IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

IN RE:

MARVIN LEE WILCOX,	)	
PAMELA JEAN WILCOX,	)	
	)	Bankr. Case No. 07-10610-BH
	)	Chapter 7
Debtors.	)	

DEBTORS' RESPONSE TO MOTION FOR RELIEF FROM AUTOMATIC STAY

Debtors, Marvin Lee Wilcox and Pamela Jean Wilcox, ("Mr. and Mrs. Wilcox"), responds to the motion of the Oklahoma Department of Securities (the "Department") that this Court lift the automatic stay to allow the Department to pursue collection of its judgment against Mr. and Mrs. Wilcox, stating as follows:

Procedural History

1. Judgment was entered in the matter Oklahoma Department of Securities ex rel. Irvin L. Faught, Administrator, et al., Case No. CJ-2005-3796 in the District Court of Oklahoma County, State of Oklahoma against Mr. and Mrs. Wilcox on January 31, 2007 on the claim of unjust enrichment. This matter remains unresolved as it remains on appeal at the Oklahoma Supreme Court in consolidated case, SD-104262.

2. On March 2, 2007, Mr. and Mrs. Wilcox filed a petition of bankruptcy under Chapter 7 of the United States Bankruptcy Code (the "Code") in Bankr. Case No. 07-10610.

3. On October 25, 2007, Oklahoma brought an adversary action against Mr. and Mrs. Wilcox in Adversary Case No. 07-01140 seeking denial of their discharge of the

Department's judgment under the authority of § 523(a)(2) and (19) and revocation of his discharge under § 727(c),(d), and (e) of the Code.

4. On December 12, 2008, this Court sustained the Department's motion for summary judgment, finding that Mr. and Mrs. Wilcox had been unjustly enriched by a third party's security fraud and that their discharge of his obligations to the Department is denied pursuant to § 523(a)(19). The Court has noted that this finding is made without a finding of intent to commit a securities violation by Mr. or Mrs. Wilcox.

5. On December 22, 2008, Mr. and Mrs. Wilcox brought their appeal of this Court's order to District Court.

Argument

This Court's order of summary judgment denying discharge of Mr. and Mrs. Wilcox's debt to Oklahoma pursuant to § 523(a)(19) of the United States Bankruptcy Code is pending appeal. This area of the Code remains new and relatively undetermined.

It remains well established in the Code that exceptions to discharge are construed strictly against the creditor. See Gleason v. Thaw, 236 U.S. 558, 562 (1915); In re Spigel, 260 F.3d 27, 32 (1st Cir. 2001); In re Miller, 39 F.3d 301, 304 (11th Cir. 1994). Here, in subsection (a)(19), the important aspect of Mr. and Mrs. Wilcox's appeal is the two-part test used in determining non-dischargability. It is only after there is a judicial determination that there was a violation of a securities law or fraud association with the purchase or a sale of a security, when, and only when it is considered whether there is an order for a restitutionary payment ordered. Here, it remains important to note that there has never been a finding of a securities law violation or securities associated fraud by Mr.

or Mrs. Wilcox. Accordingly, the Debtors, Mr. and Mrs. Wilcox, urge the Court that the consideration of the unjust enrichment and disgorgement order should never have reached the court's consideration. (See 11 U.S.C. § 523(a)(19)).

Because of the absence of established law on point with this issue and the pending appeal of not only the state court decision, but this Court's judgment, the Debtors further urge the Court to deny the Department's motion that it order the stay lifted.

Accordingly, Debtors Marvin Lee Wilcox and Pamela Jean Wilcox urge that this Court deny the motion by the Oklahoma Department of Securities for relief from the automatic stay.

Respectfully submitted,

PHILLIPS MURRAH P.C.

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CERTIFICATE OF SERVICE

This is to certify that on the 14th day of April 2009 that I electronically transmitted the attached document to the clerk of this Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel of record.

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