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David L. Gladwell v. Douglas James Reinhart : Brief of Appellant

Utah Supreme Court

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Adam S Affleck; Charles L Perschon; Prince, Yeates and Geldzahler; Attorneys for Appellant.
Duane H Gillman; Michael F Thomson; Durham, Jones and Pinegar; Stephen R Bailey; Unitest States Trustee; Attorneys for Appellee .

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IN THE SUPREME COURT OF UTAH

In re: DOUGLAS JAMES REINHART,
Debtor.

DAVID L. GLADWELL, Trustee,
Appellant,

vs.

DOUGLAS JAMES REINHART,
Appellee.

Utah Supreme Court Case No. 20110257

BRIEF OF APPELLANT

On Certification from the United States Court of Appeals for the Tenth Circuit

Mr. Duane H. Gillman
Mr. Michael F. Thompson
DURHAM, JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
Attorneys for Appellee

Mr. Stephen R. Bailey
2454 Washington Blvd.
Ogden, Utah 84401
Attorney for Appellee

United States Trustee
Ken Garff Building
405 South Main Street, Suite 300
Salt Lake City, Utah 84111

Adam S. Affleck (5434)
Charles L. Perschon (11149)
PRINCE, YEATES & GELDZAHLER
A Professional Corporation
175 East 400 South, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 524-1000
Facsimile (801) 524-1098
asa@princeyeates.com
clp@princeyeates.com
Attorneys for Appellant

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Mr. Duane H. Gillman
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DURHAM, JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
Attorneys for Appellee

Mr. Stephen R. Bailey
2454 Washington Blvd.
Ogden, Utah 84401
Attorney for Appellee

United States Trustee
Ken Garff Building
405 South Main Street, Suite 300
Salt Lake City, Utah 84111

Adam S. Affleck (5434)
Charles L. Perschon (11149)
PRINCE, YEATES & GELDZAHNER
A Professional Corporation
175 East 400 South, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 524-1000
Facsimile (801) 524-1098
asa@princeyeates.com
clp@princeyeates.com
Attorneys for Appellant

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STATEMENT OF JURISDICTION

This Court's jurisdiction rests upon Utah Code Ann. § 78A-3-102(1).

STATEMENT OF THE CERTIFIED QUESTIONS

QUESTION 1: Does Utah Code Ann. § 70C-7-103 create an exemption in bankruptcy, or does it only limit a judgment creditor's garnishment remedy outside bankruptcy?

QUESTION 2: If § 70C-7-103 does create an exemption in bankruptcy, do pre-petition wages such as those claimed by the debtor in this case qualify as "disposable earnings" under the statute?

QUESTION 3: If § 70C-7-103 does create an exemption in bankruptcy, and the debtor's pre-petition wages qualify as "disposable earnings" under the statute, do the debts in this case "aris[e] from a consumer credit agreement"?

UNIVERSAL STANDARD OF REVIEW: Because a certified question from a federal court does not present this Court "with a decision to affirm or reverse, . . . 'traditional standards of review do not apply.'" *Egbert v. Nissan North Am., Inc.*, 2007 UT 64, ¶ 7, 167 P.3d 1058, 1060 (quoting *Robert J. DeBry & Assocs. v. Qwest Dex, Inc.*, 2006 UT 41, ¶ 11, 144 P.3d 1079). On certification, this Court "'do[es] not resolve the underlying dispute; rather, [it] answer[s] the legal questions presented.'" *Mecham v. Frazier*, 2008 UT 60, ¶ 9, 193 P.3d 630, 632 (quoting *Egbert*, 2007 UT 64, ¶ 7).

STATEMENT OF THE CASE/STATEMENT OF FACTS

Appellee/Debtor Douglas J. Reinhart ("Debtor") filed a chapter 7 bankruptcy petition in United States Bankruptcy Court for the District of Utah on January 28, 2000

(“**Petition Date**”). *In re Reinhart*, 416 Fed. Appx. 761, 761-62 (10th Cir. 2011). When he filed, the Debtor claimed no wages were owed to him. (Applt. Appx. 53, 55.)

Nearly five years later, on December 30, 2004, Appellant/Trustee David L. Gladwell (“**Trustee**”) commenced an adversary proceeding, case no. 04-3052 (“**Adversary Proceeding**”), against the Debtor and his professional corporation, Douglas J. Reinhart, M.D., P.C. (“**P.C.**”). *Reinhart*, 416 Fed. Appx. at 762. In the Adversary Proceeding, the Trustee sought to recover from the Debtor and the P.C. no less than \$49,000 worth of salary, bonuses, and interest that the Debtor earned prior to the Petition Date and which the P.C. still owed the Debtor after the Petition Date (collectively “**Pre-petition Wages**”). *Id.* The Adversary Proceeding was later resolved by arbitration, and pursuant to the arbitration award and subsequent judgment, the Pre-petition Wages owed from the P.C. to the Debtor amounted to only \$10,315.00, which were earned by the Debtor in 1999. (Applt. Appx. 135.)

In the Adversary Proceeding, the Debtor and the P.C. denied that any wages were owed. (Applt. Appx. 53, 55.) Nevertheless, on January 31, 2005—a month after the Trustee initiated the Adversary Proceeding—the Debtor filed amended Schedule B, which included a hedged bet that he may have an “unknown” interest in “Wages – Douglas J. Reinhart M.D., P.C. (if determined to be owed).” *Id.* at 75. He also amended Schedule C, which claimed the 75% wage exemption, with a sole reference to 15 U.S.C. § 1673 , which is part of a larger statutory scheme passed by Congress in 1968 called the Consumer Credit Protection Act (“**CCPA**”), as the basis for the exemption. *Id.* at 80.

The Trustee objected to the new exemption claimed on March 1, 2005. (Applt.

Appx. 81-84.) Relying on the United States Supreme Court decision in *Kokoszka v. Belford*, 417 U.S. 642 (1974), , which held that the garnishment limitations contained in § 1673 were not bankruptcy exemptions, the Trustee took the position that the exemption was improperly claimed. *Id.*

In response, the Debtor amended Schedule C a final time by adding Utah Code Ann. § 70C-7-103, which is part of a larger statutory scheme passed by the Utah Legislature in 1969 called the Utah Consumer Credit Protection Act, as an additional basis for the claimed exemption. *Id.* at 86. The amount owed remained “unknown.” *Id.*

On March 23, 2005, the Trustee objected to this additional source for the Debtor’s claimed exemption, arguing that, like §1673, § 70C-7-103 did not create an exemption or limit the Trustee’s ability to recover the Pre-petition Wages. (Applt. Appx. 103-06.)

