UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of	:	**Case No. 95 - 1914 - DH**
	:	
LOIS MARIE SIVERLY,	:	**Chapter 7**
	:	
Debtor.	:	
- -		
SEARS, ROEBUCK AND CO.,	:	**Adv. No. 95 - 95113**
	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
LOIS M. SIVERLY,	:	
	:	
Defendant.	:	

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ORDER--MOTION FOR SUMMARY JUDGMENT

On February 15, 1996, a telephonic hearing was held on the Plaintiff's Motion for Summary Judgment. Debtor Lois M. Siverly was represented by attorney Steven R. Hahn; Creditor Sears, Roebuck and Co. was represented by attorney Joseph M. Kehoe. At the conclusion of the hearing, the Court took the matter under advisement.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(O). The Court, upon review of pleadings, depositions, interrogatories, admissions on file, and memoranda filed by counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7056.

FINDINGS OF FACT

1. Debtor, Lois M. Siverly, filed a voluntary petition for protection under Chapter 7 of the Bankruptcy Code on June 28, 1995.

2. Plaintiff, Sears, Roebuck and Co. ("Sears"), is a creditor of Debtor by virtue of a Sears Charge credit card.

3. On August 9, 1995, Sears mailed a letter to Debtor's attorney, with a copy sent to Debtor and the chapter 7 Trustee. The letter concerned Debtor's pre-petition debt with Sears, some options available to Debtor, and an offer for Debtor to reestablish a line of credit with Sears by reaffirming the account balance.

4. On August 16, 1995, Debtor's attorney advised Sears that he objected to the sending of the copy of the letter to Debtor. Debtor's counsel threatened to take legal action against Sears for violating Iowa Consumer Credit Code § 537.7103 (5)(e).

5. On August 24, 1995, Sears filed this Adversary Proceeding, seeking a declaratory judgment that Iowa Code § 537.7103 (5)(e) is preempted by federal bankruptcy law and that Sears' actions did not violate federal bankruptcy law. Sears seeks, in the alternative, a declaratory judgment that the correspondence at issue did not violate Iowa Code § 537.7103 (5)(e).

6. A Stipulated Scheduling Order was filed by the parties on November 21, 1995. The parties agreed to a January 15, 1996 deadline for filing dispositive motions. Sears and Debtor both indicated with a check mark that they would be pursuing such a motion.

7. Monday, January 15, 1996, was a legal holiday as used in Fed.R.Bankr.P. 9006(a).

8. On January 16, 1996, Sears filed a Motion for Summary Judgment.

9. A telephonic hearing was held on the Motion for Summary Judgment on February 15, 1996. At the conclusion of the hearing, the Court ordered Debtor to file her resistance to the

motion for summary judgment within seven days and Plaintiff to file a response, if any, within seven days of receipt of the resistance. Further hearing, if any, to be upon further order of the court upon request of the parties or examination of the parties' pleadings by the Court.

10. On February 20, 1996, Debtor filed a Resistance to Motion for Summary Judgment.

11. Sears filed a reply to Debtor's resistance on February 28, 1996.

12. The Court now considers the matter fully submitted.

DISCUSSION

Forty-two days after Debtor filed for protection under chapter 7 of the Bankruptcy Code, Sears sent a letter to Debtor's attorney regarding Debtor's Sears account. Sears mailed a copy of the letter directly to Debtor and a copy to the chapter 7 Trustee. Both the federal Bankruptcy Code and the Iowa Debt Collection Practices Act, Article 7 of the Iowa Consumer Credit Code, prohibit certain acts to collect debts. See 11 U.S.C. § 362 (a)(6), Iowa Code § 537.7103 (5)(e) (1995). Sears asserts that their actions do not violate either code and brought an adversary proceeding, seeking a declaratory judgment that Iowa Code § 537.7103 (5)(e) is preempted by federal bankruptcy law and that they did not violate the automatic stay provisions of bankruptcy law, or, in the alternative, that their actions did not violate the Iowa Consumer Credit Code. Sears argues that the copy of the letter was sent to Debtor for informational purposes only and is a permissible attempt to get a statement of intentions required by 11 U.S.C. § 521. Debtor uses a shotgun approach in opposing Sears' Motion for Summary Judgment. Arguments raised by Debtor include: (1) that Sears may not bring a summary judgment motion because they failed to indicate its potential usage in the Stipulated Scheduling Order, (2) res judicata precludes Sears

from proceeding in this matter, (3) a controversy in the factual setting precludes summary judgment, (4) the letter is a harassing, forceful letter, (5) Sears' actions confuse debtors, and (6) Sears is not entitled to equitable relief because of responses provided to discovery requests in other cases.

