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IN THE UNITED STATES BANKRUPTCY COURT

2013 JUL 15 AM 11:40

FOR THE

U.S. BANKRUPTCY COURT  
BRUNSWICK, GA

SOUTHERN DISTRICT OF GEORGIA

Statesboro Division

IN RE: SARA JONES RICKS	)	Chapter 7 Case
	)	Number <u>13-60100</u>
Debtor	)	
	)	
<hr/> JAMES C. OVERSTREET JR.	)	
Chapter 7 Trustee	)	
	)	
Movant	)	
	)	
vs.	)	
	)	
SARA JONES RICKS	)	
	)	
Debtor/Respondent	)	

**OPINION AND ORDER GRANTING MOTION FOR TURNOVER**

This matter came on for hearing on motion by the chapter 7 Trustee seeking turnover of certain nonexempt funds by the Debtor under 11 U.S.C. § 542. For the reasons that follow, the Motion is granted.

**FINDINGS OF FACT**

On February 22, 2013, when pro se Debtor Sara Jones Ricks filed this bankruptcy case, she was to all appearances "the honest but unfortunate debtor" that the Bankruptcy Code was enacted to protect. See Grogan v. Garner, 498 U.S. 279, 287 (1991). So destitute did Ricks appear that her Application for

Waiver of the Chapter 7 Filing Fee was granted without hearing. (ECF No. 13.)<sup>1</sup>

In fact, however, Ricks was far from destitute. Ricks had a total of \$9,095.57 in cash and in the bank on the date of the filing of this case and had just withdrawn \$8854 from her checking account in a cluster of ATM transactions and checks written to cash over the four days preceding and including the date of the filing. After applying the \$300 exemption that Ricks claimed in her checking account (Am. Sch. C, ECF No. 2 at 5), what remains is \$8,795.57 in nonexempt funds.<sup>2</sup>

**I. Ricks Concealed Nonexempt Funds by Lying on Her Bankruptcy Schedule B and on Her Statement of Financial Affairs.**

The Trustee's first knowledge of the possible existence of nonexempt funds was on April 2, 2013, when Ricks testified at the first 341 meeting that she had received an income tax refund of approximately \$6000. (Mot. for Turnover Hr'g Tr. 9:7-18, June 10, 2013.) Ricks had not disclosed any such refund on her Schedule B. (ECF No. 1 at 11.)

Ricks later provided the Trustee with her tax return, bank statements, and copies of canceled checks that, together

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<sup>1</sup> The Order granting the Application is vacated by separate order entered in tandem with this Opinion and Order Granting Motion for Turnover.

<sup>2</sup> The Trustee has not objected to the claimed exemption of \$300, notwithstanding that the value of the checking account as shown on Amended Schedule C is \$241.57.

with her testimony as discussed below, show that on the date she filed this case, Ricks possessed the nonexempt funds that the Trustee now seeks. But it was her admissions at hearing on the Motion that establish that Ricks lied on her Schedule B, both as initially filed and as later amended, and on her Statement of Financial Affairs as part of her effort to conceal the existence of the funds:

- In addition to the checking account that she disclosed, Ricks had a savings account that she did not disclose. (Hr'g Tr. 17:16-20.)
- Within the month before she filed her case, Ricks received an income tax refund of \$6500 (id. at 10:16-11:2) that she did not disclose.
- During the 90 days before she filed her case, Ricks made regular payments of several hundred dollars on credit card debt to an Atlanta law firm (id. at 16:17-17:1) that she did not disclose.
- Within the 90 days before she filed her case, Ricks gifted her mother with approximately \$1000 (id. at 16:8-16) that she did not disclose.

Ricks acknowledged that she signed her bankruptcy documents under penalty of perjury. (Id. at 8:14-9:6.)

**II. Ricks Possesses as Much as \$8,795.57 in Nonexempt Cash.**

In her response to the Motion, Ricks said the \$9,931.48 she had in her checking account "at some time prior to the filing of the petition" comprised proceeds of a student loan and what remained of her income tax refund. (Ex. T-5 ¶ 2, ECF No. 31.) She also said there was no money left to turn over (id. ¶ 3), that she had spent it all "on school related expenses" and on "the daily maintenance of [herself] and her children" (id. ¶ 2).

Ricks offered the same defense at hearing, testifying that on the date she filed her case, she had no cash at all and only \$241.57 in her checking account (Hr'g Tr. 17:2-15), as shown on her Amended Schedule B.

I don't believe Ricks's testimony. The weight of the Trustee's evidence and Ricks's demeanor on the witness stand convince me that not only did Ricks have \$9,095.57 on the date of the filing of this case but also that she is currently holding at least some, if not all, of the nonexempt \$8,795.57 as cash.

