

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
COLUMBUS DIVISION

IN RE:

CASE NO. 99-41085-JTL

HELEN LOUISE SHEPPARD,  
SSN: XXX-XX-XXXX  
DEBTOR.

CHAPTER 13

HELEN LOUISE SHEPPARD,  
MOVANT,

V.

PIGGLY WIGGLY,  
RESPONDENT.

MEMORANDUM OPINION

On December 3, 1999, the court held a hearing on Debtor's motion for contempt against Piggly Wiggly ("Respondent") for violation of the automatic stay of § 362 of the Bankruptcy Code ("Code") based on Respondent's having a warrant issued postpetition for Debtor's arrest as a consequence of Debtor's having written a bad check prepetition. No one appeared on behalf of Respondent, and Debtor presented evidence in support of her motion.

The applicable case law is Barnette v. Evans, 673 F.2d 1250 (11<sup>th</sup> Cir. 1982), and cases construing Barnette, such as Tenpins Bowling, Ltd. v. Alderman (In the Matter of Tenpins Bowling, Ltd.), 32 B.R. 474 (Bankr. M.D. Ga. 1983). Barnette

involved a debtor who, as in this case, had issued worthless checks. Barnette basically established a two-prong test for determining whether the court should enjoin a state criminal prosecution of a debtor on the ground that the prosecution will frustrate the bankruptcy judge's jurisdiction to discharge debt. First, a debtor must establish that the criminal prosecution is brought in bad faith. Tenpins Bowling, Ltd., 32 B.R. at 480 (discussing the application of Barnette). Second, a debtor must establish that it would be no defense to the criminal prosecution that the prosecution was brought for the purpose of collecting a debt. Id. In Barnette, under Alabama law, the debtor could have defended the criminal prosecution by showing that the prosecution for theft was really a subterfuge for the collection of a debt. Barnette, 673 F.2d at 1252.

Applying this case law, and after considering the evidence and argument of counsel, the court announced findings of fact and conclusions of law from the bench. The court ruled that Debtor had met her burden of proof with regard to the first prong of the Barnette test by proving that Respondent acted in bad faith in having a criminal warrant issued for Debtor's arrest postpetition. However, the court reserved ruling on the second prong of the Barnette test, which is whether Debtor could have asserted as a defense to the criminal action in Georgia that the criminal action was brought as a subterfuge for collecting the debt. Debtor's counsel requested that the

court reserve ruling on this issue to allow him to supplement his argument and evidence.

After the hearing, counsel submitted a brief along with two exhibits in support of Debtor's position. Exhibit "A" to Debtor's brief is an affidavit by the Solicitor General of the State Court of Muscogee County, Georgia verifying that it would be no defense to a deposit account fraud (bad check) prosecution that the warrant was issued for the purpose of collecting the money due. Exhibit "B" to Debtor's brief is a copy of the index to Chapter 3 of the Official Code of Georgia Annotated, which shows that no defense listed relates to the fact that a warrant in a deposit account fraud case was issued only for the purpose of collecting the debt.

After considering counsel's brief and the exhibits thereto, the court finds that Debtor has met the second prong of Barnette and will grant Debtor's motion. The court finds that Respondent did willfully violate the automatic stay of § 362 of the Code. The court will order Respondent to pay damages in the amount of \$750 attorney fees in addition to \$183.70 in actual damages. The court does not find that the appropriate circumstances exist in this case to justify punitive damages under § 362(h) of the Code.

An order in accordance with this Memorandum Opinion will be entered.

DATED this 6<sup>th</sup> day of January 2000.

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JOHN T. LANEY, III

UNITED STATES BANKRUPTCY JUDGE