

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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October 27, 1993

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Subject: ***Roberts V. Bill Summers Motors, Inc.***
(In re Randall R. Roberts),
Adversary No. 93-5010
Chapter 7; Bankr. No. 93-50083

Dear Counsel:

I have reviewed the applicable law case that discusses 11 U.S.C. § 547(c) (7). Courts interpreting this provision have concluded: (1) the aggregate preference payments to a particular creditor must total over \$600.00; and (2) if the total is over \$600.00, the entire balance is subject to turnover, not just the amount over \$600.00. See, e.g., *In re Yetter*, 112 B.R. 301 (Bankr. S.D. Iowa 1990); *In re Via*, 107 BR. 91 (Bankr. W.D. Va. 1989).

Based on 547(c) (7) and the case law cited above, I conclude Debtor may recover pre-petition garnishment payments received by Bill Summers Motors only if the total receipts within ninety days before the petition equaled or exceeded \$600.00. Based on the facts presented at the hearing on Plaintiff's Motion for Default on September 8, 1993, it appears that Bill Summers Motors received only \$478.71 within ninety days before the petition. Therefore, pursuant to 547(c) (7) and 522(h), Bill Summers Motors does not have to return that \$478.71 to Debtor.

Section 547(c) (7) does not apply to the \$476.32 post-petition garnishment payments that Bill Summers Motors received and Debtors' present complaint does not address the turnover of those funds. However, to clarify for the parties' benefit, it appears that the automatic stay stopped the garnishment on the

petition date. The Court's order on July 7, 1993 discharged the underlying unsecured debt and essentially extinguished the garnishment. Those post-petition funds, therefore, should be returned to Debtor if the wages were for his services rendered after the petition date or to the Chapter 7 Trustee if the wages were for Debtor's services rendered before the petition [Debtor declared only the pre-petition transfers as exempt property] See 11 U.S.C. § 541 (a) (6). Chapter 7 Trustee Dennis Whetzal or Debtor may need to commence an appropriate turnover action if either believes he is entitled to all or a portion of the \$476.32 and Bill Summers Motors in not willing to voluntarily relinquish the funds.

ou the essence of the case, I find that procedurally we are in an unusual place. The Motion before the Court is Debtor-Plaintiff's Motion for Default. The hearing on September 8, 1993, though, was transformed into a summary judgment hearing by the Court's and counsels' discussion. Since it does not appear that any facts are disputed, I will leave it to the parties to draft an appropriate consent order if no other issues need to be addressed.

is summary procedure or if an evidentiary hearing on other issues is needed, please contact my law clerk, Kay Cee Hodson.

Sincerely,

Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk
Trustee Dennis C. Whetzal

States Trustee