

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
THIRD DIVISION

In re: Chapter 7 Case  
Mark Andrew Jaffe and Bonnie Jaffe, BKY Case No. 3-88-3461  
ADV No. 3-90-307

Debtors.

Sheridan J. Buckley, Trustee,  
Plaintiff,

v.

MEMORANDUM ORDER

Richfield Bank and Trust Company,  
Defendant.

This matter came before the Court on cross motions for summary judgment. Sheridan J. Buckley (Trustee) appeared on behalf of the bankruptcy estate. Richfield Bank and Trust Company (Bank) is represented by Thomas A. Ohnesorge. This is a core proceeding under 28 U.S.C. 157(b). The Court has jurisdiction to determine this matter under 28 U.S.C. 157(b) and 1334.

I.

Debtor Mark A. Jaffe entered into a loan agreement with the Bank on March 31, 1988. The loan was renewed on April 26, 1988, with the same terms and conditions, except the amount owing. The agreement contained the following setoff provision:

If I [debtor] am in default, you may take the money from any of my accounts with you to pay this Agreement. For this purpose, my accounts include all accounts I have or share with anyone else. This may be done without notifying me.

The last agreement provided for Jaffe to repay \$8,014.92 to the Bank on or before August 1, 1988. Jaffe defaulted and did not make the payment.

On August 2, 1988, 90 days pre-petition, Jaffe's checking account balance with the Bank was \$1,819.14.(1) Since it was his only deposit account at the Bank, the Bank's claim against Jaffe exceeded his deposits by \$6,195.78.

Footnote 1

The Jaffes filed their bankruptcy petition on October 31, 1988.  
End Footnote

From August 2, 1988, to August 17, 1988, Jaffe's checking account balance increased from \$1,819.14 to \$8,005.05. On August 17, 1988, the Bank exercised its right to setoff, applying \$8,005.05 from Jaffe's checking account as full and final payment of the loan.

The trustee brought this suit against the Bank for \$6,185.91, which is the difference between the account balance on August 2, 1988, and the balance on August 17, 1988, when the setoff was exercised. The trustee claims that the Bank inappropriately improved its position by its timing of the setoff, and that the improved amount is recoverable under 11 U.S.C. 553(b). The Bank claims that the setoff was proper and that, in any event, 553(b) is irrelevant because the Bank was a secured creditor regarding the account.

## II.

The Bank argues that Minnesota law governs creditors' setoff rights, not the Bankruptcy Code. However, creditors' state law remedies are subject to the limitations of 11 U.S.C. 553.(2) In re Schmidt, 26 B.R. 89 (Bankr. D. Minn. 1982). In Schmidt, the bank set off funds from the debtor's savings account against the debtor's checking account overdraft balance and the balance due on loans. The court noted that state law allowed the bank to offset deposits against amounts owed, but that 11 U.S.C. 553(b) limited state law setoff rights. In ordering return of the setoff, the court applied an improvement-in position test and found that the bank had improved its position within the meaning of 553(b)(1), thereby entitling the trustee to recover the improvement under the statute.

### Footnote 2

11 U.S.C. Section 553(b)(1) provides in pertinent part:

...if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of-

- (A) 90 days before the date of the filing of the petition; and
- (B) the first date during the 90 days immediately preceding the date of the filing of the petition on which there is an insufficiency.

End Footnote

In the alternative, the Bank argues that the trustee may not avoid the setoff because the Bank had a perfected security interest with the checking account as collateral. The Bank denies any improvement in position by way of the setoff, since it would have been entitled to those funds as a secured creditor.

The Bankruptcy Code treats the right of setoff as a secured claim. However, 11 U.S.C. 506(a)3 together with 553 define the nature, and limit the scope, of such claims. 553(b)(1) limits the scope of the allowed amount of a secured setoff claim, where the right of setoff is exercised within 90 days before a bankruptcy petition is filed. Under the facts of this case, the allowed amount of the Bank's secured setoff claim was \$1,819.14, which was the balance in the account on the 90th day preceding the bankruptcy filing. The additional amount actually set off is recoverable by the trustee, and the Plaintiff is entitled to judgment accordingly.

### Footnote 3

11 U.S.C. Section 506(a) provides in pertinent part: "An allowed claim of a creditor secured by a lien on property in which the

estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim."

End Footnote

NOW, THEREFORE, IT IS ORDERED:

1. Plaintiff's motion for summary judgment is granted and Defendant's motion for summary judgment is denied.
2. Plaintiff trustee is entitled to recover \$6,185.91 from Defendant Richfield Bank and Trust Company pursuant to 11 U.S.C. 553(b)(1).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 10, 1991.

By the Court:

Dennis D. O'Brien  
U.S. Bankruptcy Judge