

United States Bankruptcy Court

For the NORTHERN District of IOWA

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

APR 16 1991

BARBARA A. EVERLY, CLERK

Chapter 7

Case No. L-90-01462D

EUGENE FLOYD BAXTER and
JANICE MARIE BAXTER,

DEBTORS.

PAUL J. FITZSIMMONS, TRUSTEE,

Plaintiff

v.

TRI-STATE COMMUNITY CREDIT CORP.,

f/d/b/a/ Fireside Credit, Inc., Defendant

Adversary Proceeding No. L-90-0205D

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable
MICHAEL J. MELLOY, 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
MICHAEL J. MELLOY, United States Bankruptcy Judge, and a decision
having been reached without trial or hearing,

IT IS ORDERED AND ADJUDGED: that the trustee's complaint to recover a \$1,093.92
preferential transfer from Tri-State is granted in full.



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BARBARA A. EVERLY

Clerk of Bankruptcy Court

[Seal of the U.S. Bankruptcy Court]

Date of issuance: 4-16-91

By: Mission P. Solay
Deputy Clerk

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NORTHERN DISTRICT OF IOWA

APR 16 1991

BARBARA A. EVERLY, CLERK

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

EUGENE FLOYD BAXTER and
JANICE MARIE BAXTER,

Debtor.

PAUL J. FITZSIMMONS, Trustee,

Plaintiff,

v.

TRI-STATE COMMUNITY CREDIT CORP.,
f/d/b/a Fireside Credit, Inc.,

Defendant.

Chapter 7
BANKRUPTCY NO.

L-90-01462D

ADVERSARY NO.

L-90-0205D

RULING RE: TRUSTEE'S TURN OVER COMPLAINT

The matter before this Court is the complaint of the trustee against Tri-State Community Credit Corporation ("Tri-State") for the turn over of \$1,093.92. The trustee's complaint asserted, among other things, that the estate is entitled to turn over of these funds because Tri-State acquired the funds by preferential transfer which the trustee may avoid under 11 U.S.C. § 547(b).¹ Tri-State asserts that § 547(c)(7) limits the trustee's recovery to only those funds in excess of \$600, which in this case is \$493.92. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F). The following opinion granting the trustee's motion constitutes this Court's findings of fact, conclusions of law, and order pursuant to Fed.R.Bankr.P. 7052.

¹All statutory references are to Title 11 of the United States Code unless otherwise stated.

Findings of Fact

Following the hearing, this Court held on the trustee's complaint, the parties agreed to submit this matter on stipulated facts and briefs. The Court has derived the following findings of fact from the parties' stipulation.

1. On June 15, 1987, Fireside Credit, Inc., obtained a money judgment against the debtor, Eugene Baxter ("Baxter") in the Dubuque County Iowa District Court for \$21,022.53, plus costs and interest. Fireside Credit, Inc., subsequently assigned the money judgment to Tri-State.

2. On July 10, 1990, Tri-State caused an execution to be issued to the Dubuque County Sheriff to levy on Baxter's accounts at Dubuque Bank & Trust Company. On the same day, the Dubuque County Sheriff served the execution on Dubuque Bank & Trust Company.

3. On July 20, 1990, Baxter received notice of the garnishment. Baxter filed no objection or response to the notice of garnishment.

4. On August 14, 1990, the Dubuque County Sheriff delivered \$1,093.92 in garnishment proceeds to the Dubuque County Clerk of Court.

5. One week later, on August 21, 1990, Baxter filed his bankruptcy petition. The next day, notice of the bankruptcy was filed with the Dubuque County Clerk of Court.

6. On August 23, 1990, the Dubuque County District Court filed an order with the Clerk of District Court condemning the

funds previously garnished.

7. The trustee has met the burden of proof required by § 547(g) to establish the existence of a preferential transfer under § 547(b), except as to those matters raised as defenses by Tri-State.

8. Baxter's debts are primarily consumer debts.

9. Tri-State is a separate corporate entity from Fireside Credit, Inc., Tri-State did not formerly do business under that name. Fireside Credit assigned the Dubuque County judgment to Tri-State.

Conclusions of Law

Based upon the stipulation, the parties agree that the trustee has established the elements of a preferential transfer under § 547(b). Tri-State contends, however, that § 547(c)(7) limits the trustee's recovery to \$493.92. Section 547(c)(7) states in pertinent part:

- (c) the trustee may not avoid under this section (a) transfer --
 - (7) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600.

Here, Tri-State received \$1,093.92 from the garnishment of Baxter's wages. Tri-State claims that § 547(c)(7) limits the trustee's recovery only to amounts Tri-State received which exceed \$600. Hence, Tri-State believes that it is entitled to keep \$600 from the \$1,093.92 preferential transfer and return only \$493.92 to the trustee.