On January 18, 2006, and continuing on February 21, 2006, the bankruptcy court held an evidentiary hearing on the Trustee’s objections. *Id.* at 143-227. At the hearing, the court received into evidence the Debtor’s bankruptcy schedules. *Id.* at 153. In Schedule F, the Debtor listed four unsecured debts owed on the Petition Date (collectively “**Pre-petition Debts**”). *Id.* at 158-61. At the hearing, the Trustee examined the Debtor and obtained uncontroverted evidence that the unsecured debts were business debts and/or a student loan obligation. *Id.* For example:

- a. The Debtor’s Pre-petition Debt to Green Tree Vendor, Information Leasing Company, and Reinhart Investment were business debts incurred to finance the Debtor’s and his wife’s bagel business. *Id.*
- b. Though the Debtor’s Pre-petition Debt to the Utah Board of Regents was a

student loan obligation, the Debtor could not recall if it was guaranteed or insured by the federal government. *Id.*

The bankruptcy court made no findings with regard to whether these debts arose from transactions that were debts arising from a “consumer credit agreement” covered by the Utah Consumer Credit Code or § 70C-7-103’s limitation on wage garnishment. *Id.*

Without identifying the specific basis for its decision, the bankruptcy court overruled the Trustee’s objections and held that 75% of the Debtor’s Pre-petition Wages were exempt under one of the following: 11 U.S.C. § 522(b)(2)(A), 15 U.S.C. § 1673, Utah Code Ann. § 70C-7-103, or *In re Stewart*, 32 B.R. 132 (Bankr. D. Utah 1983). (Applt. Appx. at 115-17.) The Trustee appealed to the district court which summarily affirmed. *Id.* at 124-29.

The Trustee then appealed to the United States Court of Appeals for the Tenth Circuit, which issued its opinion, *In re Reinhart*, 416 Fed. Appx. 761 (10th Cir. 2011), on March 22, 2011. *Id.* at 140-42. The Tenth Circuit, relying on *Kokoszka*, rejected the Debtor’s argument that his Pre-petition Wages were exempt under § 1673 the CCPA. *In re Reinhart*, 416 Fed. Appx. at 763. In following *Kokoszka*, the Tenth Circuit reaffirmed that the CCPA does not create an exemption in bankruptcy, and because it is a statutory wage garnishment limitation, it is inapplicable to bankruptcy proceedings generally. *Id.* Rather, the CCPA was enacted to *prevent* consumer bankruptcies by limiting the percentage of wages that a judgment creditor may garnish from a judgment debtor after a final judgment. *Id.* Bankruptcy exemptions, the Court explained, are governed by the Bankruptcy Act—not an unrelated wage garnishment statute. *Id.*

Because the Tenth Circuit rejected the Debtor's argument that federal law supported his exemption, the court concluded that "[t]he resolution of this appeal turns . . . on whether Utah Code Ann. § 70C-7-103 provides for an exemption in bankruptcy, and if so, whether the debtor's pre-petition wages are exempt under that statute." *Id.* Because these questions have not yet been addressed by the Utah appellate courts, the Tenth Circuit, pursuant to Tenth Circuit Rule 27.1 and Rule 41 of the Utah Rules of Appellate Procedure, certified to this Court the three questions above. *Id.*

SUMMARY OF ARGUMENT

Though this case presents an unresolved question for Utah, the United States Supreme Court addressed it nearly forty years ago in *Kokoszka* by holding that the federal statute limiting wage garnishment does not create an exemption in bankruptcy. This Court should follow *Kokoszka* and hold that Utah's wage garnishment limitation—which is nearly identical to its federal counterpart—does not create an exemption in bankruptcy. Moreover, Utah's garnishment statute does not amount to a wage exemption because the statute does not provide full and permanent sequestration of a debtor's wages from creditors, as a true exemption would require.

Second, even if the Utah statute creates a bankruptcy exemption, the Debtor's Pre-petition Wages are not "disposable earnings" within the meaning of the statute because the wages are more akin to the tax refund in *Kokoszka* than to a periodic payment of compensation needed to support the Debtor's family on a week-to-week basis. Further, the Debtor initially disclaimed any interest in the Pre-petition Wages, as he failed to include them in his personal property Schedule B and his exemptions in Schedule C.

Last, even if the statute creates an exemption, and earnings constitute “disposable earnings,” the debts in this case did not arise from a consumer credit agreement, but from business/commercial transactions and student loans. Therefore, the alleged exemption is inapplicable by its own terms, which is limited to garnishments for judgments arising from a consumer credit agreement.

ARGUMENT

I. SECTION 70C-7-103 DOES NOT CREATE AN EXEMPTION IN BANKRUPTCY, BUT MERELY LIMITS A JUDGMENT CREDITOR’S GARNISHMENT REMEDY OUTSIDE BANKRUPTCY.

A. Because Utah’s Garnishment Statute Is Functionally Identical To The Federal Garnishment Statute, This Court Should Adopt The U.S. Supreme Court’s Reasoning And Holding From Kokoszka.

Nearly forty years ago, the U.S. Supreme Court was presented with the question this Court faces today: whether a statute imposing limits on wage garnishment serves as a de facto wage exemption in bankruptcy. The Supreme Court held in *Kokoszka v. Belford*, 417 U.S. 642, 644 (1974), that the federal limits on wage garnishments contained in the CCPA did not create such an exemption. Because this federal garnishment statute was the model for—and is nearly identical to—Utah’s garnishment statute, this Court should adopt and apply the Supreme Court’s holding from *Kokoszka*.¹

¹ This Court has already turned to *Kokoszka* and the CCPA for guidance in construing Utah’s garnishment laws. In *Funk v. Utah State Tax Comm’n*, this Court addressed the question of whether Utah’s garnishment laws exempted a debtor’s tax refund from the trustee in the debtor’s bankruptcy. 839 P.2d 818, 821 (Utah 1992). The Utah Supreme Court not only cited and analyzed *Kokoszka*, but it adopted *Kokoszka*’s holding and went so far as to state that the “*Kokoszka* rationale regarding the CCPA applies equally to the almost identical language of [Utah’s garnishment laws].” *Id.* This Court ultimately concluded that, in light of *Kokoszka*, under both Utah’s garnishment laws and the CCPA,

The facts of *Kokoszka* are simple. In 1971, the petitioner earned a modest income, from which federal taxes were withheld. *Id.* at 644. The following year, the petitioner filed a bankruptcy petition as well as his tax return, which resulted in a small tax refund. *Id.* The refund was the sole asset claimed by the trustee in the bankruptcy. *Id.* Over the petitioner's objection, the bankruptcy referee (i.e., the bankruptcy court) ordered the petitioner to turn the money over to the trustee. *Id.* The petitioner appealed, and both the district court and the Second Circuit Court of Appeals denied relief because "the limitations on garnishment contained in the [CCPA, the federal wage garnishment statute,] did not apply to bankruptcy situations and that consequently, the trustee was entitled to the entire refund." *Id.* at 644-45.

