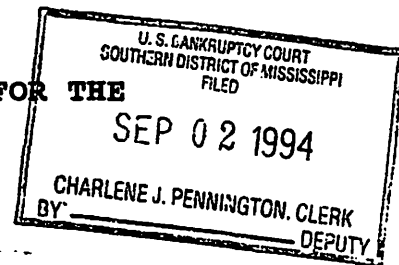


IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION



IN RE:

CHAPTER 7

DEBORAH MCCRAY

CASE NO. 9102394JC

DEBORAH MCCRAY

PLAINTIFF

VS.

ADVERSARY NO. 930076

MERCHANT FUNDING, INC. AND
RUSHING & GUICE

DEFENDANT

M. T. Shareef
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McComb, MS 39648

Attorney for Debtor

Edgar F. Maier
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Attorney for Creditor

Edward Ellington, Judge

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Court on the *Complaint for Damages For Violation of Automatic Stay and Unfair Trade Practices* filed by Deborah McCray and the *Answer to Complaint for Damages for Violation of Automatic Stay and Unfair Trade Practices* filed by Merchants Funding, Inc. After considering the pleadings and briefs

filed, the Court finds the complaint is not well taken and should be denied.

FINDINGS OF FACT

1. On June 27, 1991, Deborah McCray (Debtor) filed a petition for relief under Chapter 7 of the Bankruptcy Code.

2. The Debtor received her discharge and her case was closed on October 17, 1991.

3. On or about June 15, 1992, Merchants Funding, Inc. (Merchants) obtained a judgment against the Debtor. A Writ of Garnishment was filed on the Debtor's employer on November 6, 1992.

4. The Debtor filed a motion on January 13, 1993, requesting to be allowed to reopen her bankruptcy petition in order to add Merchants as a prepetition creditor. The Debtor stated that Merchants was inadvertently omitted from her original schedules. An order was entered on January 26, 1993, reopening the Debtor's Chapter 7 bankruptcy. On February 2, 1993, the Debtor amended her Schedule A-3 to add Merchants as an unsecured creditor.

5. On February 5, 1993, the attorney for Merchants notified the Debtor's employer to stop withholding the funds from the Debtor's wages until further notice. On March 11, 1993, an order was entered in the Circuit Court of Lincoln County, Mississippi, dismissing the Garnishment.

6. On May 6, 1993, the attorney for Merchants received the \$416.62 which had been withheld from the Debtor's wages pursuant to the Writ of Garnishment. Merchant's attorney is presently holding the funds in his trust account.

7. The Debtor filed the above styled adversary proceeding on May 21, 1993.

8. An *Agreed Order* was entered on August 31, 1994. In the order, the parties agreed to dismiss all causes of action in the Debtor's complaint which related to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 and which related to the Unfair and Deceptive Acts and Practices, 15 U.S.C. § 45. In addition, the parties stated that the Court was to render its decision as to all remaining causes of action based upon the pleadings and briefs which were filed in the adversary proceeding.

CONCLUSIONS OF LAW

I.

This Court has jurisdiction of the subject matter and of the parties to this proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. § 157. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(F).

II.

The Debtor is attempting to recover the funds garnished from her wages by Merchants. The Debtor is seeking to recover these funds pursuant to 11 U.S.C. § 547.¹

The Court finds that the funds were withheld within 90 days of the reopening of the Debtor's bankruptcy case and that the writ of garnishment was issued within 90 days of the reopening of the

¹Hereinafter, all code sections refer to the Bankruptcy Code found at Title 11 of the United States Code unless specifically noted otherwise.

Debtor's bankruptcy case. Assuming, arguendo, that the garnishment constitutes a preference as defined in § 547 and considered in In re Hailes, Case No. 9308823HEG, slip op. (Bankr. S.D. Miss. June 22, 1994) and in In re Taylor, 151 B.R. 772 (Bankr. N. D. Miss. 1993), the preference may not be avoided if one of the exceptions to § 547 is applicable.

Section 547(c)(7) states:

11 U.S.C. § 547. Preferences

(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.

Upon review of the Debtor's schedules, the Court finds that this is an "individual debtor whose debts are primarily consumer debts" as contemplated by § 547(c)(7). Since the amount of the funds garnished from the Debtor's wages is less than \$600, the Debtor cannot recover these funds.

In her complaint, the Debtor requests sanctions against Merchants pursuant to § 362(h). The Court finds that Merchants instructed the Debtor's employer to stop withholding the garnishment from the Debtor's wages until a ruling was made on the Debtor's motion to reopen her bankruptcy case. After the bankruptcy case was reopened, Merchants dismissed the garnishment. In these circumstances, the Court will not award any sanctions pursuant to § 362(h) against Merchants.

CONCLUSION

Since the funds withheld from the Debtor's wages are less than \$600 and this Debtor is an individual whose debts are primarily consumer debts, the Debtor is not entitled to recover these funds pursuant to § 547(c)(7).

The Debtor's request for sanctions pursuant to § 362(h) will be denied.

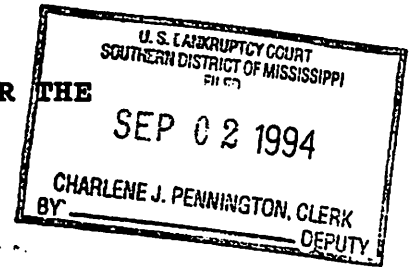
A separate judgment consistent with this opinion will be entered in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 2nd day of September, 1994.



UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
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IN RE:

CHAPTER 7

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VS.

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MERCHANT FUNDING, INC. AND
RUSHING & GUICE

DEFENDANT

FINAL JUDGMENT

Consistent with the opinion dated contemporaneously
herewith:

IT IS THEREFORE ORDERED that the *Complaint for Damages
for Violation of Automatic Stay and Unfair Trade Practices* filed by
Deborah McCray is hereby denied.

IT IS FURTHER ORDERED that Merchants Funding, Inc. is
entitled to the \$416.62 which was garnished from Deborah McCray's
wages.

This is a final judgment for purposes of Federal Rules of
Bankruptcy Procedure 7054 and 9021.

SO ORDERED this the 2nd day of September, 1994.


UNITED STATES BANKRUPTCY JUDGE