

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

IN RE:)
STEPHEN E. KESSLER,)
Debtor.) Bankruptcy Case No. 93-31315
_____)
KARL VON EITZON and ERIKA)
VON EITZON; NORMAN R. BENDER)
and DONNA J. BENDER;)
SAUL L. STOCKMAN and)
FLORENCE K. STOCKMAN,)
as Trustees; and MARILOU DINAH,)
Plaintiffs,)
and) Adversary Case No. 95-3007
DONALD HOAGLAND, Trustee,)
Intervening Plaintiff,)
vs.)
STEPHEN E. KESSLER,)
Defendant.)

OPINION

This matter having come before the Court on two Petitions for Order of Contempt filed by the Plaintiffs herein; the Court, having heard arguments of the parties and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The instant Petitions for Order of Contempt were filed by the Plaintiffs based upon the fact that the Debtor/Defendant has failed to make scheduled payments pursuant to this Court's Order of October 21, 1996, finding a debt to the Plaintiffs to be nondischargeable pursuant to 11 U.S.C. § 523. At hearing, on August 24, 1998, the Court was advised that the Debtor/Defendant had, in fact, just made

payments to the Plaintiffs prior to the hearing. However, the Plaintiffs requested that attorneys' fees be awarded for the Debtor/Defendant's continued failure in making timely payments as ordered by the Court.

In reviewing the history of the instant adversary proceeding, the Court finds that this is not the first time that the Debtor/Defendant has failed to make scheduled payments, and there have been previous Petitions for Orders of Contempt as a result. As such, the Court ordered attorneys for the Plaintiffs to file accountings as to their fees in order to determine an appropriate award for the Debtor/Defendant's inability to make timely payments. The Court has now received those fee accountings from both attorneys, Andy Scharf and Steve Wallace.

In considering the fee accountings filed by Plaintiffs' attorneys, it is apparent that on several occasions it has become necessary for the Plaintiffs' attorneys to either communicate with the Debtor/Defendant or his counsel regarding late payments; and, in more than one instance, it has become necessary for the Plaintiffs to file Petitions for Orders of Contempt in an attempt to maintain the stream of payments due from the Debtor/Defendant as ordered by the Court on October 21, 1996. Even though the Debtor/Defendant has apparently made payments in response to the most recent Petitions for Orders of Contempt, the Court finds it appropriate to award attorneys' fees for both Andy Scharf and Steve Wallace as a reminder to the Debtor/Defendant that he has an obligation to make timely payments pursuant to the judgment of October 21, 1996. Based upon the fee accountings filed by Plaintiffs' attorneys, the Court finds it appropriate to award the sum of \$500 each to Andy Scharf and Steve Wallace as a sanction for the Debtor/Defendant's continued failure to make timely payments. The Court also finds that Debtor/Defendant should pay the sum of \$500 directly to both Andy Scharf and Steve Wallace on or before December 15, 1998.

ENTERED: October 22, 1998.

**/s/ GERALD D. FINES
United States Bankruptcy Judge**