

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

U.S. BANKRUPTCY COURT X
NORTHERN DISTRICT OF IOWA

In re:

NOV 08 1995

BRIAN J. MASSEY,

Debtor.

STEPHANIE TORBERT,

Plaintiff,

vs.

BRIAN J. MASSEY,

Defendant.

Chapter 7 BARBARA A. EVERLY, CLERK

Bankruptcy No. 94-51561XS

Adversary No. 95-5066XS

JUDGMENT

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

IT IS ORDERED AND ADJUDGED: that Stephanie Torbert shall recover from Brian J. Massey the sum of \$979.88. Such judgment is excepted from the discharge of Brian J. Massey under 11 U.S.C. § 523(a)(2)(A). Costs are taxed to defendant. Plaintiff's requests for attorney's fees is denied.

Vol. V
Page 60



[Seal of the U.S. Bankruptcy Court]

Date of Issuance: November 8, 1995

BARBARA A. EVERLY
Clerk of Bankruptcy Court

By: *Larris Slagle*
Deputy Clerk

affidavit in support of her request that legal fees and expenses be awarded.

The court finds and concludes that Brian J. Massey is not an infant or incompetent person and is not in the military service. Brian J. Massey is in default for failing to move or plead, and plaintiff Stephanie Torbert is entitled to judgment. Based upon plaintiff's verification of account, Brian J. Massey is indebted to her in the sum of \$979.88 and judgment in her favor for that amount shall enter. The judgment is nondischargeable under 11 U.S.C. § 523(a)(2)(A).

Plaintiff requests the award of attorney fees. She has not submitted a contractual agreement with Massey which would support such an award. Luce v. First Equipment Leasing Corp. (Matter of Luce), 960 F.2d 1277, 1286 (5th Cir. 1992); Jennen v. Hunter (In re Hunter), 771 F.2d 1126, 1131 (8th Cir. 1985). The request for attorney's fees is denied. Costs, however, will be taxed to defendant.

IT IS ORDERED that plaintiff's motion for default judgment is granted. Judgment shall enter that Stephanie Torbert shall recover from Brian J. Massey the sum of \$979.88. Such judgment is excepted from the discharge of Brian J. Massey under 11 U.S.C. § 523(a)(2)(A). Costs are taxed to defendant. Plaintiff's requests for attorney's fees is denied.

SO ORDERED THIS 8th DAY OF NOVEMBER 1995.



William L. Edmonds, Chief Bankruptcy Judge

I certify that on 11-8-95 I mailed a copy of this order by U.S. mail to: Steven Kohl, Debtor and U. S. Trustee. *BS*

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

IN RE: BRIAN J. MASSEY,)
SS# 478-08-3169,) CASE NO. 94-51561 XS
Debtor) DATE FILED: 9/28/94
STEPHANIE TORBERT,) CHAPTER 7
Plaintiff)
v.) ADV. PROC. NO.95-5066XS
BRIAN J. MASSEY,)
Defendant) BILL OF COSTS AFFIDAVIT

STATE OF IOWA)
: SS.
COUNTY OF WOODBURY)

I, Steven C. Kohl, having been first duly sworn on oath, depose and state that the costs listed in the attached Bill of Costs are true and correct and were necessarily incurred in this action. A copy of the Bill of Costs with the attached Affidavit has been mailed this date, November 15, 1995, first class postage paid, to Brian J. Massey, the Plaintiff at his last known address, 3106 Jackson Street, Sioux City, Iowa 51104 with postage fully prepaid thereon.


STEVEN C. KOHL

SUBSCRIBED AND SWORN TO before me by the said Steven C. Kohl on this 15th day of November, 1995.


NOTARY PUBLIC IN AND FOR THE
STATE OF IOWA