

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:)	Chapter 7
)	
JAQUELINE A. WILLIAMS,)	No. 00 B 05081
)	Honorable Carol A. Doyle
Debtor.)	

MEMORANDUM OPINION AND ORDER

This matter is before the court on motion of two creditors, Tarek Farag and Soona Farag, to lift the automatic stay, and on their objection to a \$2,000 “wildcard” exemption asserted by the debtor in this Chapter 7 Bankruptcy case. The Farags obtained a judgment against the debtor and initiated wage garnishment proceedings against the debtor in state court. The debtor asserted the Illinois “wildcard” exemption with respect to \$2,000 of the debtor’s wages that were withheld by her employer but not paid to the Farags prior to the bankruptcy filing. The Farags moved to lift the automatic stay under 11 U.S.C. § 362(d) so they could collect the withheld wages, and they objected to the debtor’s asserted \$2,000 exemption on the basis that the Illinois wildcard exemption cannot be applied to wages required to be withheld in a wage deduction proceeding.

The court concludes that the Illinois wildcard exemption cannot be applied to the debtor’s withheld wages. As discussed below, the Illinois personal property exemption statute provides that the exemption shall not apply to wages “required to be withheld in a wage deduction proceeding.” The Farags properly served the debtor’s employer with the summons and interrogatories required to commence a wage deduction proceeding under the Illinois wage deduction statute. At that point, the

statute required the employer to withhold the debtor's wages. Therefore, her wages fall within the withheld wages exception to the Illinois wildcard exemption. The court sustains the Farags' objection to the debtor's asserted exemption, and lifts the automatic stay to allow the Farags to collect the withheld wages in accordance with the Illinois wage deduction statute.

Jurisdiction

The court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is before the court pursuant to 28 U.S.C. § 157 and Local General Rule 2.33(a) of the United States District Court for the Northern District of Illinois. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(B) and (G).

The Illinois Wildcard Exemption

Section 522 of the Bankruptcy Code allows a debtor to exempt certain property from property of the bankruptcy estate. 11 U.S.C. § 522. A debtor may either use the federal exemptions listed in § 522(d) or may use applicable state exemptions unless the applicable state law provides otherwise. Illinois law requires Illinois residents to use the state-authorized exemptions. 735 ILCS 5-12/1201. Under the Illinois exemptions, a debtor is permitted to exempt the debtor's equity interest in up to \$2,000 of miscellaneous personal property. 735 ILCS 5-12/1001(b). This is generally referred to as the "wildcard" exemption. In re Youngblood, 212 B.R. 593, 595. (Bankr. N.D. Ill. 1997) (Schmetterer, J.)

Section 5/12-1001 was amended in 1996, and now provides that:

The personal property exemptions set forth in this Section shall not apply to or be allowed against any money, salary, or wages due or to become due to the debtor that are required to be withheld in a wage deduction proceeding under Part 8 of this Article XII.

735 ILCS 5-12/1001(i). Thus, a debtor may not apply the wildcard exemption to wages “required to be withheld in a wage deduction proceeding.” The issue before the court is at what point in an Illinois wage deduction proceeding are wages “required to be withheld” for purposes of the wildcard exemption.

Illinois Wage Deduction Proceedings

A wage deduction proceeding in Illinois is initiated by a judgment creditor filing an affidavit stating the creditor’s belief as to the identity of the judgment debtor’s employer and including a set of interrogatories for the employer to answer. 735 ILCS 5/12-805. The clerk of the state court then issues a summons commanding the employer to answer the interrogatories. Id. The creditor then serves the employer with the summons, judgment, interrogatories, and a copy of the wage deduction notice. 735 ILCS 5/12-806. The employer must answer the interrogatories or face certain consequences. 735 ILCS 5/12-807. After being served with the summons, the employer must pay the employee the amount of his or her exempt wages, 735 ILCS 5/12-808(a), and begin to withhold non-exempt wages pending entry of an order of the state court (the wage deduction order). 735 ILCS 5/12-808(b). The Illinois statute creates a lien in favor of the judgment creditor at the time the creditor serves the employer with the summons. The lien applies to wages due at the time of service of the summons and to subsequent earnings until the total amount due to the judgment creditor is satisfied. Id.

After the employer answers the interrogatories, if the judgment debtor or judgment creditor contests the truth or sufficiency of the answers, a trial is held to resolve the issues, and then a wage deduction order is entered. 735 ILCS 5/12-808, & -811. If no one contests the employer's answer, the wage deduction order is entered compelling the employer to deduct wages in the appropriate amount and pay them to the creditor. 735 ILCS 5/12-808(e).

