

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

GEORGIANA H. JUNGELS

Case No. 92-10186 K

Debtor

By a submission of July 12, 1995, Debtor Georgiana Jungels has sought "corrections" to this Court's Order of July 6, 1995. The Court deems this submission to be a motion for reconsideration.

For the following reasons, the motion for reconsideration is denied.

It appears that the Debtor has been engaged in a lengthy battle with the State of New York over money she claims to be owed and which, she claims, have been improperly withheld from her. That battle has been waged in other tribunals, and has never been before this Court in any manner.

The Debtor, however, erroneously asserts that this Court did in fact issue instructions to the State of New York in connection with this Chapter 13 case. That is not so. In fact, what occurred in this case occurs in every Chapter 13 case in which the Chapter 13 Debtor does not submit to the issuance of a "Wage Order" to an employer.

A Wage Order, when issued under authority of 11 U.S.C. § 1325(c), binds any entity from which the Debtor receives income, to pay all or any part of such income to the Trustee.

The Chapter 13 Trustee, in every case, prepares for the Court's signature an "Order to Employer to pay to the Trustee," and he does this whether or not the Wage Order is going to issue to the Debtor's employer. That form order contains provisions compelling a wage deduction and remittance of the deductions to the Chapter 13 Trustee, provisions dissolving certain other deductions, garnishments, and wage assignments, and a provision ordering that the balance of "all earnings and wages of the debtor ... be paid to the aforesaid debtor in accordance with the employer's usual payroll procedures."

In instances like the present case, in which the Wage Order is not going to issue to the employer, but will issue to the debtor instead, the Chapter 13 Trustee puts a black mark through the words "Employer Of" in the title of the Order -- instead of being an "Order to Employer to Pay to the Trustee" the Order becomes an "Order to Pay to the Trustee" and it is served only on the debtor. The boilerplate provisions addressing wage garnishments and the like are simply of no effect; if a debtor making payments himself or herself pursuant to such an order is having difficulty with those payments because some wage execution or other wage deduction has remained on his or her payroll check, then the burden would be upon the debtor and counsel to take suitable steps to have it dissolved or to have a suitable new

order issued directly to his or her employer.¹

It must be emphasized, however, that even in cases in which the Wage Order is actually served by the Chapter 13 Trustee upon the Debtor's employer, that Order is not intended to, does not, and would be jurisdictionally insufficient to, resolve any employment or compensation disputes between the Debtor and his or her employer. That would require plenary proceedings in a competent tribunal. Hence the Order makes reference to the employer's "usual payroll procedures."

The Court has no way of knowing whether the Debtor did or did not know this fact regarding the operation and effect of this Order, but it has become evident to the Court that the Debtor has been attempting to utilize the said Order of this Court (through correspondence and otherwise as attached to her various papers submitted in recent weeks to this Court) against the State of New York. She has claimed elsewhere that the State has disobeyed this Court's Order by failing to pay her the compensation which she believes she is due. (For example, her present submission discloses that she misrepresented the effect of my Order in letters to then-Governor Cuomo and others in letters of February 8, 1992 and February 10, 1992.)

¹If the Wage Order had issued to the employer, on the other hand, the Chapter 13 Trustee might take steps to enforce it, to avoid employment problems for the Debtor that might otherwise arise from any efforts by the Debtor to obtain compliance.

Recently she completed making the \$124.00 per week payments to the Chapter 13 Trustee that were necessary to complete her plan. Having completed her plan, she received her bankruptcy discharge, and a standard form order was issued from this Court releasing her from the Wage Order. She sought to have that Order vacated and she thereby brought to the direct attention of the undersigned Judge for the first time the fact that she was using the earlier Order as the basis for a claim against the State of New York, and she argued to this Court that to release the Order would be to release the State of New York from what she believes was its disobedience of this Court's Order. In response to that argument, and on the record in open court, this Court expressly told this Debtor that the earlier Wage Order was never intended to be served upon, issued to, or to otherwise direct the State of New York, and that this Court was not and would not become involved in any way in her disputes with the State of New York. I invited her to submit an amending order if she wished, and I would consider it. She did submit a proposed Order, and that is the Order that I denied in my Order of July 6, 1995, and it is my Order of July 6 that is the subject of the present motion for reconsideration.

