

BK 95
(Rev. 8/83)

FILED
U.S. BANKRUPTCY COURT S.C.
NORTHERN DISTRICT OF IOWA

United States Bankruptcy Court

DEC 19 1990

For the NORTHERN District of IOWA

BARBARA A. EVERLY, CLERK

IN RE: DICK ARTHUR HEFTY and
SHIRLEY ANN HEFTY,

Chapter 7

Debtors.

Case No. X90-00302F

CITIBANK (SOUTH DAKOTA) N.A., Plaintiff
v.

DICK ARTHUR HEFTY and
SHIRLEY ANN HEFTY, Defendants

Adversary Proceeding No. X90-0100F

JUDGMENT

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

[OR]

The issues of this proceeding having been duly considered by the Honorable William L. Edmonds, United States Bankruptcy Judge, and a decision having been reached without trial or hearing, by stipulation of the parties,

IT IS ORDERED AND ADJUDGED:

that plaintiff Citibank (South Dakota) N.A. shall recover from defendants Dick Arthur Hefty and Shirley Ann Hefty the sum of \$2,409.69. This judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2). Terms of the payment of the judgment are included within a stipulation filed by the parties on December 13, 1990.

Vol. II
Page 257

copies mailed with order
12/19/90, *Jm*



BARBARA A. EVERLY

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

12-19-90

Lanis McElligant

DEC 13 1990

BARBARA A. EVERLY, CLERK

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)	
DICK ARTHUR HEFTY and)	Chapter 7
SHIRLEY ANN HEFTY,)	Bankruptcy No. X-90-00302-F
)	
Debtors.)	
<hr/>		
CITIBANK (SOUTH DAKOTA) N.A.,)	
)	
Plaintiff,)	
)	
vs.)	Adversary No. X-90-0100F
)	
DICK ARTHUR HEFTY and)	
SHIRLEY ANN HEFTY,)	
)	
Defendants.)	

STIPULATION RE: SETTLEMENT

COME NOW the parties and enter into the following Stipulation to Settle the above-captioned adversary complaint:

1. Plaintiff is a corporation represented by Attorney Joseph A. Peiffer while Defendants are individual Chapter 7 Debtors represented by Attorneys Mark Crimmins and Kurt Wilke.

2. The Defendants herein filed their Chapter 7 bankruptcy on the 23rd of February, 1990. On the 8th day of June, 1990, the Plaintiff filed its complaint objecting to the dischargeability of its debt pursuant to 11 U.S.C. §523 (a) (2).

3. The Defendants admit that they are indebted to Plaintiff by virtue of charges made on their Visa credit card account number 4128 511 138 612. The debt due and owing on the credit card as of the date of filing was \$2,209.69.

4. The Defendants admit that from February 7, 1990, through February 12, 1990, they caused to be charged the sum of \$2,191.01. the dates of these charges are within sixteen days of the date the Bankruptcy Petition was filed.

5. The Defendants admit that prior to February of 1990, the Visa account referred to in paragraph three above had a zero balance for several consecutive months. The Defendants admit that they have made no payments on any of the charges incurred in February of 1990. The Defendants admit that of the sums charged in February of 1990 a cash advance in the sum of \$2,000.00 was procured by them at Security National Bank of Sioux City, Iowa.

6. The Defendants admit the 11 U.S.C. §523 (a) (2) (C) provides in pertinent part:

"For purposes of subparagraph A of this paragraph, cash...cash advances, aggregating more than \$1,000.00 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within twenty days before the order of relief under the title, are presumed to be non-dischargeable..."

7. The Defendants and Citibank have agreed that the Defendant shall have judgment entered against them in the amount of \$2,409.69; \$2,209.69 for sums owed to Citibank plus \$200.00 in attorney fees. Said judgment in the amount of \$2,409.69 shall be non-dischargeable pursuant to 11 U.S.C. §523 (a) (2).

8. The Plaintiff and Defendants have agreed that Plaintiff shall withhold execution on the judgment sum of \$2,409.69 provided that Defendants make payments at the rate of \$50.00 per month beginning on the 12th day of January, 1990, and continuing thereafter on the same day of each month until paid in full. Citibank hereby agrees that it shall not execute and that the judgment shall bear no interest unless, the Defendants fail to make a payment when due and do not cure any default within fifteen days of the date notice is sent to them by certified mail by Citibank at which point in time the entire remaining balance of the judgment will become immediately due and payable and will bear interest at the Iowa judgment rate

of 10% per annum. Further, in the event of non-payment of any payment due under the Stipulated Judgment, Citibank would be empowered to immediately exercise all remedies available to it to collect said judgment through garnishment or other legal processes allowed by the laws of the State of Iowa.