The issue properly before the court at this time is whether Plaintiff is entitled to summary judgment on the issue of whether Iowa Code § 537.7103 (5)(e) is preempted by federal bankruptcy law and, if not preempted, whether Sears' conduct violates that provision of the Iowa Code.

A motion for summary judgment is governed by Fed.R.Civ.P. 56, made applicable to bankruptcy proceedings pursuant to Fed.R.Bankr.P. 7056, which provides in pertinent part:

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

In ruling on a motion for summary judgment, the court's function is to determine whether a genuine issue as to any material fact exists, not to resolve any factual issues. See Celotex Corp. v. Catrett, 106 S.Ct. 2548, 2556 (1986). The movant bears the initial burden of asserting that no genuine issue of material fact exists. Id., 106 S.Ct. at 2552-2553. While the facts are viewed in the light most favorable to the nonmoving party, the ultimate burden of demonstrating the existence of a genuine issue of material fact that could affect the outcome of the controversy is on the nonmoving party. See In re Young, 82 F.3d 1407, 1413 (8th Cir. 1996).

Debtor contends that Sears failed to indicate its potential use of a summary judgment motion in the Stipulated Scheduling Order. A review of the Stipulated Scheduling Order filed with this Court on November 21, 1995, proves Debtor's contention is without merit.

Several of Debtor's assertions of factual issues fail to raise issues of material fact in this case. Debtor argues that Sears is not entitled to summary judgment because of a "controversy which exists in the factual setting." He urges that Sears had previously argued in other cases that letters were sent for a purpose other than that proffered in this case. Sears' strategic decisions on how to develop and present theories and arguments in other cases do not create a genuine issue of material fact in the case at bar. Additionally, Sears' responses to discovery requests in other cases and whether Sears' action confuse debtors generally do not create a genuine issues of material fact in this case.

Preclusion

Debtor argues that Sears is not entitled to summary judgment in its favor because of prior state court rulings "dealing with the same type of letter which Sears is sending in this matter and dealing with Sears and with the same attorney for debtors binds Sears under the doctrine of res judicata." If Debtor uses "res judicata" in the generic sense, it can mean either claim preclusion or issue preclusion.

Res judicata, or claim preclusion, precludes relitigation of a cause of action that was or could have been raised in the first action. See Federated Dep't Stores v. Moitie, 452 U.S. 394, 101 S.Ct. 2424 (1981). The doctrine bars a later suit when:

(1) the prior judgment was rendered by a court of competent jurisdiction;
(2) the prior judgment was a final judgment on the merits;
(3) both suits involved the same cause of action (arises out of same nucleus of operative facts); and
(4) both suits involved the same parties or their privies.

See Lane v. Peterson, 899 F.2d 737, 742 (8th Cir. 1990)(cites omitted).

Debtor asserts that Sears is bound by three state court decisions issued by District Associate Judge Thomas R. Brown in the Small Claims Division of Iowa District Court for Des

Moines County: Love v. Sears, No. SC14579 (April 7, 1993), Schier v. Sears, No. SC/SC000190 (Dec. 29, 1993) and Sammons v. Sears, No. SC/SC000244 (Dec. 29, 1993). The debtor in this case, Lois M. Siverly, was neither a party nor a privy to any of the three state court cases. The principle of res judicata, or claim preclusion, does not apply in this case.

As with claim preclusion, issue preclusion is applied only when the party against whom the earlier decision is being asserted had a full and fair opportunity and incentive to litigate the issue in question. See In re Miera, 926 F.2d 741, 743 (8th Cir. 1991). Federal courts are required to afford the same full faith and credit to a state court judgment as would apply in that state. See 28 U.S.C. § 1738; See also In re McNallen, 62 F.3d 619, 624 (4th Cir. 1995)(citing Allen v. McCurry , 449 U.S. 90, 96 (1980)). If state law would preclude litigation, the court must then determine whether any federal statute provides an exception to the application of collateral estoppel in this case. See In re Asbury, 195 B.R. 412, 415 (Bankr. E.D.Mo. 1996). Iowa law on issue preclusion, or collateral estoppel, bars relitigation if four elements are met:

(1) the issue concluded be identical in the two actions;
(2) the issue be raised and litigated in the prior action;
(3) the issue be material and relevant to the disposition of the prior action; and
(4) the determination made of the issue in the prior action be necessary and essential to the judgment.

Hall v. Barrett, 412 N.W.2d 648, 650 (Iowa Ct.App. 1987)(citing Ideal Mut. Ins. Co. v. Winker, 319 N.W.2d 289, 294 (Iowa 1982)).