When this Debtor filed her Chapter 13 case in this court in 1992, she was represented by an attorney, Gerald Cohen, Esq. The Court has no way of knowing what advice Mr. Cohen may or may not have given the Debtor regarding the operation and

effect of the Wage Order entered in this case. But it is clear that the Debtor either did not seek or did not obtain adequate counsel regarding the operation and effect of the Wage Order before she sought to wield it as a sword against her opponent, the State of New York.

If she honestly misunderstood its operation and effect, then that is regrettable, but it is not a basis on which to accord her relief against the Chapter 13 Trustee² or on which to lend her assistance in her efforts to obtain satisfaction from the State of New York.

Reconsideration is denied. The Trustee's Final Report and Account is approved. This case shall be closed in the ordinary manner.

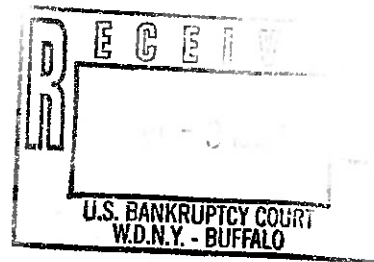
SO ORDERED.

Dated: Buffalo, New York
July 14, 1995

U.S.B.J.

²This Debtor's complaints regarding the Chapter 13 Trustee's disbursement of monies upon a claim of the Internal Revenue Service duly filed in this case are totally without merit. Gerald Cohen's letter of December 30, 1992, was (as I understand it) honored by the Chapter 13 Trustee for the 60-day period which Cohen requested. After that, the Trustee resumed payments to the IRS until he was notified that that claim was settled. His conduct was wholly appropriate. Furthermore, any suggestion that he was under a duty to enforce the Wage Order against the State of New York is specious.

Clerk, U.S. Bankruptcy Court, Buffalo, NY
U.S. Bankruptcy Court WDNY
Western District of New York
Room 310
U.S. Courthouse
68 Court St.
Buffalo, NY 14202



BFNY
95cv 743
Kaplan

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

S U M M A R Y O R D E R

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the city of New York, on the 29th day of May, one thousand nine hundred and ninety-six.

PRESENT: HON. THOMAS J. MESKILL,
HON. ROGER J. MINER,
Circuit Judges,
HON. MORRIS E. LASKER,
District Judge.

IN RE: GEORGIANA H. JUNGELS,
Debtor.

GEORGIANA H. JUNGELS,
Appellant,

v.

STATE OF NEW YORK,
Appellee.

APPEARING FOR APPELLANT: Georgiana H. Jungels, pro se, Buffalo, NY.

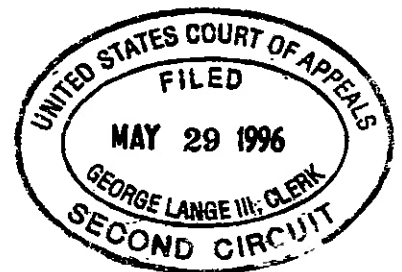
APPEARING FOR APPELLEE: Neal S. Mann, Assistant Attorney General for the State of New York, Buffalo, NY.

UPON CONSIDERATION of this appeal from a judgment of the United States District Court for the Western District of New York, it is hereby

ORDERED, ADJUDGED, AND DECREED that the judgment be and it hereby is AFFIRMED.

This cause came on to be heard on the transcript of record

* The Honorable Morris E. Lasker of the United States District Court for the Southern District of New York, sitting by designation.



95-5092

and was submitted.

Plaintiff-appellant Georgiana Jungels appeals pro se from a judgment entered in the United States District Court for the Western District of New York (Elfvin, J.) affirming an order, entered in the United States Bankruptcy Court, that closed Jungels' Chapter 13 bankruptcy case.

