UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

In re	)	
	)	
KAREN LYNN FISCHER,	)	Case No. 6:09-bk-07498-KSJ
	)	Chapter 7
Debtor.	)	
	)	

ORDER DENYING TRUSTEE'S
MOTION FOR RECONSIDERATION

The Chapter 13 trustee, Laurie K. Weatherford, asks the Court to reconsider[1] its prior order directing her to honor a Writ of Garnishment issued by a Florida state court.[2] In the prior order, the Court weighed the contrary positions of sister courts and concluded that "there is nothing special about funds the Chapter 13 trustee holds that should prevent a creditor from proceeding with garnishment."[3] Because the debtor converted this case to a Chapter 7 liquidation case, the Chapter 13 trustee unfortunately did not receive notice or service of some of the prior pleadings on this issue. Accordingly, she now seeks reconsideration[4] and raises various practical considerations with the Court's prior ruling.

The trustee points out that if she is required to honor writs of garnishment obtained by diligent creditors[5] upon the dismissal of a Chapter 13 case, she will incur some cost, predictable administrative headaches, and need to change certain of her existing financial controls and

[1] Motion for Reconsideration of Order Denying Trustee's Motion to Determine Whether an Order of this Court to Turn Over Funds to the Debtor can be Superseded by a Writ of Garnishment Issued by Another Court. Doc. No. 66.
[2] Doc. Nos. 61 and 62.
[3] Doc. No. 62 at 3-4.
[4] The Court construes the trustee's motion as one under Federal Rule of Civil Procedure 60(b). Under Rule 60(b)(6), a court may relieve a party from a final judgment or order for "any…reason that justifies relief." A Rule 60(b)(6) motion, however, must demonstrate "that the circumstances are sufficiently extraordinary to warrant relief." *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006). Whether to grant relief is at the Court's sound discretion. *Id.*
[5] Echelon Services, Inc. is a large national creditor who purchases hard-to-collect debts from sophisticated lenders. Here, the debtor acknowledged she owed approximately $7,200 to Echelon when she filed this bankruptcy case. Doc. No. 1, Schedule A, pg. 17. When the debtor was unable to make her payments to the Chapter 13 trustee, the Court entered an order dismissing the case and directing the Chapter 13 trustee to turn over all monies in her possession, $1,337, to the debtor. Doc. No. 25. Although the Court later honored the debtor's request to convert the case to a Chapter 7 liquidation case, in the meantime, Echelon had obtained its Writ of Garnishment seeking to receive the $1,337 from the trustee. Doc. Nos. 27 and 31.

procedures. The Court does not ignore that the Chapter 13 trustee indeed may face these challenges if garnishments are allowed against funds she otherwise would return to the debtor pursuant to 11 U.S.C. § 1326(b). These difficulties, however, are nothing different than any bank, employer, or similar business faces upon receipt of a writ of garnishment. The trustee, who administers millions of dollars every year, certainly can adapt to this new requirement.

The Court, moreover, accepts the trustee's suspicion that only the more savvy creditors, such as the garnishor in this case, Echelon Services, Inc., who buys large amounts of uncollected debts from national lenders, will adopt procedures to quickly get writs of garnishment upon the dismissal of a Chapter 13 case. The garnishment, if allowed, likely will permit these jack rabbit creditors to receive more than other similarly situated but less diligent unsecured creditors. However, the fact that garnishment may issue only (1) after the debtor fails in his or her Chapter 13 reorganization attempts, and (2) when no bankruptcy case (i.e., a converted Chapter 7 case) is pending, posits in support of Echelon's request to obtain enforceable writs of garnishment. Debtors who fail should not receive a continuing benefit from a bankruptcy case. One consequence of dismissal is that creditors will renew their collection efforts, including their right to seek garnishment of funds still held by the Chapter 13 trustee.

Lastly, the Chapter 13 trustee argues that the cases relied upon by this Court are distinguishable because the garnishor in those cases was almost always a taxing authority (frequently the Internal Revenue Service) and not a typical unsecured creditor like Echelon.[6] But this is a distinction without significance. The majority of the decisions relied upon allowed garnishment because numerous policies favor it that have nothing to do with whether the creditor

[6] The Court relied upon the following cases in its prior opinion: *In re Steenstra*, 307 B.R. 732, 738 (1st Cir. B.A.P., 2004); *In re Beam*, 192 F.3d 941 (9th Cir. 1999); *In re Mishler*, 223 B.R. 17, 20 (Bankr. M.D. Fla. 1998); *In re Schlapper*, 195 B.R. 805, 806 (Bankr. M.D. Fla. 1996); *In re Brown*, 280 B.R. 231 (Bankr. E.D. Wisc. 2002); *In re Doherty*, 229 B.R. 461, 463 (Bankr. E.D. Wash. 1999); *Clark v. Commercial State Bank*, No. NO-00-CA-140, 2001 WL 685529 (W.D. Tex. April 16, 2010).

seeking garnishment is the IRS or a run of the mill unsecured creditor.[7] The logic of those opinions and this Court's previous opinion is the same regardless of the type of creditor seeking garnishment.

The motion by the Chapter 13 trustee seeking reconsideration of the requirement to honor writs of garnishment is denied. The trustee is directed to comply with the Court's prior order directing her to disburse $1,337 to Echelon Services, Inc., in compliance with the valid Writ of Garnishment issued by the County Court for Orange County, Florida, Case No. 08-CC-2596.

DONE AND ORDERED on February 11, 2011.

Karen S. Jennemann
United States Bankruptcy Judge

[7] *See In re Steenstra*, 307 B.R. at 739-40 (concluding that "because the dismissal of a bankruptcy case prior to confirmation removes the protection afforded by the Bankruptcy Code, the funds held by a Chapter 13 trustee after administration of the estate are not afforded protection from levy."); *In re Doherty*, 229 B.R. at 463 (finding "[j]udicial economy suggests that any issues regarding the funds [held by a Chapter 13 trustee] should be resolved by the bankruptcy court."); *In re Mishler*, 223 B.R. at 20 (adopting the rationale espoused by *In re Schlapper*); *In re Schlapper*, 195 B.R. at 806 (finding that "once the order of dismissal is entered, and the stay has been lifted, and the Trustee has been ordered to turn over funds to the Debtor, she becomes a debtor of the Debtor to that extent. The funds held by the trustee are subject to levy or garnishment by creditors of the Debtor, pursuant to applicable law.").

Copies furnished to:

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