

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

Cite as: [Unpublished]

Louise Marie Bradica, Debtor
Bankruptcy Case No. 00-31352-7

United States Bankruptcy Court
W.D. Wisconsin

December 14, 2000

Jenny R. Armstrong, Armstrong Law Offices, Ltd., Madison, WI, for debtor.
Peter M. Gennrich, Lee, Kilkelly, Paulson & Kabaker, S.C., Madison, WI, for trustee.

Robert D. Martin, United States Bankruptcy Judge.

MEMORANDUM DECISION

Chapter 7 debtor, Louise M. Bradica, claimed an exemption in income tax refunds under 15 U.S.C. §1673, to which the trustee filed an objection. When the debtor filed her chapter 7 case on March 21, 2000, she elected to use the federal exemptions under §522(d) and claimed as exempt under §522(d)(3) an estimated federal and state tax refund of \$500.00. Subsequently, she amended her schedules, increasing the refund amount and claiming it as fully exempt under 15 U.S.C. §1673, a provision of the Consumer Credit Protection Act. She amended her schedules a second time, electing to switch from the federal exemption scheme to the Wisconsin exemption scheme, but left unaltered the exemption claimed in the refunds under §1673.

The trustee contends that tax refunds are not exemptible under §1673. The debtor counters that the refunds were derived from withheld wages, which are insulated from garnishment under §1673, and that turnover to the trustee would constitute a garnishment of those wages, in contravention of §1673.

Section §1673(a) states:

Maximum allowable garnishment. Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed (1) 25 per centum of his disposable earnings for that week, or (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a) (1) of Title 29 in effect at the time the earnings are payable, whichever is less.

15 U.S.C. §1673(a). Under the debtor's theory, the tax refunds are derived from withheld wages and thus fall under the categories of "earnings" and "disposable earnings," as those terms are defined in §1672:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes

periodic payments pursuant to a pension or retirement program. (b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld. (c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

15 U.S.C. §1672. Because the tax refunds are protected from garnishment under §1673, the debtor contends that she is entitled to benefit from §1673 as a de facto exemption in bankruptcy.

While the debtor's argument has some logical appeal, it was squarely addressed and rejected by the Supreme Court in Kokoszka v. Belford, 417 U.S. 642, 94 S.Ct. 2431, 41 L.Ed.2d 374 (1974). Kokoszka was decided under the Bankruptcy Act, but its facts otherwise parallel the facts of our case. There, the debtor sought to exempt a pre-petition tax refund, which prompted an objection by the trustee and a demand for turnover. The debtor argued that the tax refund was made up of wages, a portion of which was protected from garnishment under §1673, and that turnover was in effect a garnishment on those wages. Accordingly, the debtor proposed to exempt that portion of the refund protected from garnishment under §1673.

The Supreme Court rejected the debtor's argument, finding that a tax refund did not constitute "disposable earnings" within the definition of §1672 and therefore could not be shielded from the trustee. It found support for this interpretation in the legislative history of the Consumer Credit Protection Act, which in the Court's view repudiated any notion that the Act was intended to function as an exemption in bankruptcy:

An examination of the legislative history of the Consumer Protection Act makes it clear that, while it was enacted against the background of the Bankruptcy Act, it was not intended to alter the clear purpose of the latter Act to assemble, once a bankruptcy petition is filed, all of the debtor's assets for the benefit of his creditors.... Indeed, Congress' concern was not the administration of a bankrupt's estate but the prevention of bankruptcy in the first place by eliminating 'an essential element in the predatory extension of credit resulting in a disruption of employment, production, as well as consumption' ... and a consequent increase in personal bankruptcies. Noting that the evidence before the Committee 'clearly established a causal connection between harsh garnishment laws and high levels of personal bankruptcies,' ... the House Report concluded:

'The limitations on the garnishment of wages adopted by your committee, while permitting the continued orderly payment of consumer debts, will relieve countless honest debtors driven by economic desperation from plunging into bankruptcy in order to preserve their employment and insure a continued means of support for themselves and their families....'

Kokoszka v. Belford, 417 U.S. at 650-51. According to Kokoszka, "the Consumer Credit Protection Act sought to prevent consumers from entering bankruptcy in the first place," rather than to "alter the delicate balance of a debtor's protections and obligations during the bankruptcy procedure." Id. at 651.

Kokoszka is on all fours with our case. Like the debtor in Kokoszka, our debtor seeks to fashion out of §1673 an exemption for the purpose of shielding tax refunds which would otherwise be subject to levy by the trustee. However, Kokoszka holds that the restriction on garnishment found in §1673 does not operate as an exemption in bankruptcy. According to Kokoszka, §1673 operates prospectively, to safeguard against the filing of bankruptcy; once bankruptcy is filed, "the debtor's protection and remedy remain[s] under the Bankruptcy [Code]" Id. The Trustee's objection must be sustained.

It may so be ordered.