

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:

TONY W. BRUCE and  
DAWN M. BRUCE,

Bankruptcy Case No. 02-33071

Debtors.

SUGAR LOAF TOWNSHIP,  
a Municipal Corporation,

Plaintiff,

vs.

Adversary Case No. 02-3287

TONY W. BRUCE and  
DAWN M. BRUCE,

Defendants.

OPINION

This matter having come before the Court for trial on a Complaint Objecting to Dischargeability of Debt filed by Plaintiff, Sugar Loaf Township; the Court, having heard arguments of counsel and having reviewed the written memorandum of law filed by the Plaintiff and the record of Debtors' bankruptcy proceeding, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

The material facts in this matter are not in dispute and are, in pertinent part, as follows:

1. On November 19, 2002, Creditor, Sugar Loaf Township, filed the instant Complaint Objecting to Dischargeability of Debt alleging that certain penalties assessed against Debtors for unpaid sewer services were non-dischargeable in Debtors' Chapter 7 bankruptcy pursuant to 11 U.S.C. § 523(a)(7).

2. On December 18, 2002, Debtors filed an Answer to Complaint Objecting to Dischargeability of Debt in which they denied that the penalties at issue were non-dischargeable in their Chapter 7 bankruptcy as alleged in the Complaint.

3. On January 15, 2003, a pre-trial hearing was held at which time counsel for Plaintiff, Joel Drury, and counsel for Defendants, William Mueller, were both present. The trial in this matter was scheduled for June 2, 2003, at 9:00 a.m., in East St. Louis, Illinois.

4. On February 3, 2003, counsel for Defendants/Debtors, William Mueller, filed a Motion to Withdraw as Attorney for Defendants stating as cause that the Defendants had stopped payment on a retainer check, and that, as a result, Attorney William Mueller was no longer willing to represent the Defendants/Debtors.

5. On February 4, 2003, an order was entered allowing Attorney William Mueller to withdraw, and that order was duly served upon the Defendants/Debtors. Trial on the Complaint Objecting to Dischargeability of Debt remained scheduled for June 2, 2003, and the Defendants/Debtors were notified of this fact.

6. At trial, on June 2, 2003, Defendants/Debtors failed to appear, and the Plaintiff proceeded with its case requesting that penalties on past-due sewer bills, in the amount of \$5,449.05, be declared non-dischargeable in Defendants/Debtors' bankruptcy pursuant to 11 U.S.C. § 523(a)(7).

7. At the close of trial on June 2, 2003, the Court granted the Plaintiff a period of 21 days in

which to file supporting documentation concerning calculation of the alleged penalties and legal argument concerning dischargeability of the subject penalties under 11 U.S.C. § 523(a)(7).

8. On June 19, 2003, Plaintiff, Sugar Loaf Township, filed a Brief Explaining Penalties, in which it set out the calculation of the penalties alleged in the Complaint, and also supplied case law concerning the non-dischargeability of the subject penalties pursuant to 11 U.S.C. § 523(a)(7).

#### Conclusions of Law

In its Brief Explaining Penalties, filed with the Court on June 19, 2003, Plaintiff, Sugar Loaf Township, sets out an accounting showing that, as of the date Defendants/Debtors filed their bankruptcy petition on August 23, 2002, they owed Plaintiff the sum of \$6,790.75 in past-due sewer bills, of which \$1,341.90 were actual charges and \$5,449.05 were penalties assessed pursuant to Ordinance No. 18-1981 of Sugar Loaf Township, St. Clair County, Illinois. The accounting submitted by Plaintiff established that, between January 1, 1998, until the Defendants/Debtors filed for relief under Chapter 7 of the Bankruptcy Code, in August 2002, the Defendants/Debtors failed to pay current sewer charges as they came due, and that, as a result, penalties accrued on their account as provided for under Ordinance No. 18-1981 of the Sugar Loaf Township. The total penalties involved in the instant action, as calculated on the accounting provided by the Plaintiff, was in the amount of \$5,449.05, as of August 23, 2002, the date which Defendants/Debtors filed for relief under Chapter 7 of the Bankruptcy Code.

In addition to supplying an accounting of the penalties which Plaintiff requested be declared non-dischargeable in Defendants/Debtors' bankruptcy proceeding, Plaintiff supplied the case of In re Johnson, Bankruptcy Case No. 87-30691, Adversary Proceeding No. 87-0171 (Bankr. S.D. Ill.), in which the Bankruptcy Court for the Southern District of Illinois was upheld on appeal by the United States District

Court in Case No. 88-3508, where it was found that penalties assessed by Plaintiff, Sugar Loaf Township, in a case similar to the instant case were non-dischargeable in debtors' bankruptcy case pursuant to 11 U.S.C. § 523(a)(7). In Johnson, the United States District Court found that the issue at hand was whether or not late charges are dischargeable under 11 U.S.C. § 523(a)(7). In finding for the plaintiff, the District Court stated:

Whether a penalty payable to the government is exempt from discharge turns on whether the penalty is imposed for compensatory reasons or to punish the wrongdoer. Only if the penalty is imposed for punishment of the wrongdoer is the debt arising from the penalty nondischargeable [sic] under sec. 523(a)(7). In re Stelweck, 86 Bankr. 833, 851-52 (Bankr. E.D. Pa. 1988).

In comparing the facts of the instant case with the facts in Johnson, this Court concludes that the penalties charged against the Defendants/Debtors in the instant case are not penalties imposed for compensatory reasons, but are rather imposed to punish Defendants/Debtors for non-payment of their sewer bills. Accordingly, the late payment penalty charges in the amount of \$5,449.05 are non-pecuniary in nature and are non-dischargeable in Defendants/Debtors bankruptcy proceeding pursuant to 11 U.S.C. § 523(a)(7).

ENTERED: June 24, 2003.

/s/ Gerald D. Fines  
United States Bankruptcy Judge