In each of the three state small claims cases referenced by Debtor, at issue was whether a particular letter sent to each debtor directly by Sears, if it was an attempt to collect a debt, violated Iowa Code § 537.7103 (5)(e). The District Associate Judge found that the letters sent by Sears were an attempt to collect a debt and that such conduct violated the Iowa Code. Copies of the letters sent to Love, Schier, and Sammons are not before this Court. This Court will not

attempt to hypothesize as to whether they are identical to the letter in this case or whether factual differences in them changes how the ultimate issue is framed.

The legal issue of preemption was litigated in state court. The Schier and Sammons decisions were appealed to the Iowa District Court, which determined that federal bankruptcy law did not preempt the provision of the Iowa Code at issue. See Schier v. Sears, No. ACLA000398 (Iowa Dist. Ct. Des Moines County July 21, 1994), Sammons v. Sears, No. ACLA 000397 (Iowa Dist. Ct. Des Moines County July 21, 1994). Sears' application for discretionary review by the Iowa Supreme Court was denied. See Schier v. Sears, No. 94-1331 (Iowa Sept. 19, 1994), Sammons v. Sears, No. 94-1332 (Iowa Sept. 19, 1994). The issue of whether federal bankruptcy law and policy preempted Iowa Code § 537.7103 (5)(e) was determined by a valid and final judgment. The issue was material and relevant to the disposition in the state court action. The determination made on the issue was necessary and essential to the Iowa District Court opinion. No federal statute provides an exception to the application of collateral estoppel in this case. Collateral estoppel, or issue preclusion, precludes relitigation of the preemption issue in this case.

Preemption

Even if collateral estoppel did not apply, this Court would find that Iowa Code § 537.7103 (5)(e) is not preempted by federal bankruptcy law or policy. Sears' claim that the Iowa Consumer Credit Code provision at issue is preempted by the reaffirmation agreement provisions of the Bankruptcy Code is a question of law. Because no fact issue is involved, Summary Judgment is appropriate.

The pertinent portions of the state and federal code sections at issue are:

> 537.7103 Prohibited practices.
> . . .
> 5. A debt collector shall not engage in the following conduct to collect or attempt to collect a debt:
> . . .
> 3. A communication with a debtor when the debt collector knows that the debtor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question, within a reasonable time, or prior approval is obtained from the debtor's attorney or when the communication is a response in the ordinary course of business to the debtor's inquiry.

Iowa Code § 537.7103(5)(e) (1995).

> § 521. Debtor's duties.
> The debtor shall --
> . . .
> (2) if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate --
> (A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to reaffirm debts secured by such property;

11 U.S.C. § 521.

> § 524. Effect of discharge.
> . . .
> (c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under

this title is enforceable only to an extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if --

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;

(2) (A) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim; and

(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of --

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement;

. . .

(f) Nothing contained in subsection (c) or (d) of this section prevents a debtor from voluntarily repaying any debt.

11 U.S.C. § 524.

Although not directly at issue in the instant controversy, the automatic stay imposed by the Bankruptcy Code sets the context in which reaffirmation agreements are negotiated. Unless the stay has been lifted, all reaffirmation negotiations must be done against the backdrop of the provisions of the automatic stay. See 11 U.S.C. §§ 362 (a)(6), 362 (c). The reaffirmation provisions of § 524 must be read in conjunction with the automatic stay provisions, which read in pertinent part:

§ 362. Automatic Stay

. . .

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of --

. . .

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362 (a)(6).

Under the Supremacy Clause of the United States Constitution, state law is preempted whenever it contradicts or interferes with federal law. See U.S. Const. art. VI, cl. 2. Preemption can be either express or implied. When the federal law at issue does not expressly preempt state law, the court "must inquire more deeply into the intention of Congress and the scope of the pertinent state legislation." Hankins v. Finnel, 964 F.2d 853, 861 (8th Cir. 1992)(cite omitted). Congressional intent is found in the text and structure of the federal statute. See CSX Transp. Inc. v. Easterwood, 113 S.Ct. 1732, 1737 (1993)(Federal Railroad Safety Act of 1970). Implied preemption occurs when the state law impedes federal law or policy. See Hines V. Davidowitz, 312 U.S. 52, 67 (1941)(federal Alien Registration Act). Field preemption is implied when the federal law occupies the entire field. See Pacific Gas & Elec. Co. v. State Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190 (1983)(field of radiological safety aspect of nuclear plant development preempted by Atomic Energy Act); Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984)(field of tort remedies available not preempted by Atomic Energy Act). Conflict preemption is implied when the statutes at issue actually conflict and cannot be complied with simultaneously and then preemption is implied only to the extent the statutes are inconsistent. See Fischer v. UNIPAC Service Corp., 519 N.W.2d 793, 798-799 (Iowa 1994)(federal regulations expressly directing direct contact with debtor preempted Iowa Code § 537.7103 (5)(a) prohibiting direct contact

The state code provision at the center of this controversy pertains to creditors communicating with debtors represented by counsel. See Iowa Code § 537.7103 (5)(e). In the Bankruptcy Code, Congress has not expressly preempted state regulation in this field.

