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The Eighth Circuit's Bankruptcy Appellate Panel Provides Some Relief To Garnishing Creditors¹

By: Jeanelle R. Lust

In *James v. Planters Bank*, Case No. 00-6083EA (Jan. 24, 2001), the United States Bankruptcy Appellate Panel for the Eighth Circuit determined that it was not a violation of the automatic stay for the creditor, Planters Bank, to refuse to turn over a wage garnishment check received after the debtors (the James) had filed bankruptcy.

In July of 1998, Planters Bank began garnishment proceedings against Mr. James' employer, Siegel Roberts. The garnishment was successful and began paying money to Planters Bank in November of 1998. The James' filed bankruptcy on March 9, 1999. Planters Bank received a check under the garnishment on March 13, 1999, and deposited and kept the money. The James' moved to hold Planters Bank in contempt for violating the automatic stay.

The Court held that Planters Bank did not violate the automatic stay. The Court noted that while the check did not get to Planters Bank until after the bankruptcy was filed, the check was for a portion of wages earned prior to the bankruptcy filing. Therefore, Mr. James no longer had an interest in the garnishment check at the time of the bankruptcy filing. There was no violation of the automatic stay.

Note: Planters Bank was eventually forced to turn over the garnishment check as a preference. But only after the debtors' had pursued litigation to have it declared a preference. The Court specifically noted until such time as there is a court order declaring the garnishment a preference, the bank was under no obligation to turn over any money. Thus if a trustee or debtor fails to petition to declare a garnishment a preference, the creditor should be able to keep the money it has obtained under the garnishment.

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