and omissions of the Defendant.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Plaintiffs, Shuntrell L. Surry and Astashia B. Surry, shall recover of the Defendant, United States Army, actual damages in the amount of \$1,209.99, together with attorney's fees in the amount of \$500.00.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 4th day of February, 2002.