On certiorari, the Supreme Court analyzed, *inter alia*, whether the federal limits on wage garnishment applied in the petitioner's bankruptcy to exempt 75% of his refund from the trustee's custody.² *Id.* at 648-49. The petitioner relied on the CCPA to claim his 75% exemption. *Id.* at 649. The CCPA provides in relevant part:

(a) Maximum allowable garnishment.

Except as provided in subsection (b) of this section and in section 1675 of this title, ***the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed***

- (1) ***25 per centum of his disposable earnings for that week, or***
- (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206 (a)(1) of title 29 in effect at the time the earnings are payable,

a state tax refund does not constitute "disposable earnings" within the meanings of those statutes. *Id.*

² In a bankruptcy, a trustee takes title to the bankrupt's property "except insofar as it is to property which is held to be exempt" *Id.* (quoting 11 U.S.C. § 110(a)).

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

15 U.S.C. § 1673(a) (emphasis added). The petitioner argued that the trustee taking custody of a bankrupt's tax refund in a bankruptcy proceeding was a "garnishment" within the meaning of the CCPA, which broadly defines "garnishment" as a "legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt."³ *Kokoszka*, 417 U.S. at 649 (quoting 15 U.S.C. § 1672(c)).

Despite the CCPA's broad definition of "garnishment," which the petitioner argued included a bankruptcy proceeding, the Supreme Court rejected the petitioner's argument. Congress did not enact the CCPA "in a vacuum," the Court explained. *Id.* at 650. The drafters of the CCPA were cognizant that the Bankruptcy Act and the CCPA would have to coexist, and the Court took into consideration the language and purpose of both the Bankruptcy Act and the CCPA in evaluating the petitioner's argument. *Id.* The legislative history of the CCPA reveals that, in passing the CCPA, Congress' concern "was not the administration of a bankrupt's estate" *Id.* Indeed, the CCPA "was not intended to alter the clear purpose of the [Bankruptcy] Act," which is "to assemble, once a bankruptcy petition is filed, all of the debtor's assets for the benefit of his creditors." *Id.* Rather, in passing the CCPA, Congress noted the "causal connection between harsh garnishment laws and high levels of personal bankruptcies

³ The Utah garnishment statute defines "garnishment" equally broad and nearly identical to the definition in the federal garnishment statute.

... .” *Id.* (quoting H.R. Rep. No. 1040, 90th Cong. 1st Sess., 20 (1967)). Thus, the CCPA aimed to “prevent[] . . . bankruptcy in the first place by eliminating ‘an essential element in the predatory extension of credit resulting in a disruption of employment, production, as well as consumption’ and a consequent increase in personal bankruptcies.” *Id.* (quoting H.R. Rep. No. 1040, 90th Cong. 1st Sess., 20 (1967)).⁴

In concluding, the Supreme Court reiterated that though the CCPA aimed to prevent bankruptcies, if bankruptcy did occur, “the debtor’s protection and remedy remained under the Bankruptcy Act.” *Id.* at 651. The CCPA simply has no bearing on a bankruptcy proceeding, the Court reasoned. *Id.*

This Court should follow *Kokoszka* because the Utah statute is essentially the same as §1673 with the same limited purpose to prevent bankruptcy—but not to create an exemption once bankruptcy is filed.

In 1968, Congress enacted the CCPA, 15 U.S.C. § 1671-77, which imposed nationwide restrictions on garnishments. As explained in *Kokoszka*, the purpose of these restrictions was to help debtors avoid, rather than protect them, in bankruptcy. *Kokoszka*, 417 U.S. at 650-51. In 1969, one year after Congress passed the CCPA, the Utah Legislature enacted the Utah Uniform Consumer Credit Code, Utah Code Ann. § 70C-1-

⁴ As several courts have noted, the legislative history “underlying [the] CCPA gives no indication that it was meant to be applicable to bankruptcy, and it is not included on the list of federally recognized bankruptcy exemptions.” *In re Sikes*, No. 04-30951(2), 2004 WL 2028021, at *2 (Bankr. W.D. Ky. Sept. 8, 2004) (citation omitted); *see also In re Lawrence*, 205 B.R. 115, 122 (Bankr. E.D. Tenn. 1997) (concluding that the CCPA’s legislative history “contains not a hint of any such bankruptcy application”).

101 *et seq.*,⁵ which was modeled on the CCPA.⁶ The garnishment limitations⁷ now at issue which are part of the Utah Consumer Credit Code, took effect on July 1, 1970.

Utah's garnishment statute is an almost verbatim recitation of the federal statute. For example, the definitions of "garnishment" are all but identical, with the federal distinctions in bold: "[g]arnishment" means any legal or equitable procedure through which the earnings of an **[any]** individual are required to be withheld for payment of a **[any]** debt." Utah Code Ann. § 70C-7-103(1)(b); *cf.* 15 U.S.C. § 1672(c). The federal and state provisions limiting wage garnishment are equally similar. Utah's statute reads, in relevant part:

(2) The maximum part of the aggregate disposable earnings of an individual for any pay period which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of:

- (a) 25% of his [or her] disposable earnings for that pay period; or
- (b) the amount by which his [or her] disposable earnings for that pay period exceed 30 hours per week multiplied by the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C., Section 206(a)(1), in effect at the time the earnings are payable.

Utah Code Ann. § 70C-7-103(2). By comparison, the federal statute provides:

[T]he maximum part of the aggregate disposable earnings of an individual

⁵ Originally, the Utah Uniform Consumer Credit Code was codified as Utah Code Ann. § 70B-5-101 *et seq.*

⁶ Utah's reliance on the CCPA is clear. The Utah Legislature went so far as to explicitly reference and adopt the CCPA's definitions: "[e]xcept as otherwise defined, all definitions or terms used in this title have the same meaning as when used in the federal Consumer Credit Protection Act, 15 U.S.C. Sections 1601 through 1677" Utah Code Ann. § 70C-1-301.

⁷ The garnishment limitations in the original codification were found at Utah Code Ann. §§ 70B-5-105 and -106.

for any workweek which is subjected to garnishment may not exceed (1) 25 per centum of his [or her] disposable earnings for that week, or (2) the amount by which his [or her] disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206 (a)(1) of title 29 in effect at the time the earnings are payable, whichever is less.

