

Court entered summary judgment for debtor/plaintiff under 11 U.S.C. §§ 522(g) and (h), when debtor-plaintiff sought to recover garnished wages within 90 days of bankruptcy. Court awarded sanctions and attorneys' fees against creditor-defendant in the requested amount of \$1,000.00.

***Guzik v. Ford Motor Credit Co., LLC (In re Guzik)*, 2016 Bankr. LEXIS 883 (Bankr. D. Md. Mar. 21, 2016) (Schneider, J.).**

Summary by Justin P. Fasano, McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A.

The debtor (the "Debtor") entered into a consent judgment with his automobile lender (the "Lender") eleven months prior to filing Chapter 7 bankruptcy. Within the 90 days prior to the Debtor's bankruptcy, the Lender garnished \$1,869.00 of the Debtor's wages pursuant to the consent judgment. Upon filing bankruptcy, the Debtor claimed the garnished wages as exempt.

The Debtor thereafter demanded the return of the garnished wages pursuant to 11 U.S.C. §§ 522(g) and (h). The Lender requested copies of the Debtor's pay stubs and bankruptcy schedules, which were provided. However, the Lender still refused to return the garnished wages, and the Debtor filed an adversary proceeding against the Lender.

The Debtor moved for summary judgment, and the Lender filed an opposition. The Lender conceded that it had received \$1,600.00 in garnished wages within 90 days of the bankruptcy, but denied receipt of the remaining \$269.00. However, the Debtor introduced pay stubs into evidence showing that \$1,869.00 had been garnished. The Lender did not present any contradictory evidence.

The Bankruptcy Court entered summary judgment against the Lender in the amount of \$1,869.00. Sections 522(g) and (h) of the Bankruptcy Code allow individual debtors to avoid involuntary preferential transfers which impair those debtors' exemptions, and which would otherwise only be avoidable by a trustee under 11 U.S.C. § 547. 11 U.S.C. §§ 522(g) and (h). The Bankruptcy Court cited well-established prior case law from the District of Maryland that held that although the garnishment lien was created outside the preference period, the lien attached to wages only upon those wages becoming payable. Therefore, the payment of garnished wages was preferential. The Court found the \$269 dispute to be *de minimus*, and held that there was no evidence in the record to support the argument that the Lender only received \$1,600.

Based on the lack of any appropriate defense to the Complaint, the Bankruptcy Court awarded sanctions and attorneys' fees against the Lender in the amount of \$1,000.