

**United States Bankruptcy Court
Western District of Wisconsin**

Cite as: [Unpublished]

Jeanette Pearnell, Plaintiff v. Sunstar Acceptance Corp., Defendant

(In re Jeanette Pearnell, Debtor)

Bankruptcy Case No. 96-34153-7, Adv. Case No. 96-3228-7

United States Bankruptcy Court
W.D. Wisconsin, Madison Division

June 9, 1997

Michael J. Rynes, Bankruptcy Law Services, Madison, WI, for the plaintiff.

Michael A. Haakenson, Bidwell, Haakenson & Haakenson, Janesville, WI, for the defendant.

Robert D. Martin, United States Bankruptcy Judge

MEMORANDUM DECISION

Sunstar garnished the debtor's wages under a continuing garnishment order on August 23, September 6, September 20 and October 4, 1996 collecting a total of \$708.26. Fewer than 90 days later, Ms. Pearnell filed bankruptcy. The trustee did not try to recover the \$708.26, so Ms. Pearnell brought this preference action under §522(h).¹ Sunstar now defends the transfers under §547(c)(8), claiming the \$708.26 is not recoverable because each individual garnishment yielded less than \$600.

Section 547(c)(8) provides:

- (c) the trustee may not avoid under this section a transfer —
(8) if, in a case filed by an individual debtor whose debts are primarily

¹11 U.S.C. §522(h) provides:

The debtor may avoid a transfer of property of the debtor . . . to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if —

- (1) such transfer is avoidable by the trustee under section . . . 547 . . . ; and
(2) the trustee does not attempt to avoid such transfer.

consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600.

11 U.S.C. §547(c)(8). The parties agree that Ms. Pearnell is an individual debtor with primarily consumer debts. However, Sunstar argues the “\$600 exception” in §547(c)(8) applies to each of the two individual garnishments. The “plain meaning” of the statute is said to require that the “\$600 exception” apply to each individual garnishment. “The statute says transfer, not transfers.” In re Clark, 171 B.R. 563 (Bankr. W.D. Ky. 1994); but cf. In re Bunner, 145 B.R. 266 (Bankr. C.D. Ill. 1992)(finding the plain meaning to require the opposite).

In In re Alarcon, 186 B.R. 135 (Bankr. D.N.M. 1995), the court said the statute contemplates more than one “transfer” despite the “plain meaning” of §547(c)(8). “[I]f the aggregate amount of the payments exceeds \$600 but [a] single payment [does not] exceed \$600,” the exception doesn’t apply. Id. at 136. The term “aggregate” is commonly understood to mean “a combined whole.” Id. Other Code sections use “aggregate” to mean the sum or total — as in §522(d)(3), where the debtor’s interest is “not to exceed \$400 in value in any particular item or \$8,000 in aggregate value . . .” or in §522(d)(4), where “the debtor’s aggregate interest [is] not to exceed \$1,000 in value”

The Seventh Circuit has yet to address the “plain meaning” of §547(c)(8), but, the Fifth Circuit recently sided with Alarcon and Bunner in finding that:

the plain meaning of §547(c)(8) and the legislative history of that provision allow multiple transfers to a single creditor to be made during the preference period to be aggregated when determining whether the \$600 threshold has been met.

In the Matter of Hailes, 77 F.3d 873, 874 (5th Cir. 1996).

A more restrictive view was expressed in In re Howes, 165 B.R. 270 (Bankr. E.D. Mo. 1994). The creditor garnished the debtor’s wages three times pursuant to two consecutive garnishment

orders. The first order yielded two payments in the preference period totaling \$549.68, and the second yielded only one payment of \$376.13. First, the court looked to Missouri garnishment law to define a §547(c)(8) “transfer.” It found a creditor’s interest in wages is secure only when the creditor has a perfected judgment lien on the debt. This judgment lien is obtained “when a writ of garnishment in aid of execution is served.” Id. at 271. Thus, a “transfer” for purposes of §547(c)(8) is the service of the writ of garnishment. Because the creditor had served two garnishment orders there were two “transfers.” Both were excepted from the trustee’s §547(b) recovery power because neither transfer exceeded the “\$600 limit.”

Under Wisconsin garnishment law, as in Missouri, the service of a garnishment order effects a §547 “transfer.” In the Matter of Woodman, 8 B.R. 686, 687 (Bankr. W.D. Wis. 1981). In the present case, Sunstar served Ms. Pearnell’s employer only once. The four amounts garnished pursuant to that garnishment order constituted a single transfer of more than \$600. Section 547(c)(8) does not except Sunstar’s garnishment from recovery under §547(b). The debtor has satisfied all elements of a preference and can recover the \$708.26 by virtue of §522(h). Judgment may be entered accordingly.