



**THIS OPINION IS NOT INTENDED FOR PUBLICATION**

Code and the filing of the debtors' Chapter 13 Plan which, *inter alia*, proposes to pay general unsecured creditor a 100 percent dividend over a five year period, Beth Ross employed Vincent Meeker to provide certain lawn care services for to the debtors. Mr. Meeker billed Mrs. Ross for those services. Mrs. Ross did not pay that bill. Thus, Mr. Meeker filed a suit to recover the money owed to him and obtained a judgment against Mrs. Ross in the amount of \$162.00 including interest and costs. Mr. Meeker instituted garnishment proceedings to collect that judgment.

According to her testimony, Mrs. Ross' employer, Richard's Garage, received a garnishment notice either on March 2, 1998, March 3, 1998, or March 4, 1998. Mrs. Ross testified that she signed the garnishment on her employer's behalf, in accordance with her job duties, on one of those three dates. A check dated March 5, 1998 was issued by Mrs. Ross' employer to "Vincent Meeker DA V.M.M. Services" in the amount of \$162.83. Mr. Meeker received the employer's check on March 7, 1998 and presented it for payment on March 9, 1998.

On March 6, 1998, Beth Ross and her husband filed a petition for relief under Chapter 13 of the Bankruptcy Code. The debtor testified that she had been planning to file a petition for relief and that she had informed her employer that she was planning to file such a petition. On that same date, Richard's Garage withheld \$40.50 from the debtor's paycheck for an "employee liability." Subsequently, Mrs. Ross' employer deducted \$40.50 from her weekly pay for an "employee liability" on March 13, March 20, and March 27, 1998. EXHIBIT A to motion. In total, the debtor's employer withheld \$162.00 of the debtor's wages payable, \$121.50 of which was payable after the debtors' Chapter 13 filing.

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The debtors seek the turnover of that money from Richard's Garage, Inc., her employer, or Vincent Meeker on the basis that the weekly garnishment of the money from her postpetition wages was a violation of the automatic stay. In addition, the motion asserts that the method chosen by the employer to handle the garnishment violated O.R.C. § 2716.03(A).

A Chapter 13 debtor's postpetition wages are property of the estate. 11 U.S.C. §§ 541 & 1306(a)(2). The automatic stay provided for in 11 U.S.C. § 362(a) prohibits "(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case...[or](6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case." 11 U.S.C. § 362. The debtor's employer withheld wages earned by the debtor and payable to her postpetition for an "employee liability," e.g. its payment of her debt to Vincent Meeker. Vincent Meeker did not violate the automatic stay. He was merely the payee on a check drawn on the account of Richard's Garage, not on the account of the debtor. He took no prohibited action against the debtor or property of the estate. The debtor's employer voluntarily became a creditor of the debtor and ultimately the debtor's bankruptcy estate when it drew a check on its own account payable to Vincent Meeker for the debt owed to Vincent Meeker by the debtor. The employer violated the automatic stay by withholding wages of the debtor on account of a debt incurred prior to the filing of the petition.

An individual shall recover damages for a violation of the automatic stay. 11 U.S.C. § 362(h). The debtors' motion requests the turnover to the debtors of the funds withheld from Mrs. Ross' wages in violation of the automatic stay.

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Turnover of the funds is more appropriately made in this situation to the debtors' estate.

Although neither counsel specifically references 11 U.S.C. § 549, this Court finds it to be relevant in this situation. Section 549 provides in pertinent part, "The trustee may avoid a transfer of property of the estate (1) that occurs after the commencement of the case; and (2)(A) that is authorized only under section 303(f) or 542(c) of this title; or (B) that is not authorized under this title or by the court." The retention by Richard's Garage of the debtor's wages postpetition was not authorized by this title or by this Court.<sup>1</sup> In fact, the retention was in violation of § 362 of this title. The retention occurred after the commencement of this case. In addition, even if the employer's actions were authorized, the authority would stem only from 11 U.S.C. § 542(c). Transfers made pursuant to 11 U.S.C. § 542(c) postpetition may be avoided by the trustee. 11 U.S.C. § 549(a)(2)(A).

11 U.S.C. § 550 deals with the liability of a transferee for an avoidable postpetition transfer. The trustee may recover the money from "the initial transferee of such transfer or the entity for whose benefit such transfer was made; or any immediate or mediate transferee of such initial transferee."

Pursuant to this section, turnover to the estate of the wages withheld by

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<sup>1</sup>Under Ohio Law, a debtor's wages may only be garnished in accordance with Chapter 2716 of the Ohio Revised Code. The frequency and percentage of garnishments of debtors' wages are limited. O.R.C. §§ 2716.03(B). Personal earnings of a debtor may not be garnished sooner than 30 days after the filing of the last successful garnishment. *Id.*

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the Debtor's employer, the initial transferee and the entity for whose benefit such transfer was made, is appropriate. Vincent Meeker is not liable to the estate for the funds paid to him because the employer's response to the garnishment was not consistent with O.R.C. § 2716.03(A) and therefore the funds received by Vincent Meeker were the employer's, not the debtors or the estate's. The funds withheld from the debtor's paycheck were property of the bankruptcy estate. Richard's Garage, Inc. is ordered to turn over \$121.50 to the trustee. Richard's Garage, Inc. will be viewed as holding a general unsecured claim in that amount to be paid to Richard's Garage, Inc. in accordance with the debtor's plan.

**IT IS SO ORDERED.**

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MARILYN SHEA-STONUM  
Bankruptcy Judge

**DATED: 6/12/98**