Sears urges this court to believe the letter was sent to Debtor in an effort to get a statement of intentions. It is the debtor's duty to file a statement of intentions with the clerk in a timely manner. See 11 U.S.C. § 521. Neither the Code nor the Rules provide authority for a creditor to directly pursue the debtor when the debtor fails to file a statement of intentions with the court. Because § 521 does not provide a basis for creditors communicating directly with debtors represented by counsel, it can not preempt Iowa Code § 537.7103 (5)(e).

Federal Bankruptcy law does not occupy the entire field of communications with debtors represented by counsel in bankruptcy. While the Bankruptcy Code simultaneously prohibits "any act to collect, assess, or recover" a pre-petition claim against the debtor and provides for reaffirmation agreements, it does not regulate the creditor's communications in arriving at a reaffirmation agreement unless their acts to collect, assess, or recover pre-petition claims violate the automatic stay. See 11 U.S.C. § 362 (a)(6). Thus, the federal regulation is limited in scope. The scope of the state regulation is limited to statutorily defined "debt collectors" communicating with represented debtors to collect or attempt to collect debts. See Iowa Code § 537.7103 (5)(e). How communications are accomplished that do not violate the automatic stay and result in a negotiated reaffirmation agreement with a represented debtor is not completely governed by the Bankruptcy Code, but by parameters and standards imposed by other statutes, i.e. state consumer credit and harassment laws, everyday social etiquette, and the Code of Professional Responsibility.

Reaffirmation agreements can be negotiated against the backdrop of the protections afforded debtors in bankruptcy while complying with both Codes. The reaffirmation provisions of the Bankruptcy Code distinguish between agreements made with debtors represented by counsel and those not. See U.S.C. §§ 524 (c)(3) and (c)(6)(A); see also 11 U.S.C. § 524 (d). For those represented by counsel, an affirmative duty is placed on the debtor's counsel to ensure the agreement is voluntary, does not impose undue hardship, and that the debtor is fully advised of the legal effect and consequences of reaffirmation agreements and defaults thereof. See U.S.C. § 524 (c)(3). No such duty is imposed on the creditor. Id. The state law provision restricts certain communications by debt collectors with debtors represented by counsel. See Iowa Code § 537.7103 (5)(e). As applied to debtors in bankruptcy, the state statute requires that communications be with debtor's counsel in most cases. As such, this state law does not conflict with the federal reaffirmation provisions, but rather, compliments the Bankruptcy Code. This effect is in line with the statement that principles of law, including bankruptcy, supplement the provisions of the Iowa Consumer Credit Code, not that they preempt it. See Iowa Code § 537.1103.

The state code provision does not impede federal law or policies of the Bankruptcy Code. The 1978 and 1994 amendments to § 524 expanded the availability of reaffirmation agreements beyond redemption or settlement of a dischargeability action, eliminated mandatory hearings on reaffirmation agreements when the debtor is adequately represented by counsel, and requires the attorney's affidavit. These changes were enacted for the purposes of (1) lowering the transaction costs to the parties, (2) minimizing the potential burden on the bankruptcy courts, (3) ensuring the court is properly informed of the reaffirmation agreement so that it may protect debtors from overreaching creditors, and (4) ensuring the debtor is fully aware of his rights to discharge the

debt and the effect of the reaffirmation agreement. See S. Rep. No. 98-65, at 59-60 (1983); H.R. Rep. No. 103-835, at 37 (1994) *reprinted in* 1994 U.S.C.C.A.N. 3340, 3345. The state statute does nothing to interfere with the purposes or policies underlying the reaffirmation provision. To the contrary, the state statute furthers the stated purpose of protecting the debtor from overreaching creditors.

Based on the foregoing, this Court finds that Iowa Code § 537.7103 (5)(e) is not expressly or impliedly preempted by the reaffirmation provisions of the Bankruptcy Code.

