

In the United States Bankruptcy Court

for the Northern District of Iowa

VINCENT B. LOGUE
Debtor.

Bankruptcy No. 95-31475XF
Chapter 7

AT&T UNIVERSAL CARD SERVICES
Plaintiff

Adversary No. 95-3183XF

vs.

VINCENT B. LOGUE
Defendant.

**ORDERS RE:
MOTION FOR SANCTIONS
and
MOTION FOR SUMMARY JUDGMENT**

Plaintiff AT&T Universal Card Services (AT&T) has asked the court to impose sanctions on debtor/defendant Vincent T. Logue for his failure to comply with the court's order compelling him to respond to AT&T's discovery requests. In the alternative, AT&T moves for summary judgment. Hearing was held October 30, 1996 in Fort Dodge. Mark D. Reed appeared for AT&T. Logue, pro se, did not appear. He was properly served with notice of the motions and hearing.

AT&T's complaint seeks a determination that Logue's \$9,734.02 in credit card debt to it be excepted from discharge under 11 U.S.C. 523(a)(2)(A). It now also seeks judgment for that amount. Plaintiff alleges that Logue incurred the charges with no intent to repay or with knowledge that he could not repay. Logue's counsel filed Logue's answer denying fraudulent intent. Thereafter, Logue's attorney withdrew because his license to practice in Iowa had been suspended. On March 29, 1996, AT&T served interrogatories, requests for production of documents and requests for admissions on Logue. Logue never responded to these discovery requests. AT&T later filed a motion for summary judgment. Logue did not resist. Nonetheless, the court denied the motion, despite the fact that Logue's admissions, being deemed made, would have supported granting it.

On July 25, 1996, AT&T filed a motion to compel discovery. The motion was set for telephonic hearing on September 6. Plaintiff appeared; Logue did not. AT&T's attorney, Mark D. Reed, stated that he had called Logue as directed but that there was no answer. On September 6, the court entered an order granting the motion to compel and giving Logue to and including September 27, 1996 to serve a response to the requests for production and answers to interrogatories. The court also gave Logue to that date to ask that he be allowed to tardily admit or deny plaintiff's requests for admissions. The order advised Logue that if he failed to respond to discovery, plaintiff could seek and the court could grant sanctions which could include default. The trial was rescheduled for November 21, 1996. Logue did not respond to the discovery and that prompted the present motions.

AT&T's motion for sanctions should be granted. Despite the fact that Logue's attorney withdrew and that put him at a disadvantage in the case, Logue has not made any attempt to participate in the case or to comply with court orders. The court has tried to give Logue every opportunity to do so. Most allegations of the complaint were admitted. The remaining issues are whether Logue incurred creditor card charges and obtained cash advances with intent not to repay. His intent and the amount of damages were at issue from the start.

As part of the discovery materials, AT&T has presented to the court Logue's card statements for the period February 10, 1995 to March 9, 1995 and the period March 10, 1995 to April 9, 1995. Bankruptcy was filed November 13, 1995. As sanction, the court will enter default judgment against Logue. Plaintiff must prove damages. The court stated that the older the charges in relation to bankruptcy, the less likely the court would be to infer that the charges resulted from a fraudulent intent. At hearing, the court expressed concern that the February 10 period started with a balance due of \$4,096.09 and that it was not possible to determine the age of that balance. The court stated that it would enter judgment for the balance due less the initial balance without further hearing based on AT&T's presentation at hearing, but if further damages were sought, trial would go forward in November. The court is now advised by AT&T that it will accept judgment in the lower amount. The motion for sanctions will be granted. As a sanction for failing to respond to discovery, default judgment will enter in favor of AT&T against Logue. Based on the presentation of counsel, the court finds that Vincent B. Logue incurred credit card charges and obtained cash advances with AT&T Universal Card Services in the amount of \$5,637.93 with no intent to repay. Logue obtained the credit and cash from AT&T by false pretenses or actual fraud. Such debt should be excepted from discharge pursuant to 11 U.S.C. 523(a)(2)(A). The motion for summary judgment is denied as moot. Trial is canceled.

IT IS ORDERED that the motion for sanctions is granted. Default judgment shall enter that AT&T Universal Card Services shall recover from Vincent B. Logue the sum of \$5,637.93. This debt is excepted from discharge pursuant to 11 U.S.C.

523(a)(2)(A).

SO ORDERED THIS 31st DAY OF OCTOBER 1996.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U.S. mail to Mark Reed, Vincent Logue and U.S. Trustee.