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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:)
)
JAMES ROBERT EICHER, SR.)
(Chapter 13 Case 90-40025))
)
Debtor)
)
)
JAMES ROBERT EICHER, SR.)
)
Plaintiff)
)
)
v.)
)
THE UNITED STATES ARMY,)
being a division of The)
United States Department)
of Defense of the United)
States of America)
)
Defendant)

Adversary Proceeding
Number 90-4040

FILED
at 12 O'clock & 45 min P M
Date 6/27/90
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia **ROB**

MEMORANDUM AND ORDER

The above-styled adversary complaint having come on to be heard, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

James Robert Eicher, Sr., ("Plaintiff") is a member of the United States Army, and in November, 1989, received advance pay from the United States Army totalling approximately \$1,800.00. There was no security pledged against this loan and the Court accordingly finds that this was an unsecured loan.

The Plaintiff filed for protection under Chapter 13 of Title 11 of the United States Code on January 5, 1990. The United States Army was a duly listed creditor and received timely notice of the filing of the Plaintiff's bankruptcy petition.

This Court issued an Order upon the employer, United States Army Finance and Accounting Center, directing that it deduct \$235.00 per month from the Plaintiff's pay to satisfy the proposed Chapter 13 plan payments. Included in that Order was the express instruction to the employer, as of the date of the Order, to cease and discontinue to pay deductions of every kind except those required to be made for State and Federal Income Taxes, Health Insurance, Social Security contributions, and union dues. This would necessarily require the Army to cease deductions that were being made to repay itself on the advance pay obligation.

After receiving this Order, the Defendant made a decision rather than obeying this Court's Order, to refer the

Plaintiff's salary records to the Fort Stewart Accounting Office for an audit. The Court finds that the Defendant had the means to immediately implement this Court's Order and stop its deduction of \$204.00 per month.

Upon referral of Plaintiff's records for audit to Fort Stewart, the Fort Stewart Finance and Accounting Office did everything possible to timely audit Debtor's records in order to determine if the advance pay had been drawn pre or post-petition.

The natural effect Defendant's ordering an audit prior to implementing this Court's Order is that double deductions were made from Plaintiff's pay. One deduction was made to pay the Army and one for the Chapter 13 Trustee who in the regular course of a case such as this will the pay the Army its balance due. For the months of February and March, 1990, a double deduction did occur and Plaintiff not only had to pay the \$235.00 per month to the Chapter 13 Trustee, but also had to pay \$204.00 per month to the United States Army.

As a result of these double deductions Plaintiff was placed in an economic crisis and, in desperation, borrowed money from his relatives and pawned household goods to meet living expenses.

The Court finds that the Plaintiff was forced to pay

high interest rates on the money borrowed resulting in interest charges only of \$138.00.

In addition, Plaintiff had to spend \$54.00 in expenses to bring this case to trial.

In order to avoid violations of 11 U.S.C. Section 362, the Defendant should have immediately stopped all deductions upon receipt of this Court's Order upon the employer directing deductions from pay. The Court also finds that the Defendant should, after stopping all deductions, then order an audit of the Debtor's pay records, if it so desires.

11 U.S.C. Section 362 states:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15, U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entitles, of-

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or

against the property of the estate, of a judgment obtained before the commencement of the case under this title;

- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.

In this case all advance pay was drawn pre-petition and Section 362 voids all acts in continuing to collect such sums. Defendant's acts in continuing to deduct to collect pre-petition advance pay were intentional and were made with full knowledge of the pendency of Plaintiff's Chapter 13 case. As such I find that they constituted willful violations of the stay and that damages should be assessed pursuant to 11 U.S.C. Section 362(h).

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that the Defendant shall pay to the Plaintiff \$138.00 actual damages incurred, \$54.00 as costs incurred in the prosecution of this adversary proceeding, and his attorney, R. Wade Gastin, is hereby awarded \$300.00 as reasonable attorney's fees in the prosecution of this adversary proceeding. These awards are based on the Defendant's willful violation of 11 U.S.C. Section 362. No punitive damages are awarded.

This Court is deeply troubled by what appears to be a cavalier attitude on the part of some personnel of Defendant in delaying its response to this Court's order for over two months. This attitude is particularly troubling as such order issued from a Court of the United States and Defendant is the United States. However, since this is the first instance wherein such a violation has been encountered, I do not deem that the deterrent effect of an award of punitive damages is called for.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 21st day of June, 1990.

FILED

at 12:00'clock & 45 min. P.M.

United States Bankruptcy Court

Date 6/27/90
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *POB*

For the SOUTHERN District of GEORGIA

Case No. 90-40025

JAMES ROBERT EICHER, SR.
Plaintiff

v.

THE UNITED STATES ARMY, Defendant
being a division of The United States Department of Defense of the United States of America

Adversary Proceeding No. 90-4040

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

[OR]

This proceeding having come on for trial before the court and a jury, the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict,

[OR]

The issues of this proceeding having been duly considered by the Honorable Lamar W. Davis, Jr., United States Bankruptcy Judge, and a decision having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED:

That the Plaintiff, JAMES ROBERT EICHER, SR., shall recover of the Defendant, THE UNITED STATES ARMY, the principal sum of One Hundred Thirty-Eight Dollars and 00/100 Cents (\$138.00) as actual damages incurred, Fifty-Four Dollars and 00/100 Cents (\$54.00) as costs incurred in the prosecution of the adversary proceeding, together with interest at the rate of 8.24% per annum from date until paid in full. Debtor's attorney, R. WADE GASTIN, is awarded Three Hundred Dollars and 00/100 Cents (\$300.00) as reasonable attorney's fees in the prosecution of the adversary proceeding.



[Seal of the U.S. Bankruptcy Court]

Date of issuance: June 21, 1990

MARY C. BECTON

Clerk of Bankruptcy Court

By: Patsy C. Burkhalter
Deputy Clerk