



appeared on behalf of the State of Utah, Camille Anthony, and Gwen Anderson, hereinafter collectively referred to as (the "State"). After considering argument of counsel and the pleadings before it, the Court now issues the following Findings of Fact, Conclusions of Law, and Judgment.

**FINDINGS OF FACT**

1. The Debtor is a debtor in a Chapter 7 bankruptcy.
2. In August 1997, a judgment sentence was entered in Third Judicial District Court ordering Debtor to pay restitution to the State in the amount of \$239,969.
3. The sentence was entered in conjunction with Debtor's criminal sentence.
4. In October 2001, the Third District Court terminated Debtor's remaining probation and turned the restitution portion of the criminal sentence over to the Office of State Debt Collection.
5. The Court finds the issue of whether or not the restitution was "converted" to a civil judgment to be irrelevant to its analysis, and for purposes of this analysis, will assume that at all times, the restitution judgment remained criminal in nature.
6. The restitution payments made by the Debtor have been turned over to the victim of the crime.
7. Debtor properly listed the State of Utah in his schedules and statement and there is no dispute that the State received notice of the Debtor's bankruptcy.
8. Debtor was granted a Chapter 7 discharge.
9. The State has continued to attempt collection of the restitution judgment.

## CONCLUSIONS OF LAW

This Court adopts the reasoning set forth in the Seventh Circuit Court of Appeals' opinion of In re Towers, 162 F.3d 952 (1999) wherein the Circuit analyzed the provisions of § 523(a)(7) to name three elements that must be met in order to except a restitution debt from discharge. The three elements are, that the debt must reflect: 1) a fine, penalty or forfeiture; 2) payable to and for the benefit of a governmental unit; 3) that it is not compensation for actual pecuniary loss. It is undisputed by the parties that the restitution order was in the form of a fine or penalty and thereby satisfies the first element of § 523(a)(7). The undisputed facts as they apply to the second and third elements of § 523(a)(7) are analyzed as follows.

### The Restitution must be paid to and for the Benefit of a Governmental Unit

The court finds that the second element of § 523(a)(7) requires restitution to be both 1) payable to a governmental unit and 2) for the benefit of a governmental unit. It is not sufficient that a restitution payment simply be made to the governmental unit. Had Congress required only that restitution be payable to a governmental unit, this ruling would be easy and the State would prevail on this issue. The problem is that Congress imposed both requirements, the second of which requires that a restitution payment benefit the governmental unit.

The State relies heavily upon the analysis found in Kelly v. Robinson 479 U.S. 36 (1986), which discusses the issue of "benefit of a governmental unit" in dicta. Kelly v. Robinson is distinguishable. The victim in Kelly v. Robinson was a governmental unit entitled to keep the restitution payment and thereby benefit directly from receipt of the restitution payment. Here, the State concedes that restitution payments are not kept by the State. They are forwarded by the

State to the victim.

Payments benefit an entity when that entity gets to keep the money. A payment benefits a governmental unit when the payment goes into the governmental unit's coffers and stays there. Were the Court to determine that the State benefits from restitution payments forwarded the victim, it would be hard to imagine any circumstance where the State would not benefit from restitution payments. Such an interpretation would effectively "write out" the benefit requirement placed in § 523(a)(7) by Congress.

The words of the statute require that a governmental unit benefit from the payment. The plain meaning of legislation should be conclusive, except in the rare cases in which the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters. U.S. v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242, 109 S. Ct. 1026, 1031(1989). There is nothing demonstrably at odds with interpreting the intention of Congress to require that a governmental unit to both take receipt of a payment, and keep it in order for the stream of payments to be excepted from discharge. The Bankruptcy Code has many provisions that favor and prioritize the government's interests over other creditors. Such a provision is not at odds with the intent of Congress, in fact it is in harmony with the consistent intent of Congress to favor the government over other creditors.

Because the victim, and not the State benefits from payment of Debtor's restitution, the restitution here is not excepted from discharge under the second element of § 523(a)(7).

#### The Restitution Must Not Compensate for Actual Pecuniary Loss

Addressing the third element of § 523(a)(7), that the restitution not be in compensation

for actual pecuniary loss, the Court must look to the nature of the restitution payment to determine whether or not it compensates for actual pecuniary loss. The Supreme Court of Utah in Monson v. Carver, 928 P.2d 1017, 1027 (1996), states that:

[I]t is clear from the legislative scheme that restitution is not a 'punishment' but a civil penalty whose purpose is entirely remedial, i.e., to compensate victims for the harm caused by a defendant and whose likely intent is to spare victims the time, expense, and emotional difficulties of separate civil litigation to recover their damages from the defendant.

In addition, Utah Code Annotated § 76-3-201(1)(c) limits restitution to an amount which is necessary to compensate a victim for losses's caused by the defendant. A penalty assessed to defray costs is not excluded from discharge by § 523(a)(7). Williams v. Motley, 925 F.2d 741, 745 (4th Cir. 1991). Because Utah law defines restitution as being compensatory in nature and not as punishment, Debtor's restitution is not excepted from discharge under the third element of § 523(a)(7). The Court does not now decide, because the question is not before it, the issue of whether or not restitution payments made during an ongoing period of probation would be excepted from discharge under § 523(a)(7).

#### Section 523(a)(7) is Not the Appropriate Remedy

Here, the court has before it a debtor who pled guilty to the crime of arson. Congress dealt with claims such as this by enacting Code § 523(a)(6) which exempts debts that stem from willful and malicious injury by the debtor to another entity or to the property of another entity. The underlying facts of the Debtor's actions appear to "fit" the provisions of § 523(a)(6). There is no reason to treat a victim of a willful and malicious injury that is benefitted by a criminal restitution order any differently than any other victim of a willful and malicious injury, unless

1) the restitution is a fine, penalty or forfeiture; 2) that is payable to and benefits a governmental unit and 3) the restitution is not compensation for actual pecuniary loss. The facts before the Court today do not fit the requirements set forth under § 523(a)(7).

The Automatic Stay Was Not Knowingly Violated

Because this is an issue of first impression within this Circuit, the State did not knowingly violate the automatic stay and the Court will award no damages in favor of the Debtor with respect to any violation of the automatic stay.

Based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED that the Debtor's Motion for Partial Summary Judgment is hereby granted, and it is further;

ORDERED that the State's Motion for Summary Judgment is DENIED, and it is further;

ORDERED that Debtor is awarded no damages as a result of any violation of the automatic stay.

DATED this 8 day of March, 2005.

BY THE COURT:



GLEN E. CLARK, CHIEF JUDGE

UNITED STATES BANKRUPTCY COURT