Iowa Consumer Credit Code Violation

Sears' alternative claim, alleging no violation of the Iowa Consumer Credit Code, requires determinations of fact and law. Sears' Complaint states that they mailed the letter in question to Debtor's counsel with a copy mailed directly to Debtor and the chapter 7 trustee. Based on the record before this court, neither party alleges that a disputed material fact exists on this issue. Whether Sears' actions of corresponding with Debtor violated the Iowa statute is a matter of law and summary judgment is appropriate.

Sears' argument is that their actions did not violate Iowa Code § 537.7103 (5)(e). In order to be regulated by the state statute, Sears had to be acting as a "debt collector," defined in the Iowa Consumer Credit Code as a "person engaging, directly or indirectly, in debt collection ...." Iowa Code § 537.7102 (5). Debt collection "means an action, conduct or practice in soliciting debts for collection, or in the collection or attempted collection of a debt." Iowa Code § 537. 7102 (4).

The text of the letter sent to Debtor states in pertinent part:

> We have been notified that your office is representing the above-named debtor in Chapter 7 bankruptcy proceedings.
> . . .

> Section 521 (2)(A) of the Bankruptcy Code provides that a statement of intention as to secured merchandise must be filed within 30 days after the date of the filing of the petition. We have not as yet received a copy of this statement. As a secured creditor, we need to ensure that we are listed on the statement of intention and that we are informed as to your client's intention concerning this account. Under Section 704(3), the Trustee must ensure that the debtor performs the stated intention.
>
> Please advise us of your client's intention as to this account:
> A. Sign Reaffirmation Agreement for the account balance, to be paid in monthly installments.
> B. Redeem merchandise, by making lump sum cash payment only.
> C. Return merchandise to Sears.
>
> If your client should elect to reaffirm for the account balance, a line of credit in the amount of $2,117.00 will be granted immediately to assist in the establishment of a favorable credit history.

Sears argues that the correspondence is not an attempt to collect a debt. Although Sears states its desire is to ascertain Debtor's intentions or to negotiate a reaffirmation agreement, Debtor is offered a line of credit in exchange for his agreement to reaffirm the entire balance of his pre-petition obligation. In this regard it would make no difference whether the debts sought to be collected were secured or unsecured. Sears' correspondence was an attempt to collect a debt. Sears knew Debtor was represented by counsel; they sent the original letter directly to Debtor's counsel. Sears' act of communicating directly with Debtor in an attempt to collect a debt when Sears knew the debtor is represented by counsel violates Iowa Code § 537.7103 (5)(e).

Although this Court finds that Sears' correspondence was an attempt to collect a debt, whether that act violated the automatic stay provision of § 362 (a)(6) need not be addressed in this proceeding.

Ethical Violation

The Iowa requirement that communications with debtors represented by counsel be through counsel should not surprise bar practitioners. Although the Iowa Supreme Court

adopted the ABA Model Code of Professional Responsibility for Lawyers, with some modifications, in 1972, a majority of the states have adopted the newer ABA Model Rules of Professional Conduct. Under either model, an attorney's contact with opposing parties represented by counsel is regulated. Canon 7 of the ABA Model Rules of Professional Conduct states that "a lawyer should represent a client zealously within the bounds of the law." Disciplinary Rule DR 7-104 further states:

> DR 7-104 Communicating With One of Adverse Interest.
> (A) During the course of his representation of a client a lawyer shall not:
> (1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.
> (2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

Whether the letter was written by counsel, done at the direction of counsel, or by the acquiescence of counsel, it was unethical for Sears to send it to a debtor known to be represented by counsel. See, e.g., E.E.O.C. v. McDonnell Douglas Corp., 948 F.Supp. 54 (E.D.Mo. 1996)(no ethical violation where communications not initiated by counsel); In re Flynn, 143 B.R. 798, 803 (Bankr. D.R.I. 1992)(direct contact by corporation); In re Federal Skywalk Cases, 97 F.R.D. 370, 376-77 (W.D.Mo. 1983)(communications done in presence of counsel).

This court finds Sears' action of communicating directly with a party known to be represented by counsel to be unethical.

ORDER

IT IS THEREFORE ORDERED that the Motion for Summary Judgment is granted insofar as it seeks declaratory relief based on there being no genuine issue of material fact.

IT IS FURTHER ORDERED that federal bankruptcy law and policy do not preempt Iowa Code § 537.7103 (5)(e).

IT IS FURTHER ORDERED that Sears' conduct in this case was an act to collect a debt under Iowa Code § 537.7103 (5)(e).

IT IS FURTHER ORDERED that Sears' conduct in this case violated DR 7-104 (A)(1) of the ABA Code of Professional Responsibility and the ABA Rules of Professional Conduct.

Dated this _____ day of June, 1997.

_____
RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT