BENEFICIAL CONSUMER : IN THE COURT OF COMMON PLEAS OF DISCOUNT COMPANY, : LYCOMING COUNTY, PENNSYLVANIA

Plaintiff

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vs. : NO. 04-00,999

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JACLYN E. RZEPLINSKI and

JOSEPH RZEPLINSKI :

a/k/a JOSEPH M. RZEPLINSKI :

and

WEST BRANCH VALLEY

CREDIT UNION, :

Defendants : CLAIM FOR EXEMPTION

Date: April 7, 2005

## **MEMORANDUM OPINION and ORDER**

Before the court for determination is the Claim for Exemption of Defendants Jaclyn E. and Joseph Rzeplinski (hereafter "Rzeplinskis") filed September 30, 2004. The court will grant in part and deny in part the claim.

Plaintiff Beneficial Consumer Discount Company (hereafter "Beneficial") instituted this suit by filing a complaint on June 21, 2004 seeking to recover a debt owed by the Rzeplinskis pursuant to a loan agreement. A default judgment in the amount of \$8,330.53 plus interest at the rate of six percent per annum was entered against Rzeplinskis on August 10, 2004. Rzeplinskis had a number of accounts with West Branch Valley Credit Union (hereafter "West Branch"). A writ of execution was issued on August 27, 2004 naming West Brach as garnishee. West Branch was served with a copy of the writ of execution on September 9, 2004.

Rzeplinskis filed a Claim for Exemption on September 30, 2004. They contend that the contents of their accounts with West Branch are exempt from execution. Rzeplinskis argue tha the contents of the accounts are social security proceeds.

Two evidentiary hearings were held regarding the Claim for Exemption. The first was held on February 14, 2005. The second was held on March 18, 2005. Beneficial and Rzeplinskis attended both hearings. West Branch did not attend either hearing despite apparently having notice of them. From these evidentiary hearings, the following facts have been deduced.

Rzeplinskis had three accounts with West Branch. Account number 11726-00S and number 11837-00S respectively were savings account, while account number 11726-20S was a checking account. Beneficial introduced a packet of documents, which contained records from West Branch indicating the activity of Rzeplinksis' accounts. The packet was admitted into evidence as Exhibit B. The records show that deposits were noted as follows: "US TREASURY 303," "AUTO TRAKK S," and "(WMRX)."

The notation "US TREASURY" indicates a deposit of social security proceeds. "AUTO TRAKK S" indicates a deposit of Jaclyn Rzeplinski's paycheck. The notation "(WMXR)" indicates a deposit of loan funds received from Jaclyn Rzeplinski's mother.

The note to Pa.R.C.P. 3123.1 lists the major exemptions of property from execution. Included in that list is an exemption pursuant to 42 U.S.C. §407 for social security benefits. The evidence produced demonstrates that only the amounts in the account numbered 11837-

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<sup>&</sup>quot;The right of any person to any future payments under this title [42 USCS §§ 401 et seq.] shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or the rights existing under this title [42 USCS §§ 401 et seq.] shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law." 42 U.S.C. §407(a).

00S are exempt from execution. The records indicate that the money deposited in that account was from social security proceeds. This is indicated by the "US TREASURY" notations found in the records. Accordingly, the amounts held in account number 11837-00S are exempt from execution by Beneficial.

The amount held in accounts number 11726-00S and 11726-20S are not exempt from execution. The records indicate that the amounts in account number 11726-00S were transferred from account number 11726-20s. The records indicate that the amounts in account number 11726-20S were deposits from Jaclyn Rzeplinski's paycheck and loans from her mother. As such, these deposits are not exempt from execution as being social security proceeds.

Accordingly, the claim for exemption is granted in part and denied in part.

## **ORDER**

It is hereby ORDERED that the Claim for Exemption of Defendants Jaclyn E. and Joseph Rzeplinski filed September 30, 2004 is GRANTED IN PART and DENIED IN PART.

The claim is GRANTED in that the amounts held in the account numbered 11837-00S at West Branch Valley Credit Union are social security proceeds and exempt from execution.

It is further ordered that any deposits that are indicated in the account records as "US TREASURY 303" are exempt as social security proceeds.

The claim is DENIED in that the amounts held in the account numbered 11726-00S and the account numbered 11726-20S are not social security proceeds and are not exempt from execution.

## BY THE COURT:

William S. Kieser, Judge

cc: Melissa A. Shenkel, Esquire

375 Southpointe Boulevard, 4<sup>th</sup> Floor, Canonsburg, PA 15317

Jaclyn E. Rzeplinski,

811 Second Street, Williamsport, PA 17701

Joseph Rzeplinski,

811 Second Street, Williamsport, PA 17701

West Branch Valley Credit Union

1542 East Third Street, Williamsport, PA 17701

Judges

Christian J. Kalaus, Esquire

Gary L. Weber, Esquire (Lycoming Reporter)