

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
KENNETH DOUGLAS PETERSON &)
KELLY CHRISTINE PETERSON,)
)
Debtor(s).)

KELLY CHRISTINE PETERSON ,)
)
Plaintiff,)
)
vs.)
)
A-1 STAFFING, INC.; A-1 CAREERS, INC.;)
PUTMAN, INC.; and BRUCE PUTMAN,)
)
Defendants.)

CASE NO. BK10-83302-TLS
A11-8080-TLS

CHAPTER 7

ORDER

This matter is before the court on the defendants’ motion for summary judgment and motion to dismiss (Fil. No. 11) and resistance by the debtor plaintiff (Fil. No. 18). Thalia Downing Carroll represents the plaintiff, and Lisa M. Peters represents the defendants. No briefs or evidentiary materials were filed. Pursuant to the court’s authority under Nebraska Rule of Bankruptcy Procedure 7056-1, the motions were taken under advisement without oral arguments.

The motion for summary judgment is denied. The motion to dismiss is granted.

The plaintiff filed this adversary proceeding alleging that the defendants withheld commissions and wages owed to her in violation of the discharge injunction of 11 U.S.C. § 524 and the Nebraska Wage Payment and Collection Act at Neb. Rev. Stat. §§ 48-1228 through -1232. The defendants have moved for summary judgment on the discharge injunction claim and have moved to dismiss the state law claims.

The plaintiff allegedly signed an employment agreement in June 2008 with Putman, Inc., which operates a national professional placement firm. The plaintiff’s compensation was based at least in part on the amount of revenue she generated for Putman. According to the parties, the contract also permitted the plaintiff to make weekly draws against future commissions. Putman would deduct the advances from the monthly commission payments to the plaintiff. When the plaintiff and her husband filed a Chapter 7 bankruptcy petition in November 2010, she owed Putman more than \$13,000, which was listed as an unsecured non-priority debt on the bankruptcy schedules. The debtors obtained a discharge in February 2011. Putman continued to deduct amounts evidently for both pre- and post-petition advances from the plaintiff’s compensation throughout the remainder of her employment with the company. She left in May 2011. The defendants characterize the

deductions as recoupments, allowable under the Bankruptcy Code and the terms of the parties' contract.

Recoupment is a limited exception to the basic premise of a bankruptcy discharge.

The Eighth Circuit Court of Appeals recognizes recoupment in the bankruptcy setting as an equitable principle that allows a creditor in bankruptcy to avoid full liability for a debtor's claim "because of matters arising out of the transaction sued on." *United States v. Dewey Freight System*, 31 F.3d 620, 622–23 (8th Cir. 1994) (quoting 4 Collier on Bankruptcy ¶ 553.03, at 553–17 (15th ed. 1994)). That is, recoupment allows "a creditor to recoup a pre-petition claim by reducing its obligation to pay for a bankrupt's post-petition services." *Dewey Freight System*, 31 F.3d at 623. Recoupment is a narrow exception to the general principle of bankruptcy law that once a petition in bankruptcy is filed, "debts that arose before the petition may not be satisfied through post-petition transactions." *Id.* (quoting *In re B & L Oil Co.*, 782 F.2d 155, 158 (10th Cir. 1986)).

To prevent creditors from "using recoupment to gain unwarranted preferences, courts require that 'the creditor . . . have a claim against the debtor that arises from the same transaction as the debtor's claim against the creditor.'" *Id.* (quoting *In re NAFX, Inc.*, 864 F.2d 593, 597 (8th Cir. 1989)). The Eighth Circuit Court of Appeals has noted that because of the equitable nature of the doctrine, courts have not precisely defined the "same-transaction" standard, instead focusing on the "facts and equities of each case." *Id.*

In re O'Neil, 408 B.R. 823, 827 (D. Neb. 2008).

As the district court explained, the judicial consideration of a recoupment claim is fact-specific, which in itself usually precludes summary judgment. Moreover, the movants here provided no evidence to support their motion, so there is no way to ascertain on this record whether the parties' employment contract permitted the defendants to withhold the funds as they claim.

Summary judgment is appropriate only if the record, when viewed in the light most favorable to the non-moving party, shows there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c) (made applicable to adversary proceedings in bankruptcy by Fed. R. Bankr. P. 7056); *see, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986). The court must examine the record to ascertain whether the movant, through depositions, answers to interrogatories, admissions, affidavits, and other evidence, has demonstrated the absence of a genuine issue of material fact. *Beard v. Banks*, 548 U.S. 521, 529 (2006). The defendants here have not demonstrated any facts in support of their position, so summary judgment in their favor must be denied.

The defendants also move for dismissal of the plaintiff's state law claims for lack of subject matter jurisdiction. In her complaint, the plaintiff alleges the defendants violated the Nebraska Wage Payment and Collection Act by withholding wages owed to her for more than 30 days after a regular

designated payday. She also alleges that the defendants violated the Act by failing to timely furnish her with an itemized statement of her wages and the deductions therefrom, as she requested in June 2011. As the defendants point out, the allegations under the Nebraska Wage Payment and Collection Act are in no way core bankruptcy proceedings under 28 U.S.C. § 157(b)(2), nor do they appear to be “related to” the bankruptcy case under 28 U.S.C. § 157(c)(1). The scope of “related to” jurisdiction is broad, but it is not unlimited. *GAF Holdings, LLC v. Rinaldi (In re Farmland Indus., Inc.)*, 567 F.3d 1010, 1019 (8th Cir. 2009). There must be a nexus between the civil lawsuit and the bankruptcy case. *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). The test for whether a civil proceeding is related to a case under title 11 is whether the outcome of the proceeding could conceivably have any effect on the bankruptcy estate. *Dogpatch Prop., Inc. v. Dogpatch U.S.A., Inc. (In re Dogpatch, U.S.A., Inc.)*, 810 F.2d 782, 786 (8th Cir. 1987). In other words, if the outcome of the civil proceeding could alter the debtor’s rights, liabilities, options, or freedom of action and in any way impacts upon the handling and administration of the bankruptcy estate, the action is related. *Id.*; *Specialty Mills*, 51 F.3d at 774.

There is no nexus between the state law claims and the bankruptcy case here. The defendants’ motion to dismiss the second and third claims of the plaintiff’s complaint will be granted. The plaintiff may file those claims in an appropriate forum.

IT IS ORDERED: The defendants’ motion for summary judgment (Fil. No. 11) is denied. The defendants’ motion to dismiss the second and third claims of the plaintiff’s complaint (Fil. No. 11) is granted.

DATED: August 7, 2012

BY THE COURT:

/s/ Thomas L. Saladino
Chief Judge

Notice given by the Court to:
Thalia Downing Carroll
*Lisa M. Peters
U.S. Trustee

Movant (*) is responsible for giving notice to other parties if required by rule or statute.