Neither the statutory language of § 547(c)(7) nor the case law interpreting that section supports Tri-State's contentions. Tri-State essentially asks this Court to read § 547(c)(7) as saying the trustee may avoid a preferential transfer under § 547(b) only to the extent that it exceeds \$600. There is no language, however, in § 547(c)(7) which supports such a construction. As the bankruptcy court for the Eastern District of Tennessee points out in the leading case Ray v. Cannons, Inc., (In re Vickery), 63 B.R. 222, 223 (Bankr. E.D. Tenn. 1986), "[i]f Congress had intended the exception to mean [what Tri-State asserts it does here] it could easily have used the 'to the extent' language that it used in the first five exceptions" of § 547(c). Likewise, the Court in Via v. Colonial American National Bank (In re Via), 107 B.R. 91, 93 (Bankr. W.D. Va. 1989), observed that "the obvious reading of § 547(c)(7) does not say that a transfer is avoidable only to the extent that it exceeds \$600." See also In re Lewis, 116 B.R. 54, 57 (Bankr. D. Md. 1990) (allowing entire preference to be avoided because it exceeded \$600).

These courts which have rejected the same argument which Tri-State asserts in this matter, went on to observe that:

[t]he wording of the [547(c)(7)] exception clearly makes \$600 the cut-off point on the trustee's right to recover, and more importantly on his decision to bring suit. The payment of \$599 is protected, but a payment of \$601 is not. Creditors who have received preferential payments of less than \$600 can expect not to be sued by the trustee. Likewise, the trustee is given a good reason not to bring suit for amounts so small that litigation costs should not justify bringing suit. The legislative history is minimal, but the court believes this type of cut-off point is exactly what Congress had in mind. The legislative history reflects that the exception was

intended to stop recoveries by bankruptcy trustees of small installment payments made in the ninety days before bankruptcy. In re Johnson, 53 B.R. 919, 921 n.4 (Bankr. N.D. Ill. 1985), citing S. Rep. No. 446, 97th Cong. Sess. 24 (1982).

In re Via, 107 B.R. at 95 (quoting In re Vickery, 63 B.R. at 223).

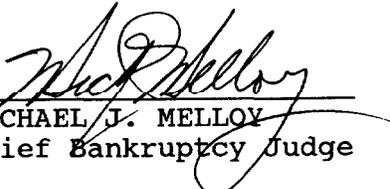
This Court finds that the above reasoning is dispositive in this matter.

By way of conclusion, this Court finds that based on the plain meaning of § 547(c)(7) and the case law interpreting it, Tri-State's argument that the trustee in this matter can recover only \$493.92 of the \$1,093.92 preferential transfer is without merit. The trustee is entitled to recover the full \$1,093.92. Having reached this conclusion, the Court need not address the other grounds which the trustee has asserted to recover the funds.

O R D E R

IT IS THEREFORE ORDERED that the trustee's complaint to recover a \$1,093.92 preferential transfer from Tri-State is granted in full.

DONE AND ORDERED this 16th day of April, 1991.


MICHAEL J. MELLODY
Chief Bankruptcy Judge

Copies to: (w/judgment)
Paul J. Fitzsimmons,
Trustee/Plaintiff;
Chad C. Leitch,
Atty for Defendant;
U.S. Trustee;
this April 16, 1991

Deputy Clerk
P.O. Box 74890
Cedar Rapids, Iowa 52407

UNITED STATES BANKRUPTCY COURT
FOR THE
NORTHERN DISTRICT OF IOWA

FILED
BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

MAY 24 1991

BARBARA A. EVERLY, CLERK

IN RE:

EUGENE FLOYD BAXTER
JANICE MARIE BAXTER

CHAPTER 7

BANKRUPTCY NO. L-90-01462-D

DEBTOR(S)

PAUL J. FITZSIMMONS,

TRUSTEE/PLAINTIFF,

vs

ADVERSARY NO. L-90-0205-D

TRI-STATE COMMUNITY
CREDIT CORP., f/d/b/a
FIRESIDE CREDIT, INC.,

SATISFACTION OF JUDGMENT

DEFENDANT

COMES NOW the Trustee, Paul Fitzsimmons, and hereby acknowledges receipt from Tri-State Community Credit Corp. of the sum of \$1,093.92, and states that the judgment in the above adversary proceeding has been satisfied.

PAUL FITZSIMMONS, Trustee

By: 

Paul Fitzsimmons
FITZSIMMONS AND BECKMAN
790 Town Clock Plaza
Dubuque, IA 52001
(319) 588-4088

Attorney for the Trustee

Copy mailed to
filing attorney

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