15 U.S.C. § 1673(a).

The parallelism between the CCPA and the Utah statute—in form and substance, and in their nearly concurrent adoption—dictate the same result in this case as in *Kokoszka*. Most other courts to face this issue side with the Supreme Court in *Kokoszka*. For example, in *In re Lawrence*, 205 B.R. 115 (Bankr. E.D. Tenn. 1997), a bankruptcy court interpreted whether Tennessee’s statutory wage garnishment limitation, which, like Utah’s, was “virtually a copy of the CCPA,” operated as an exemption in bankruptcy. *Id.* at 116, 120. Examining *Kokoszka* and similar cases from lower courts, the bankruptcy court concluded that *Kokoszka* “effectively repudiated the broad claim made by the debtor that the CCPA operates as a de facto exemption in bankruptcy.” *Id.* at 121. As the court recognized, the Supreme Court made clear that “the CCPA was designed to operate prior to bankruptcy, not within it as some sort of an exemption.” *Id.* Therefore, as with the CCPA in *Kokoszka*, the Tennessee garnishment limitation did not create an exemption in bankruptcy. *Id.*

When appealed to the U.S. District Court for Tennessee, that court vigorously analyzed, then wholesale adopted, the bankruptcy court’s holding and rationale. *In re Lawrence*, 219 B.R. 786, 796 (E.D. Tenn. 1998). Because the Tennessee statute “closely modeled” the CCPA and, like Utah’s statute, used “almost the same language verbatim,”

the “only interpretation” the district court could attribute to the actions of the Tennessee Legislature “is that Tennessee accepts *Kokoszka* and does not intend for [Tennessee’s wage garnishment limitation] to create a bankruptcy exemption.” *Id.* at 796. And should bankruptcy occur “despite the protection afforded to consumers by the CCPA, Congress intends that the debtor’s protection from creditors and remedy remains under the bankruptcy code.”⁸ *Id.* (citing *Kokoszka*).

One of the few cases to hold contrary to *Kokoszka* is *In re Stewart*, 32 B.R. 132 (Bankr. D. Utah 1983), which the bankruptcy court in the instant case relied on in sustaining the Debtor’s claimed exemption. *Stewart* attempted to interpret and decide a previously unanswered question of Utah state law. Were *Stewart* persuasive, the Tenth Circuit likely would not have certified these questions to this Court, but rather, it would have deferred to *Stewart* as having already definitively answered those questions. It is apparent that, in light of *Kokoszka*, as well as the numerous other state and federal courts to address the issue, *Stewart* was incorrect in 1983, and it remains incorrect today and

⁸ See also *Smith v. Frazier*, 421 B.R. 513, 518 (S.D. Ill. 2009) (“[O]nce the [debtors] sought bankruptcy protection, the Bankruptcy Code and applicable state and federal property exemption statutes governed their rights and remedies—not the limitation on garnishment of wages contained in [the CCPA.]”); *In re Sikes*, No. 04-30951(2), 2004 WL 2028021, at *1-3 (Bankr. W.D. Ky. Sept. 8, 2004) (adopting *Kokoszka* in refusing to allow the Kentucky statutory wage garnishment limitation, which was “virtually identical” to the CCPA, to function as an exemption in bankruptcy, as the garnishment statute is limited to “pre-bankruptcy actions” and once a bankruptcy petition is filed, “a debtor may not look to [the state garnishment limitation] for protection from the trustee’s reach”); *In re Riendeau*, 293 B.R. 832, 836 (D. Vt. 2002) (deferring to *Kokoszka* in holding that Vermont’s statutory garnishment limitation, which was “modeled after and is the state counterpart” to the CCPA, does not provide an exemption in bankruptcy); *Frazer, Ryan, Goldberg, Keyt & Lawless v. Smith*, 907 P.2d 1384 (Ariz. Ct. App. 1995) (refusing to allow the Arizona garnishment statute to act as an exemption in bankruptcy by noting the similarity between the Arizona statute and the CCPA).

stands ready for correction by this Court. Among other things, it ignored the parallels between the CCPA and the Utah garnishment statute, and it turned a blind eye to the plain language of Utah's garnishment statute which narrowly limits its application to enforcing judgments from consumer credit transactions. Moreover, because *Stewart* is non-binding on this Court, it need not defer to that case or bow to *stare decisis* in answering the certified questions.

In addition, *Stewart* was decided two years before the Utah Legislature revisited, amended, and renumbered the Utah Consumer Credit Code, which modification included a new provision, titled "Interpretation Consistent with Federal Law," which requires courts to give the language in the Utah Consumer Credit Code the same meaning as the language in the CCPA. Utah Code Ann. § 70C-1-301 (requiring that all definitions and terms in the Utah statute have the same meaning as those in the CCPA). Further, there is no Utah legislative history indicating that the Utah Consumer Credit Code's intent was different from that of the CCPA's. These facts, in tandem with the timing of the passage of the CCPA and the Utah statute, and the near identical language used in both, support the conclusion that *Kokoszka* should govern the outcome in the instant case.

As with the CCPA and the many state statutes modeled on the CCPA, Utah's wage garnishment statute "operates at the door of bankruptcy, but not inside." *In re Lawrence*, 205 B.R. 115, 123 (Bankr. E.D. Tenn. 1997). Appellant urges this Court to follow the great weight of national authority, including the U.S. Supreme Court, in holding that Utah's statutory wage garnishment limitation does not create a de facto exemption in bankruptcy, but merely limits a judgment creditor's rights outside

bankruptcy.

B. Utah's Garnishment Statute Is Not Tantamount To A Wage Exemption Because The Statute Does Not Provide Full And Permanent Sequestration Of Wages From Creditors, As An Exemption Requires.

In this case, the Debtor does not seek to limit the amount of his earnings that may be garnished in a pay period to enforce payment of a judgment that arose from a consumer credit agreement. Rather, he uses Utah's garnishment statute to limit the Trustee's 100% recovery of a judgment against the P.C. for the turnover of unpaid Pre-petition Wages that the P.C. owes to the Debtor's bankruptcy estate under various employment (not consumer credit) contracts. In effect, he is seeking exemption of a portion of the Pre-petition Wages in bankruptcy, but Utah's garnishment statute is not a bankruptcy exemption. As the court said in *Lawrence* in interpreting Tennessee's garnishment limitation statute (also based on § 1673), a statutory garnishment limitation is not an exemption statute. 219 B.R. 786 (E.D. Tenn. 1998). That court reasoned that property is exempt only if the debtor "can forever sequester the property to himself" by placing it "completely beyond the reach of his creditors." *Id.* at 792. Put another way, property is exempt in bankruptcy only if creditors "thereafter are forever prohibited from attaching, seizing and executing" on the property. *Id.*; see also *Stewart*, 32 B.R. at 139 (recognizing that a debtor's property is exempt if it is protected from judicial process).

Section 70C-7-103 does not "exempt" wages under the bankruptcy code. The Utah statute does not "forever prohibit[] [creditors] from attaching, seizing and executing" on the property. Rather, the statute merely limits the amount of disposable earnings that a creditor may garnish from an employer. Therefore, Utah's garnishment

statute merely limits a judgment creditor garnishment remedy outside of bankruptcy but does not create an exemption within bankruptcy.

II. EVEN IF § 70C-7-103 CREATED AN EXEMPTION IN BANKRUPTCY, DEBTOR'S PRE-PETITION WAGES ARE NOT "DISPOSABLE EARNINGS" UNDER THE STATUTE.