9. Notices: All notices of non-payment by Defendants shall be sent to:

Dick and Shirley Hefty
2415 Isabella
Sioux City, IA 51103

10. Change of Address: Defendants shall notify Citibank of any changes in their address by sending notice to the following address:

CCSI
Attn: Melyssa Franklin
Bankruptcy Department
P.O. Box 5939
San Mateo, California 94402

11. Payments: All payments shall be made by Defendants to Citibank at the following address:

CCSI
Attn: Melyssa Franklin
Bankruptcy Department
P.O. Box 5939
San Mateo, California 9440

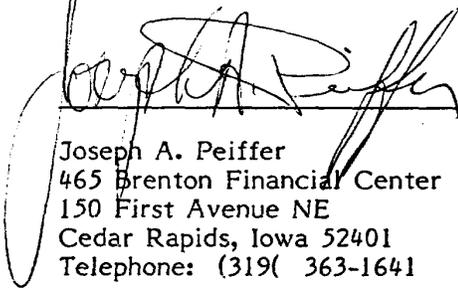
12. The Defendants hereby state that they have been advised by their attorney Kurt L. Wilke. They understand that they are executing this based upon his advice and not relying upon any representations made by Citibank, its attorneys or employees. the Defendants further represent that they understand that in the event

the payments are not made as required by this agreement Citibank can accelerate the judgment and begin execution to collect the judgment.

WHEREFORE, the parties respectfully request this Court enter an Order approving the Judgment and enter a Judgment against the Defendants with repayment to be made on the terms and conditions set forth herein.

DATED this 12 day of December, 1990.

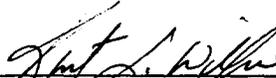
BELLS & PEIFFER, P.C.



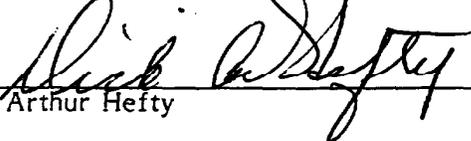
Joseph A. Peiffer
465 Brenton Financial Center
150 First Avenue NE
Cedar Rapids, Iowa 52401
Telephone: (319) 363-1641

ATTORNEY FOR PLAINTIFF

BENNETT, WILKE & CRIMMINS



Kurt L. Wilke
704 Central Avenue
Fort Dodge, Iowa 50501
Telephone: (515) 573-2101



Dick Arthur Hefty



Shirley Ann Hefty

Copy handed to
filing attorney
on date filed 

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

FILED
U.S. BANKRUPTCY COURT S.C.
NORTHERN DISTRICT OF IOWA
DEC 19 1990
BARBARA A. EVERLY, CLERK

IN RE:

DICK ARTHUR HEFTY and
SHIRLEY ANN HEFTY,

Debtors.

) Chapter 7

) Bankruptcy No. X90-00302F

CITIBANK (SOUTH DAKOTA) N.A.,

Plaintiff,

) Adversary No. X90-0100F

vs.

DICK ARTHUR HEFTY and
SHIRLEY ANN HEFTY,

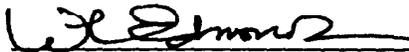
Defendants.

ORDER RE: SETTLEMENT OF ADVERSARY PROCEEDING

On December 13, 1990, the parties submitted to the court a stipulation regarding settlement of this adversary proceeding. In consideration of the stipulation,

IT IS ORDERED that judgment shall enter that plaintiff Citibank (South Dakota) N.A. shall recover from defendants Dick Arthur Hefty and Shirley Ann Hefty the sum of \$2,409.69. This judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2). Terms of the payment of the judgment are included within a stipulation filed by the parties on December 13, 1990.

SO ORDERED ON THIS 18th DAY OF DECEMBER, 1990.


William L. Edmonds, Bankruptcy Judge

cc: Joseph A. Peiffer
Kurt Wilke

U. S. Trustee

on 12/19/90, *Jm*