

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

CASE NO. 02-20338

ALBERT ARTHUR FORGUE and
JENNIFER LYNNE FORGUE,

Debtors.

DECISION & ORDER

PETER SCRIBNER, AS TRUSTEE,

Plaintiffs,

v.

AP #02-2149

AMERICAN GENERAL FINANCIAL
SERVICES, INC.,

Defendants.

BACKGROUND

On February 1, 2002, Albert Arthur Forgue and Jennifer Lynne Forgue (the "Debtors") filed a petition initiating a Chapter 7 case.

On March 27, 2002, the Debtors' trustee (the "Trustee") commenced an Adversary Proceeding against American General Financial Services, Inc. ("American General"). In his Complaint, the Trustee alleged that the receipt by American General of \$642.65 within ninety days of the filing of the Debtors' petition, as payment on a judgment execution against an account maintained by the Debtors at the Lexington Avenue

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Federal Credit Union, was an avoidable preferential transfer under Section 547(b).

On April 10, 2002, American General interposed an Answer which: (1) did not dispute that it had received the \$642.65 within ninety days of the petition as partial payment of a pre-petition debt while the Debtors were insolvent; (2) asserted that under the exception set forth in Section 547(c)(8),¹ the first \$599.00 of the transfer was not an avoidable preferential transfer; and (3) offered to return \$43.00 to the Trustee as an avoidable preferential transfer.

DISCUSSION

This Court adopts the reasoning and conclusions of the Decisions of the Bankruptcy Courts in *In re Via*, 107 B.R. 91 (Bankr. W.D.Va. 1989) and *In re Vickery*, 63 B.R. 222 (Bankr. E.D.Tenn. 1986). In a consumer debtor case, once the amount of

¹ Section 547(c)(8) provides that:

(c) The trustee may not avoid under this section a transfer -

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600.

11 U.S.C. § 547(c)(8) (2002).

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a transfer or series of transfers to a creditor within ninety days before the filing of the petition exceeds \$599.99, the entire transfer or series of transfers is avoidable if the requirements of Section 547(b) are otherwise met. The first \$599.99 of the transfer or series of transfers is not excepted from avoidance by Section 547(c)(8).

CONCLUSION

The receipt by American General of \$642.65 is an avoidable preferential transfer which shall be returned to the Trustee within ten days of the date of this Decision & Order. The request for costs, expenses and attorney's fees is denied.

IT IS SO ORDERED.

HON. JOHN C. NINFO, II
CHIEF U.S. BANKRUPTCY JUDGE

Dated: May 21, 2002