Even assuming *arguendo* that § 70C-7-103 exempted disposable earnings in bankruptcy, that statute would still not protect the Debtor's Pre-petition Wages because they are not "disposable earnings" within the meaning of the statute.

The Utah garnishment statute defines "disposable earnings" as "that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld." Utah Code Ann. § 70C-7-103(1)(a).

This Court has previously analyzed this definition in *Funk v. Utah State Tax Comm'n*, 839 P.2d 818 (Utah 1992). In *Funk*, the Court considered the same issue as in *Kokoszka*: whether a tax refund constitutes "disposable earnings" within the meaning of a statutory garnishment limitation. *Id.* at 821. The Court looked closely to *Kokoszka* to guide its decision, and it recognized that the "*Kokoszka* rationale regarding the CCPA applies equally to the almost identical language of [the Utah Garnishment laws]." *Id.* The Court went on to adopt *Kokoszka's* reasoning to hold that, "because of their periodic nature," tax refunds are not protected from garnishment by [Utah's garnishment laws]. *Id.*

Kokoszka also provides insight into whether the Debtor's Pre-petition Wages are "disposable earnings." In that case, the Court held that the petitioner's tax refund was not exempt under § 1673 because it was not "disposable earnings" within the meaning of the

CCPA. *Kokoszka*, 417 U.S. at 651-52. The Supreme Court agreed with the Second Circuit that “the terms ‘earnings’ and ‘disposable earnings,’ as used in [§ 1673] do not include a tax refund but are limited to ‘periodic payments of compensation and do not pertain to every asset that is traceable in some way to such compensation.’” *Id.* And this definition, wrote the Court, is consistent with Congress’ intent to enable debtors to avoid bankruptcy by “regulat[ing] garnishments in its usual sense as *a levy on periodic payments of compensation* needed to support the wage earner . . . on a week-to-week, month-to-month basis.” *Id.* (emphasis added). Thus, because a “tax refund is not the weekly or other periodic income required by a wage earner for his basic support,” and “depriv[ing] him of it will not hinder his ability to make a *fresh* start unhampered by the pressure of preexisting debt,” a tax refund is not “disposable earnings” within the meaning of § 1673. *Id.* (citation and internal quotations omitted).

In this *case*, the Pre-petition Wages do not qualify as “disposable earnings” because they are more analogous to a lump sum tax refund, as in *Kokoszka*, than to “periodic payments of compensation needed to support the wage earner and his family on a week-to-week, month-to-month basis.” Because the Debtor initially disclaimed any interest in the Pre-petition Wages, and because he waited almost five years before claiming that interest, the Debtor cannot claim that he was relying upon the Pre-petition Wages to pay living expenses. Therefore, the Pre-petition Wages are not “disposable earnings.”

III. EVEN IF § 70C-7-103 CREATED AN EXEMPTION IN BANKRUPTCY, AND EVEN IF THE DEBTOR'S PRE-PETITION WAGES ARE "DISPOSABLE EARNINGS," THE DEBTS IN THIS CASE DO NOT "ARIS[E] FROM A CONSUMER CREDIT AGREEMENT."

Even if the Court finds that the § 70C-7-103 is an exemption statute and that the Debtor's Pre-petition Wages are "disposable earnings" within the meaning of the statute, the Pre-petition Wages are still not protected from garnishment by § 70C-7-103 because the debts do not "aris[e] from a consumer credit agreement," but are business/commercial debts or student loan debts.⁹

Utah's garnishment limitation explicitly prohibits its application to situations where credit was extended "primarily for business, commercial, or agricultural purposes," or for loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965, 20 U.S.C. Sections 1070, *et seq.*" Utah Code Ann. § 70C-1-202(2)(a) and (h). This means that a creditor holding a judgment for business debt is not hampered by any limitations.

The unsecured debts identified by the Debtor in his bankruptcy schedules arose from a business/commercial purpose or were student loans—all of which are specifically exempted from coverage of Utah's garnishment statute. Further, the Trustee will pay with the Pre-petition Wages, according to the priorities in the bankruptcy code, debts that

⁹ Section 70C-7-103(2) states, in part, that "[t]he maximum part of the aggregate disposable earnings of an individual for any pay period which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of" The statute explicitly limits its application only to an "extension of credit to the debtor primarily for personal, family, or household purposes." Utah Code Ann. § 70C-1-201 (defining the "[c]overed transactions" for the Utah Consumer Credit Code).

arose from these transactions that are not covered by § 70C-7-103. Specifically, the Trustee seeks the Pre-petition Wages so that he can pay the following unsecured debts, which the Debtor listed on Schedule F of his bankruptcy schedules:

- a. Green Tree Vendor Services: unsecured debt for \$65,00.00;
- b. Information Leasing Corporation: unsecured judgment debt for \$80,000;
- c. Reinhart Investment: unsecured debt to family corporation for \$18,000; and
- d. Utah Board of Regents: unsecured student loan debt in the amount of \$17,100.00 (collectively “**Pre-petition Debts**”).¹⁰

(Applt. Appx. 58-60.)

Thus, the debts at issue did not “aris[e] from a consumer credit agreement.” Accordingly, if the Trustee held a judgment for these debts, he would not be prohibited by § 70C-7-103 from garnishment wages to pay them.

CONCLUSION

For the foregoing reasons, the Court should hold that:

1. Utah Code Ann. § 70C-7-103 does not create an exemption in bankruptcy, but merely limits a judgment creditor’s garnishment remedy outside bankruptcy;
2. Even if § 70C-7-103 creates an exemption in bankruptcy, Pre-petition

¹⁰ The Trustee will also use the Pre-petition Wages to pay administrative expenses incurred in the Debtor’s bankruptcy case, which do not “arise from a consumer credit agreement” because the administrative claimants are not “creditors” within the meaning of the statute. Utah Code Ann. § 70C-1-302 (3) (defining “creditor” as a party who “regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a down payment . . . [and] a party is considered to extend consumer credit regularly only if the party extends credit in the preceding calendar year more than 25 times; or more than five times for a transaction secured by a dwelling”) (emphasis added).

Wages such as those claimed by the Debtor do not qualify as “disposable earnings” under the statute; and

3. Even if § 70C-7-103 does create an exemption in bankruptcy, and the Debtor’s Pre-petition Wages qualify as “disposable earnings” under the statute, the debts in this case do not “aris[e] from a consumer credit agreement.”

RESPECTFULLY SUBMITTED this 5th day of August 2011.

PRINCE, YEATES, & GELDZAHLER
A PROFESSIONAL CORPORATION



Adam S. Affleck
Charles L. Perschon
Attorneys for Trustee/Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 5th day of August 2011, two true and correct copies of the foregoing **BRIEF OF APPELLANT** were mailed, postage prepaid, first class, to each of the following:

Mr. Duane H. Gillman
Mr. Michael F. Thompson
DURHAM, JONES & PINEGAR
111 East Broadway, Suite 900
Salt Lake City, Utah 84111
Attorney for Appellee

Mr. Stephen R. Bailey
2454 Washington Blvd.
Ogden, Utah 84401
Attorney for Appellee

United States Trustee
Ken Garff Building
405 South Main Street, Suite 300
Salt Lake City, Utah 84111



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ADDENDUM

416 Fed.Appx. 761

This case was not selected for publication in the Federal Reporter. Not for Publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1) United States Court of Appeals, Tenth Circuit.

In re Douglas James REINHART, Debtor.
David L. Gladwell, Trustee, Appellant,
v.
Douglas James Reinhart, Appellee.

No. 10-4075. March 22, 2011.

Synopsis

Background: Trustee commenced adversary proceeding against debtor and his professional corporation, seeking to recover at least \$49,000 in salary, bonuses, and interest that debtor earned prior to bankruptcy petition date but which professional corporation either paid to or still owed debtor after petition date. The United States District Court for the District of Utah summarily affirmed decision of the Bankruptcy Court, which stated that 75% of pre-petition wages were exempt. Trustee appealed.

Holdings: The Court of Appeals, Deanell Reece Tacha, Senior Circuit Judge, held that:

1 garnishment restrictions set forth in Consumer Credit Protection Act (CCPA) did not apply in bankruptcy, and
2 question regarding application of Utah code provision governing garnishment would be certified to Utah Supreme Court.

Appeal stayed; Question certified.

West Headnotes (2)

1 Bankruptcy

Property Exempt

Consumer Credit

Restrictions on garnishment

Garnishment restrictions set forth in Consumer Credit Protection Act (CCPA) did not apply

in bankruptcy, to permit Chapter 7 debtor to exempt salary, bonuses, and interest that debtor earned prior to bankruptcy petition date but which debtor's professional corporation either paid to or still owed debtor after petition date, from claims of creditors of estate. Consumer Credit Protection Act, § 303, 15 U.S.C.A. § 1673.

2 Federal Courts

Withholding decision; certifying questions

In adversary proceeding against debtor to recover salary, bonuses, and interest that debtor earned prior to bankruptcy petition date but which professional corporation either paid to or still owed debtor after petition date, question of whether Utah code provision governing garnishment provided for exemption in bankruptcy would be certified to Utah Supreme Court; questions required an intricate and historical analysis of Utah law and public policy, and Utah state courts had not addressed them. West's U.C.A. § 70C-7-103.

Attorneys and Law Firms

*761 Adam Stephen Affleck, Andrew B. Clawson, Aaron B. Millar, Prince, Yeates & Geldzahler, Salt Lake City, UT, for Appellant.

Duane H. Gillman, Michael F. Thomson, Durham, Jones & Pinegar, Salt Lake City, UT, for Appellee.

Before KELLY, Circuit Judge, TACHA, Senior Circuit Judge, and LUCERO, Circuit Judge.

Opinion

ORDER CERTIFYING STATE LAW QUESTION

DEANELL REECE TACHA, Senior Circuit Judge.

On January 28, 2000, Douglas James Reinhart ("the debtor") filed a petition for *762 bankruptcy protection under Chapter 7 of the Bankruptcy Code. On December 30, 2004, Chapter 7 Trustee David L. Gladwell ("the trustee") commenced an adversary proceeding against the debtor and his professional corporation, Douglas J. Reinhart, M.D., P.C.

("the P.C."), seeking to recover at least \$49,000 in salary, bonuses, and interest that the debtor earned prior to the bankruptcy petition date but which the P.C. either paid to or still owed the debtor after the petition date. We refer to this sum of money as the "pre-petition wages."

The debtor claimed that 75% of the pre-petition wages were exempt. He relied on the following authorities in support of the claimed exemption: (1) 15 U.S.C. § 1673, which generally prevents a creditor from garnishing more than 25% of a debtor's aggregate disposable earnings for any workweek;¹ (2) Utah Code Ann. § 70C-7-103, which contains a similar limitation on garnishment under Utah law;² and (3) *In re Stewart*, 32 B.R. 132, 139 (Bankr.D.Utah 1983), which interpreted an earlier version of § 70C-7-103 to hold that "[i]ndividual debtors in bankruptcy in Utah, may claim an exemption in earnings unpaid but earned as of the dates of the filing of their petitions in bankruptcy."

- 1 Section 1673 is titled "Restriction on garnishment." Subsection (a) provides that:

Except as [otherwise] provided ..., the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
 - (2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage ...
- whichever is less.

15 U.S.C. § 1673(a).

- 2 Section 70C-7-103 is titled "Definitions—Limitation on garnishment." Subsection (2) provides that:

The maximum part of the aggregate disposable earnings of an individual for any pay period which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of:

- (a) 25% of his disposable earnings for that pay period; or
- (b) the amount by which his disposable earnings for that pay period exceed 30 hours per week multiplied by the federal minimum hourly wage.

Utah Code Ann. § 70C-7-103(2).

In opposition to the claimed exemption, the trustee argued that § 1673 does not create an exemption in bankruptcy, relying on *Kokoszka v. Belford*, 417 U.S. 642, 94 S.Ct. 2431, 41 L.Ed.2d 374 (1974). The trustee further argued that § 70C-7-103 similarly does not create an exemption in bankruptcy

because: (1) the decision in *Kokoszka* compels such a conclusion; (2) the statute, by its terms, has no application to bankruptcy proceedings; (3) garnishment limitations serve a different purpose than bankruptcy exemptions; and (4) to the extent *In re Stewart* held otherwise, the decision is wrong or has been abrogated by subsequent amendments to § 70C-7-103 and should be disregarded. In the alternative, the trustee argued that even if §§ 1673 and/or 70C-7-103 are bankruptcy exemption statutes, they do not apply in this case because pre-petition wages do not qualify as "disposable earnings" under either statute. Finally, the trustee argued that § 70C-7-103 is further inapplicable in this case because the pre-petition wages were not sought in order to satisfy a debt incurred under a "consumer credit agreement."

Without specifically identifying the basis for its decision, the bankruptcy court overruled the trustee's objection, stating that 75% of the pre-petition wages are exempt under either 11 U.S.C. § 522(b)(2)(A), 15 U.S.C. § 1673, or Utah Code Ann. § 70C-7-103 and *In re Stewart*. The district court summarily affirmed, and this appeal followed.