Discussion

The facts in this case are not in dispute. The Farags obtained a judgment against the debtor in state court, and the Farags' attorney filed the affidavit and interrogatories required by section 5/12-805. The state court issued the summons, which was served upon the debtor's employer, along with the interrogatories. The debtor's employer answered the interrogatories and began withholding in accordance with section 5/12-808(b). However, for unknown reasons, no wage deduction order was entered ordering the employer to pay the wages withheld to the Farags.

The debtor argues that the exception to the wildcard exemption does not apply because no wage deduction order was entered in this case. She also argues that the deducted wages exception to the exemption does not apply because the Farags failed to comply with a provision of the statute requiring the judgment creditor to serve quarterly reports certifying the judgment balance. Neither argument is persuasive.

First, the court rejects the debtor's argument that a wage deduction order must be entered for the deducted wages exception to the wildcard exemption to apply. Before the 1996 amendment to the wildcard exemption statute, section 5/12-1001(b) provided:

The personal property exemptions ... shall not apply to ... wages ... that were required to be withheld and upon which a wage deduction order has been entered under Part 8 of Article XII (emphasis added).

Under that provision, a debtor could claim the wildcard exemption if a wage deduction order had not yet been entered in a garnishment proceeding. See, e.g., General Motors Acceptance Corp. v. Bates (In re Bates), 161 B.R. 965, 968 (N.D. Ill. 1993); General Motors Acceptance Corp. v. Garcia (In re Garcia), 155 B.R. 173, 176 (N.D. Ill. 1993); In re Waltjen, 150 B.R. 419, 425 (Bankr. N.D. Ill. 1993) (Schmetterer, J.). However, with the 1996 amendment, it is clear that a wage deduction order is no longer needed for the exception to the wildcard exemption to apply. The amendment specifically eliminated the requirement of a wage deduction order. Instead, the statute now applies the wage deduction exception more broadly to wages that are "required to be withheld in a wage deduction proceeding."

As discussed above, as soon as an employer is served with the subpoena and interrogatories required by section 5/12-805, it must begin deducting wages, even though it need not pay them to the judgment creditor until after the wage deduction order is entered. 735 ILCS § 5/12-808(b).

Therefore, it is upon service of the subpoena and interrogatories that the wages are required to be withheld in a wage deduction proceeding. See In re Youngblood, 212 B.R. at 595-97 ("wages withheld pursuant to the initiation of a wage deduction proceeding are not exemptible under 735 ILCS § 5/12-1001(b), even if the final wage deduction order for turnover of these funds has not been

entered”); In re Andres, 212 B.R. 306, 308-09 (Bankr. N.D. Ill. 1997) (Schmetterer, J.). The fact that a wage deduction order was not entered in this case is not significant. The debtor admits that her employer was properly served with the wage deduction summons and interrogatories, and properly began withholding wages at that time as required under the wage deduction statute. The debtor’s wages were therefore “required to be withheld in a wage deduction proceeding” for purposes of the Illinois wildcard exemption statute, and the debtor may not apply the exemption to them.

Second, the debtor asserts that the withheld wages exception to the wildcard exemption should not apply to her withheld wages because the Farags did not comply with another provision of the wage deduction statute, 735 ILCS 5/12-808.5. This provision requires a judgment creditor to serve a certification of the judgment balance on the employer on a quarterly basis if the debt is not fully satisfied. The debtor acknowledges that the Illinois statute contains no remedy for a failure to comply with this provision, but encourages the court to fashion one by finding that the withheld wages exception to the wildcard exemption does not apply in this case. The court declines to fashion such a remedy. The issue before this court is whether the wages were required to be withheld in a wage deduction proceeding for purposes of the wildcard exemption, not whether every procedural requirement of the wage deduction statute has been met.¹ As discussed above, the court finds that the debtor’s wages are subject to the withheld wages exception to the wildcard exemption. The court therefore sustains the

¹The court offers no opinion regarding how the state court should address this issue if the parties return to that court for further proceedings under the wage deduction statute.

Farag's objection to the debtor's asserted exemption, and lifts the stay with respect to the wage deduction proceeding so that the parties may proceed accordingly.²

SO ORDERED.

Dated this 22nd day of June, 2000.

CAROL A. DOYLE
United States Bankruptcy Judge

²The Farags also sought "turnover" of the funds from the employer. The court denies this request. The employer is not before the court, and could only be pursued in this court in an adversary proceeding. The court also notes that, at a hearing on the objection and motion, the parties stated that the debtor's employer has gone out of business since the filing of debtor's petition, and that the employer mailed the Farags' counsel a check for the withheld wages, which the Farags' counsel is holding by agreement with debtor's counsel. Thus, the turnover issue is moot in any event.