

2. On July 24 and 25, 1984, Attorney Ludvigson was served a garnishment Summons and Complaint for each of the two actions.

3. On August 11, 1984, Mr. Sigsworth and Attorney Ludvigson filed Answers in both actions.

4. On September 24, 1984, pursuant to a Polk County (Wisconsin) Circuit Court order of the same day, Attorney Ludvigson forwarded a \$3,322.50 check drawn on his trust account to the Clerk of Court.

5. On December 6, 1984, Kathleen M. and George V. Sigsworth filed a petition for relief under Chapter 7 of the Bankruptcy Code.

Discussion

6. Preference. Subject to the exceptions set forth at 11 U.S.C. sec. 547(c), a debtor may avoid:

- A. an involuntary
- B. transfer
- C. of an interest of the debtor in property
- D. for the benefit of a creditor
- E. on account of an antecedent debt,
- F. made while the debtor was insolvent and
- G. within 90 days before the date of the petition or, if the creditor was an insider, within a year and 90 days before the date of the petition;
- H. if the transfer enabled the creditor to receive a greater portion of its debt than it would receive in a Chapter 7 distribution

I. and the debtor may exempt the recovered property under 11 U.S.C. sec. 522(b).

11 U.S.C. secs. 522(h) & 547(b).

7. The Bank argues that the transfer of Mr. Sigsworth's property took place more than 90 days before the date of the petition for relief.

8. "[S]tate law governs in determining when a transfer of the debtor's property has occurred." In re Coppie, 728 F.2d 951, 952, 11 B.C.D. 913, 914 (7th Cir. 1984), cert. denied, Dkt. 83-2112, ___ U.S. ___ (Jan. 7, 1985).

9. Under Wisconsin law, "a garnishing creditor's lien dates from the service of the garnishment summons and complaint." In re Woodman, 8 B.R. 686, 687 (Bankr.W.D.Wis. 1981).

10. However, there remains in the garnishment defendant "an equitable interest based upon his right to defend the garnishment action . . ." Id. at 688. This interest is transferred upon default or, in a contested action, court order. See 11 U.S.C. sec. 101(48) ("transfer" defined), but see Woodman, supra (default treated as a failure to preserve an interest).

11. In the case at bar, the transfer of Mr. Sigsworth's equitable interest occurred within the 90 day preference period and may be avoided pursuant to 11 U.S.C. secs. 522(h) & 547(b).

12. Lien Avoidance. Sections 522(h) & 547(b) do not operate to void the garnishment lien obtained by the Bank before the preference period. Woodman, supra.

13. However, a garnishment lien is a judicial lien, 11 U.S.C. sec. 101(30) ("judicial lien" defined), and may be avoided pursuant to 11 U.S.C. sec. 522(f)(1).

CONCLUSION OF LAW

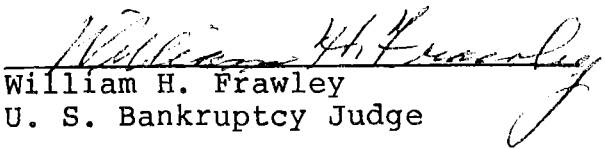
The Debtors are entitled to a turnover order. 11 U.S.C. sec. 542.

ORDER

IT IS ORDERED THAT First American Bank of Amery turn over \$3,322.50 to Kathleen M. and George V. Sigsworth, Jr.

Dated: April 11, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Barry Cohen
Attorney James A. Krupa