On January 21, 1992, Jungels filed a voluntary petition for bankruptcy. On January 27, 1992, Jungels was ordered by the bankruptcy court to pay \$100 per week to an appointed trustee for the adjustment of her debts. The January 27th order stated, in part, "that all earnings and wages of the debtor . . . be paid to the aforesaid debtor in accordance with the employer's usual payroll procedures." Jungels sent a copy of the January 27th order to her employer, Buffalo State College, and requested that it release all of the salary and benefits that had been unjustly withheld from her so that she could make the payments ordered by the bankruptcy court. Buffalo State directed Jungels' request to the Office of the State Comptroller. The State Comptroller determined that Jungels currently was under suspension without pay from Buffalo State, and therefore that Buffalo State did not owe her any money. Jungels then made the payments to the trustee herself.

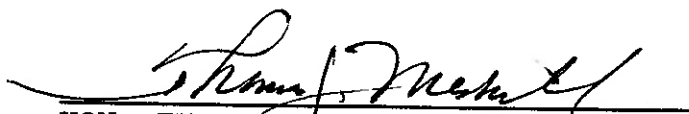
On March 17, 1995, the trustee issued a final report and account, indicating total payments in the amount of \$18,736 and finding that Jungels was entitled to a discharge. The report also showed that a "priority" disbursement had been made to the Internal Revenue Service ("IRS") in the amount of \$971.15. By a June 21, 1995 order, the bankruptcy court discharged Jungels from bankruptcy and closed the estate. At a June 26, 1995 hearing on the discharge order, Jungels alleged that she was improperly discharged from bankruptcy, and that Buffalo State wrongfully withheld money from her, in violation of the January 27th order. Jungels also claimed that she should be refunded the \$971.15 that the appointed trustee had paid to the IRS. The bankruptcy court dismissed Jungels' claims.

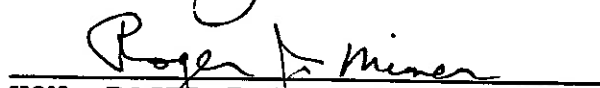
On September 15, 1995, Jungels appealed the bankruptcy court's decision to the district court. The district court construed Jungels' appeal as a challenge to the bankruptcy court's discharge order. The district court determined that Jungels did not wish to be discharged from bankruptcy because she was concerned that the discharge might preclude her from bringing claims in two actions that she had commenced against Buffalo State. The district court found that the bankruptcy court correctly had determined that its discharge order extended no further than Jungels' bankruptcy proceeding and that she would not be prejudiced by the order in her actions against Buffalo State. This appeal followed.

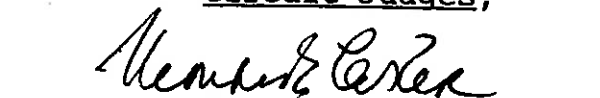
Our review of the district court's decision is plenary. In re Prudential Lines, Inc., 928 F.2d 565, 568 (2d Cir.), cert. denied, 502 U.S. 821 (1991). We will not set aside the bankruptcy court's findings of fact unless they are shown to be clearly erroneous. In re Manville Forest Prods. Corp., 896 F.2d 1384, 1388 (2d Cir. 1990).

Jungels incorrectly believes that the January 27th order of the bankruptcy court had the effect of forcing Buffalo State to release wages allegedly owed to her. Consequently, she believes that an order of discharge will estop her employer from paying the withheld wages. However, the January 27th order cannot be construed as ordering Buffalo State or any other party to pay money to Jungels. Furthermore, the question of whether she is owed money by Buffalo State currently is being litigated in another forum where she can obtain appropriate relief.

Jungels also alleges in vague terms that the \$971.15 payment to the IRS was improper and that the trustee should refund the payment to Jungels. A tax deficiency determination by the IRS is presumed to be correct in a judicial proceeding, and the taxpayer bears the burden of proving by a preponderance of the evidence that the determination is erroneous. Schaffer v. Commissioner of Internal Revenue, 779 F.2d 849, 857-58 (2d Cir. 1985). Because Jungels has not proven that the determination by the IRS was invalid or improperly calculated, this claim was properly dismissed.


HON. THOMAS J. MESKILL,


HON. ROGER J. MINER,
Circuit Judge,


HON. MORRIS E. LASKER,
District Judge.