1 The issue of whether 15 U.S.C. § 1673 provides for an exemption in this case is governed by the Supreme Court's decision in *Kokoszka*. There, the Court instructed that § 1673 does not create an exemption in bankruptcy. *See Kokoszka*, 417 U.S. at 651, 94 S.Ct. 2431 ("In short, the Consumer Credit Protection Act sought to prevent consumers from entering bankruptcy in the first place. However, if, despite its protection, bankruptcy did occur, the debtor's protection and remedy remained under the Bankruptcy Act."). Because the Supreme Court has instructed that § 1673 does not provide for an exemption in bankruptcy, that statutory provision has no bearing on this case. *See Smith v. Frazier*, 421 B.R. 513, 518 (S.D.Ill.2009) ("Stated simply, once the [debtors] sought bankruptcy protection, the Bankruptcy Code and applicable state and federal property exemption statutes governed their rights and remedies—not the limitation on garnishment of wages contained in 15 U.S.C. § 1673"); *see also In re Riendeau*, 293 B.R. 832, 838-39 (D.Vt.2002) (relying on *Kokoszka* in denying the debtor's claim that § 1673 provides an exemption in bankruptcy).

2 The resolution of this appeal, then, turns on whether Utah Code Ann. § 70C-7-103 provides for an exemption in bankruptcy, and, if so, whether the debtor's pre-petition wages are exempt under that statute. Because these questions require an intricate and historical analysis of Utah law and public policy, and because the Utah state courts have yet to address them, we respectfully certify on our own motion, pursuant

to Tenth Circuit Rule 27.1 and Utah Rule of Appellate Procedure 41, the following questions to the Utah Supreme Court:

1. Does Utah Code Ann. § 70C-7-103 create an exemption in bankruptcy, or does it only limit a judgment creditor's garnishment remedy outside bankruptcy?
2. If § 70C-7-103 does create an exemption in bankruptcy, do pre-petition wages such as those claimed by the debtor in this case qualify as "disposable earnings" under the statute?
3. If § 70C-7-103 does create an exemption in bankruptcy, and the debtor's pre-petition wages qualify as "disposable earnings" under the statute, do the debts in this case "aris[e] from a consumer credit agreement"?

We note that the Utah Supreme Court may reformulate these questions if necessary. See *In re W. Side Prop. Assocs.*, 13 P.3d 168, 170-71 (Utah 2000).

CONCLUSION

End of Document

The Utah courts do not appear to have answered the questions before us. Since these questions control the resolution of this appeal, it is appropriate for them to be certified to the Utah Supreme Court. In the interests of comity and federalism, the Utah Supreme Court should be permitted to answer these questions in the first instance if it should choose to do so.

The Clerk of this court shall transmit a copy of this certification order to counsel for all parties. The Clerk will also forward, under the Tenth Circuit's official seal, a copy of this certification order and the briefs and appendices filed in this court to the Utah Supreme Court.

We appreciate the consideration of this request. This appeal is ordered STAYED *764 pending consideration of the certified questions.

Parallel Citations

2011 WL 1048246 (C.A.10 (Utah))

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United States Code Annotated

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter II. Restrictions on Garnishment (Refs & Annos)

15 U.S.C.A. § 1671

§ 1671. Congressional findings and declaration of purpose

Currentness

(a) Disadvantages of garnishment

The Congress finds:

- (1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.
- (2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.
- (3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) Necessity for regulation

On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

Credits

(Pub.L. 90-321, Title III, § 301, May 29, 1968, 82 Stat. 163.)

Notes of Decisions (11)

Current through P.L. 112-24 approved 7-26-11

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United States Code Annotated

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter II. Restrictions on Garnishment (Refs & Annos)

15 U.S.C.A. § 1672

§ 1672. Definitions

Currentness

For the purposes of this subchapter:

(a) The term “earnings” means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term “disposable earnings” means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term “garnishment” means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

Credits

(Pub.L. 90-321, Title III, § 302, May 29, 1968, 82 Stat. 163.)

Notes of Decisions (24)

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United States Code Annotated

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter II. Restrictions on Garnishment (Refs & Annos)

15 U.S.C.A. § 1673

§ 1673. Restriction on garnishment

Currentness

(a) Maximum allowable garnishment

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of Title 29 in effect at the time the earnings are payable, whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions

(1) The restrictions of subsection (a) of this section do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of Title 11.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed--

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of garnishment order or process prohibited

No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

§ 1673. Restriction on garnishment, 15 USCA § 1673

Credits

(Pub.L. 90-321, Title III, § 303, May 29, 1968, 82 Stat. 163; Pub.L. 95-30, Title V, § 501(e)(1) to (3), May 23, 1977, 91 Stat. 161, 162; Pub.L. 95-598, Title III, § 312(a), Nov. 6, 1978, 92 Stat. 2676.)

Notes of Decisions (104)

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United States Code Annotated

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter II. Restrictions on Garnishment (Refs & Annos)

15 U.S.C.A. § 1674

§ 1674. Restriction on discharge from employment by reason of garnishment

Currentness

(a) Termination of employment

No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Penalties

Whoever willfully violates subsection (a) of this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Credits

(Pub.L. 90-321, Title III, § 304, May 29, 1968, 82 Stat. 163.)

Notes of Decisions (29)

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§ 1675. Exemption for State-regulated garnishments, 15 USCA § 1675

United States Code Annotated

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter II. Restrictions on Garnishment (Refs & Annos)

15 U.S.C.A. § 1675

§ 1675. Exemption for State-regulated garnishments

Currentness

The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) and (b)(2) of this title.

Credits

(Pub.L. 90-321, Title III, § 305, May 29, 1968, 82 Stat. 164; Pub.L. 95-30, Title V, § 501(e)(4), May 23, 1977, 91 Stat. 162.)

Notes of Decisions (1)

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United States Code Annotated

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter II. Restrictions on Garnishment (Refs & Annos)

15 U.S.C.A. § 1676

§ 1676. Enforcement by Secretary of Labor

Currentness

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this subchapter.

Credits

(Pub.L. 90-321, Title III, § 306, May 29, 1968, 82 Stat. 164.)

Notes of Decisions (10)

Current through P.L. 112-24 approved 7-26-11

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United States Code Annotated

Title 15. Commerce and Trade

Chapter 41. Consumer Credit Protection (Refs & Annos)

Subchapter II. Restrictions on Garnishment (Refs & Annos)

15 U.S.C.A. § 1677

§ 1677. Effect on State laws

Currentness

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

(1) prohibiting garnishments or providing for more limited garnishment than are allowed under this subchapter, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

Credits

(Pub.L. 90-321, Title III, § 307, May 29, 1968, 82 Stat. 164.)

Notes of Decisions (23)

Current through P.L. 112-24 approved 7-26-11

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West's Utah Code Annotated

Title 70C. Utah Consumer Credit Code (Refs & Annos)

Chapter 1. General Provisions and Definitions (Refs & Annos)

Part 1. Short Title, Construction, General Provisions

U.C.A. 1953 § 70C-1-102

§ 70C-1-102. Purposes--Rules of construction

Currentness

- (1) This title shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) The underlying purposes and policies of this title are:
 - (a) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
 - (b) to prohibit certain unfair practices; and
 - (c) to avoid the duplication of laws and regulations pertaining to consumer credit between state and federal authorities and to supplement applicable federal laws and regulations.

