

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

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May 6, 2002

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Subject: ***In re Michael and Hollee Ford***  
Chapter 7; Bankr. No. 01-10034

Dear Counsel:

The matter before the Court is Trustee William J. Pfeiffer's ("Trustee") objection to Loren Marlette's ("Marlette") proof of claim herein. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and the Court's subsequent order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that the Trustee's objection must be sustained.

**Summary.**<sup>1</sup> Sometime prior to November 1, 2000, Debtor Michael Ford ("Debtor") offered Marlette a job in California. Marlette accepted Debtor's offer and moved to California. Debtor paid Marlette \$1,575.00 per week. Debtor encountered financial difficulties, and both he and Marlette went to work for another company, Cable Express Incorporated ("Cable Express"). Cable Express was only willing to pay Marlette \$1,050.00 per week. For reasons that neither the Trustee nor Marlette have fully explained, Debtor promised Marlette that he would pay Marlette \$525.00 per week to make up the difference between what Marlette had made working for him and what Marlette would make working for Cable Express. Debtor made some, but not all, of the promised payments.

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<sup>1</sup> At the April 2, 2002 hearing on the Trustee's objection, the parties stipulated that the facts are as set forth in their pleadings. Both parties provided additional facts in their supporting letter briefs. As those additional facts are not directly relevant to the Court's decision and were not specifically stipulated to, however, the Court will refer to them only for the purpose of providing additional background.

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Debtor filed for relief under chapter 7 of the bankruptcy code on February 20, 2001. On May 16, 2001, Marlette filed a proof of claim in Debtor's bankruptcy, in which he listed an unsecured claim for \$5,459.37 and a priority claim for \$3,675.00. According to Marlette's proof of claim, the latter sum represented unpaid wages for services performed between November 1, 2000 and February 28, 2001. On February 5, 2002, the Trustee filed an objection to Marlette's claim, in which he objected "generally" to Marlette's unsecured claim. The Trustee also objected to Marlette's priority claim, on the basis that Marlette was employed by Cable Express, not Debtor, during the time in question.

The matter came before the Court on April 2, 2002. As noted above, the parties stipulated that the facts are as set forth in the pleadings. Following the hearing, both parties submitted letter briefs. In his letter brief, the Trustee effectively withdrew his objection to Marlette's unsecured claim and any objection as to the amount of Marlette's priority claim, leaving only the question of whether the latter claim is entitled to priority. The matter was taken under advisement.

**Discussion.** Pursuant to 11 U.S.C. § 507(a), certain claims are entitled to priority, including:

(3) . . . allowed unsecured claims, but only to the extent of \$4,300 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for -

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual . . .

The question of whether a particular claim is in fact a claim for "wages, salaries, or commissions" entitled to priority is determined by the relationship between the claimant and the debtor. See *In re Hutchison*, 223 B.R. 586, 588 (Bankr. M.D. Fla. 1998) ("[T]he scope of this section was intended to apply to the traditional employer-employee relationship rather than mere contractual relationships with the Debtor . . ."); *In re Grant Industries Incorporated*, 133 B.R. 514, 515 (Bankr. W.D. Mo. 1991) ("The key distinction is between those claimants who are truly engaged in a master/servant relationship with the debtor and those who are engaged in a contractual relationship with the debtor.").

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In this case, while sympathetic to Marlette's plight, the Court can find nothing in the record to support a finding that Marlette was employed by Debtor during the 90 days prior to the filing of Debtor's petition. Marlette left Debtor's employ sometime before that to accept a position with Cable Express.<sup>2</sup> Debtor's promise to "make up the difference" between what he had been paying Marlette and what Cable Express was willing to pay Marlette is at most a "contractual arrangement,"<sup>3</sup> not wages, salaries, or commissions for services rendered by Marlette for Debtor.

Under the circumstances, the Court cannot find that an "employer-employee" or "master/servant" relationship existed between Debtor and Marlette after the time Marlette left Debtor's employ to accept a position with Cable Express. Absent such a relationship, the Court cannot conclude that the sum owed by Debtor to Marlette constitutes wages, salaries, or commissions within the meaning of 11 U.S.C. § 507(a)(3). See *Hutchison*, 223 B.R. at 588; *Grant Industries*, 133 B.R. at 515.

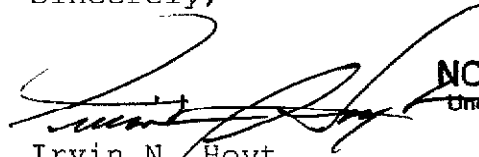
For the foregoing reasons, the Court concludes that Marlette's claim for \$3,675.00 is not entitled to priority. Marlette's total claim of \$9,134.37 is allowed as a general unsecured claim herein. Trustee Pfeiffer shall prepare an appropriate order.

I hereby certify that a copy of this document was electronically transmitted, mailed, hand delivered or faxed this date to the parties on the attached service list.

**MAY 06 2002**

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court, District of South Dakota  
By:     

Sincerely,



Irvin N. Hoyt  
Bankruptcy Judge

**NOTICE OF ENTRY**  
Under F.R. Bankr. P. 9022(a)  
Entered

**MAY 06 2002**

Charles L. Nail, Jr., Clerk  
U.S. Bankruptcy Court  
District of South Dakota

INH:sh

cc: case file (docket original; copies to parties in interest)

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<sup>2</sup> Marlette argues in his letter brief that he was still an employee of Debtor during the time in question. However, in his response to the Trustee's objection, Marlette describes his arrangement with Debtor as a promise "to make up the difference from *what claimant would have been making working for the debtor* as opposed to the lesser paying job with Cable Express" (emphasis added). Marlette thus recognizes, at least implicitly, that he was no longer working for Debtor.

<sup>3</sup> In his letter brief, the Trustee concedes that Debtor's promise to pay and Marlette's reliance thereon gave rise to a unilateral contract.

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