**A. Cash Withdrawals Strongly Imply that Ricks Did Not Spend the Money Before Filing.**

Ricks's bank statement shows that on February 15, 2013—exactly one week before she filed this case—Ricks had a balance of \$9,931.48 in her checking account. (Ex. T-3 at 2.) The bank statement and canceled checks show \$8854 in cash withdrawals over the four days leading up to and including the date of filing:

- Two ATM withdrawals (\$82 and \$202) and one check written to cash (\$700) on February 19, 2013.
- One check written to cash (\$7600) on February 20, 2013.
- One ATM withdrawal (\$270) on February 22, 2013.

(Ex. T-3 at 2; Ex. T-4.)

This cluster of cash withdrawals immediately preceding the filing and especially the check written to cash for \$7600 strongly imply that Ricks was not actually spending this money. Instead, she was emptying her bank account and hiding the cash in anticipation of filing this case.

**B. Her Evasive Testimony Strongly Implies that Ricks Is Still in Possession of the Money.**

At the hearing, the Trustee examined Ricks about her testimony at the most recent 341 meeting concerning what she did with the roughly \$8800 cash she had the week before she filed this case. Ricks acknowledged her previous testimony that she spent approximately \$2000 on clothes and another \$2000 on groceries. (Hr'g Tr. 14:20-15:4.)

When the Trustee asked about the remaining \$4800, Ricks became evasive. She answered by repeatedly parroting that she spent the money on "food, shelter, and clothing":

Q. And the other \$4800, where did that go?

A. Like I told you in the [341] meeting, I spent it on food, shelter, and clothing and

bills because I paid my bills and tried to catch them up.

. . . .

Q. What did you do with the \$8800 in cash that you had within a week prior to filing?

A. I paid my bills and I provided food, shelter, and clothing for my kids and myself.

Q. Specifically, what did you do with the \$8800?

A. That is what I did with it.

Q. What was the single largest transaction out of the \$8800?

A. I am not sure.

Q. Did you spend more than \$1000 at any one place?

A. I am not sure.

(Id. at 15:5-16:1.)

It is not credible that Ricks spent roughly \$8800 in cash in four days and yet could not identify a single individual expenditure. It particularly is not credible that Ricks spent \$2000 on "groceries":

Q. And you spent about \$2000 in groceries in the week before filing, is that right?

A. Yes, I did buy groceries.

Q. That didn't include eating out. That was just groceries?

A. Yes.

(Id. at 14:25-15:4.) I conclude that Ricks did not spend all the money before filing and indeed still has not spent it all.

#### CONCLUSIONS OF LAW

With some exceptions not relevant here, all legal or equitable interests of the debtor in property at the time of the filing of a bankruptcy case become property of the bankruptcy estate. 11 U.S.C. § 541(a)(1). The debtor may thereafter exempt certain property from the estate under § 522, which also allows states to opt out of the federal exemptions in favor of creating their own, 11 U.S.C. § 522(b). Georgia is among the states that have established their own lists of exemptions. See Ga. Code Ann. § 44-13-100.

Here, Ricks had a total of \$9,095.57 in cash and in her checking account on the date of the filing of this case. She claimed an exemption of \$300 in the money in her checking account under § 44-13-100(a)(6) of the Georgia Code. (Am. Sch. C, ECF No. 32 at 5.) Accordingly, \$8,795.57 remains in nonexempt funds.

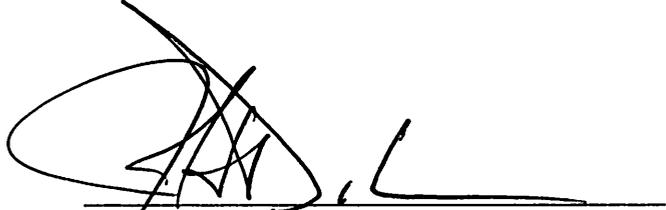
An entity that during the case is in possession of property "that the trustee may use, sell, or lease . . . shall deliver to the trustee, and account for, such property or the

value of such property, unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a).

On the day she filed this case, Ricks was in possession of \$8,795.57 in nonexempt cash—an amount that would substantially benefit the bankruptcy estate. Ricks is therefore required to turn over \$8,795.57 to the Trustee.

The Trustee's Motion for Turnover is therefore **ORDERED GRANTED**; and

**FURTHER ORDERED** that Sara Jones Ricks instanter deliver to the chapter 7 Trustee a bank cashier's check in the amount of \$8,795.57.



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JOHN S. DALIS  
United States Bankruptcy Judge

Dated at ~~Funswick~~, Georgia,  
this ~~12~~ day of July, 2013.