Credits

Laws 1985, c. 159, § 8.

Current through 2011 General Session and First Special Session

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West's Utah Code Annotated

Title 70C. Utah Consumer Credit Code (Refs & Annos)

Chapter 1. General Provisions and Definitions (Refs & Annos)

Part 2. Scope and Jurisdiction

U.C.A. 1953 § 70C-1-201

§ 70C-1-201. Covered transactions

Currentness

Except as provided in Section 70C-1-202, the provisions of this title apply to all credit offered or extended by a creditor to an individual person primarily for personal, family, or household purposes.

Credits

Laws 1985, c. 159, § 8.

Notes of Decisions (4)

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West's Utah Code Annotated

Title 70C. Utah Consumer Credit Code (Refs & Annos)

Chapter 1. General Provisions and Definitions (Refs & Annos)

Part 2. Scope and Jurisdiction

U.C.A. 1953 § 70C-1-202

§ 70C-1-202. Exempted transactions

Currentness

(1) Notwithstanding the exceptions in Subsection (2), parties to a credit transaction that is otherwise exempt from this title may explicitly agree in writing that the transaction is subject to this title. The agreement shall specifically reference Title 70C, Utah Consumer Credit Code.

(2) This title does not apply to any of the following:

(a) any extension of credit:

(i) primarily for business, commercial, or agricultural purposes; or

(ii) to other than a natural person including government agencies or instrumentalities;

(b) any closed-end extension of credit secured by a first lien or equivalent security interest on a dwelling or building lot;

(c) any transaction in securities or commodities accounts in which credit is extended by a broker-dealer registered with the:

(i) Securities and Exchange Commission; or

(ii) Commodity Futures Trading Commission;

(d) any extension of credit:

(i) not secured by:

(A) real property; or

(B) personal property used or expected to be used as the principal dwelling of the consumer; and

(ii)(A) in which the amount financed exceeds \$25,000; or

(B) in which there is an express written commitment to extend credit in excess of \$25,000;

(e) any transaction under public utility or common carrier tariffs if a subdivision of this state or the United States regulates:

(i) the charges for the services involved;

(ii) the charges for delayed payment; and

(iii) any discount allowed for early payment;

- (f) any sale of insurance by an insurer except as otherwise provided in Chapter 6, Insurance;
- (g) any transaction with a party acting as a pawnbroker and licensed by any governmental authority in this state;
- (h)(i) a loan made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965, 20 U.S.C. Sections 1070, et seq.; or
 - (ii) a loan:
 - (A) that finances tuition and other expenses:
 - (I) charged in connection with enrollment:
 - (Aa) at a public or proprietary preprimary, secondary, vocational, or postsecondary school; or
 - (Bb) in any tutorial, continuing education, test preparation, distance- learning, or similar program; and
 - (II) including:
 - (Aa) tuition;
 - (Bb) fees;
 - (Cc) books;
 - (Dd) housing; and
 - (Ee) other expenses;
 - (B) that is:
 - (I) made, insured, or guaranteed under a state program; or
 - (II) made by a federally insured depository institution; and
 - (C) including a loan that consolidates or refinances a loan described in this Subsection (2)(h)(ii); and
 - (i) a rental purchase agreement as defined in Section 15-8-3.

Credits

Laws 1985, c. 159, § 8; Laws 1993, c. 251, § 14; Laws 1994, c. 200, § 87; Laws 2006, c. 161, § 1, eff. May 1, 2006.

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West's Utah Code Annotated

Title 70C. Utah Consumer Credit Code (Refs & Annos)

Chapter 1. General Provisions and Definitions (Refs & Annos)

Part 3. Definitions

U.C.A. 1953 § 70C-1-301

§ 70C-1-301. Interpretation consistent with federal law

Currentness

Except as otherwise defined, all definitions or terms used in this title have the same meaning as when used in the federal Consumer Credit Protection Act, 15 U.S.C. Sections 1601 through 1677, as amended, and its implementing Regulation Z.

Credits

Laws 1985, c. 159, § 8.

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West's Utah Code Annotated

Title 70C. Utah Consumer Credit Code (Refs & Annos)

Chapter 1. General Provisions and Definitions (Refs & Annos)

Part 3. Definitions

U.C.A. 1953 § 70C-1-302

§ 70C-1-302. Definitions

Currentness

As used in this title:

(1) "Agreement" means the bargain of the parties in fact as stated in a written contract or otherwise as found in the parties' language or by implication from other circumstances, including :

- (a) course of dealing ;
- (b) usage of trade ; or
- (c) course of performance.

(2) "Contract" means a document containing written terms and conditions of a credit agreement.

(3)(a) "Creditor" means:

(i) a party :

(A) who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments, not including a down payment ; and

(B) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract;

(ii) an issuer of a credit card that extends either open-end credit or credit that:

(A) is not subject to a finance charge; and

(B) is not payable by written agreement in more than four installments; and

(iii) an issuer of a credit card that extends closed-end credit that:

(A) is subject to a finance charge; or

(B) is payable by written agreement in more than four installments.

(b)(i) For purposes of this Subsection (3), a party is considered to extend consumer credit regularly only if the party extends credit in the preceding calendar year:

(A) more than 25 times; or

(B) more than five times for a transaction secured by a dwelling.

(ii) If a person does not meet the numerical standards described in Subsection (3)(b)(i) in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(4) "Dwelling" means a residential structure attached to real property that contains one to four units including any of the following if used as a residence:

- (a) a condominium unit;
- (b) a cooperative unit;
- (c) a manufactured home; or
- (d) a house.

(5) "Earnings" means compensation paid or payable to an individual or for the individual's account for personal services rendered or to be rendered by the individual whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

(6) "Installment" means a payment upon a debt that is part of a series of payments, each of which is less than the original amount of the debt and scheduled as to a specific amount and due date by agreement of the parties for the purpose of repaying the debt.

(7) "Party" means an individual and any other entity legally capable of entering into a binding contract.

Credits

Laws 1985, c. 159, § 8; Laws 2009, c. 72, § 7, eff. May 12, 2009.

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West's Utah Code Annotated

Title 70C. Utah Consumer Credit Code (Refs & Annos)

Chapter 7. Remedies and Penalties

Part 1. Limitation on Creditors' Remedies (Refs & Annos)

U.C.A. 1953 § 70C-7-103

§ 70C-7-103. Definitions--Limitation on garnishment

Currentness

(1) As used in this part:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any pay period which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of:

(a) 25% of his disposable earnings for that pay period; or

(b) the amount by which his disposable earnings for that pay period exceed 30 hours per week multiplied by the federal minimum hourly wage prescribed by Section 6 (a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C., Section 206 (a) (1), in effect at the time the earnings are payable.

(3) No court may make, execute, or enforce an order or process in violation of this section.

Credits

Laws 1985, c. 159, § 8.

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