

**UNITED STATES BANKRUPTCY COURT
FOR THE
WESTERN DISTRICT OF KENTUCKY**

In re:

**WILLIAM LONA WHITE and
SHIRLEY JEAN WHITE**

Debtor(s)

CASE NO. **01-40441(2)**
Chapter 7

**WILLIAM LONA WHITE and
SHIRLEY JEAN WHITE**

PLAINTIFFS

vs.

Adv. Proc. No. **01-4101**

**KENTUCKIANA LIVESTOCK
MARKET, INC.**

DEFENDANT

MEMORANDUM OPINION

The matter under consideration in this chapter 7 case is the Complaint for Damages filed by the Debtor/Plaintiffs William Lona White and Shirley Jean White (“the Whites,” “Bill White,” or “Shirley White”). The Whites allege that the Defendant, Kentuckiana Livestock Market, Inc. (“Kentuckiana”), terminated their employment for the sole reason that they had sought relief under the Bankruptcy Code and, thereby, violated 11 U.S.C. §525(b). The facts pertinent to a resolution of the matter as established at the trial may be summarized as follows.

The Whites filed a joint chapter 7 petition on March 19, 2002. Shirley White had performed clerical and secretarial duties for Kentuckiana for over 35 years, joining the company shortly after leaving

high school in 1965. Bill White joined Kentuckiana in 1978. He managed the office, performed bookkeeping duties, and also served as Secretary/Treasurer for Kentuckiana. Kentuckiana, with operations mainly in western Kentucky, is engaged in the business of purchasing and selling livestock, including cattle, hogs, sheep and other animals for sale at auction.

On the morning of April 4, 2002, Patrick L. Baker, (“Pat Baker”), vice-president and co-manager of Kentuckiana, terminated the Whites’ employment with Kentuckiana. When the Whites asked why they were being terminated, he responded, “I don’t have to give you an answer.” At no time prior to that had either of the Whites been given a verbal or written warning concerning his or her job performance.

On April 10, 2002, Pat Baker, without advice of legal counsel, completed the Employer Statement forms provided by the Commonwealth of Kentucky relating to the reason or reasons for the termination of the Whites. Question 3 on the Employer Statement form reads: “On the day claimant was discharged, what was your primary reason?” Regarding Bill White’s termination, Pat Baker answered, “His past 2 personal business ventures, Mr. White has filed bankruptcy in one and beat several people, some of them farmers, out of thousands of dollars. This reflects poorly on Kentuckiana Livestock for having him employed.” Question 6 on the Employment Statement form reads “Describe the final incident in detail,” to which Pat Baker answered, “When Bill White declared Bankruptcy in March, and failed in his restaurant venture before that we (Kentuckiana Livestock Mkt., Inc.) felt his employment here hurts our business, decreases the faith the farmers have in our bookkeeping department and the management doesn’t trust him.”

On the Employer Statement for Shirley White, Pat Baker answered question 3 by stating, “Past record of 2 business ventures of her husband and how it reflects on Kentuckiana Livestock.” He then responded to question 6, “When her husband filed Chapter 7 Bankruptcy the last of March, this being the

second time of a failed business for him, the management of Kentuckiana Livestock Inc., decided to release both her and him for the betterment of Kentuckiana Livestock.”

The Whites also testified that on the evening of April 4, 2002, they spoke with Billie Barnett, one of the twelve members on the board of directors for Kentuckiana. The Whites testified that Billie Barnett told them that Pat Baker was calling the members of the board of directors and telling them that he had terminated the Whites because they had sought relief under the Bankruptcy Code.¹ Pat Baker testified that Bill White approached him a couple of days before he terminated the Whites about having Kentuckiana buy a vehicle for him to use. According to Pat Baker, Bill White suggested that if Pat Baker would approve the purchase, then he would fail to disclose certain information to the government related to Pat Baker’s commission check so that he would not have to pay certain taxes.

According to Bill White, however, he approached both Pat and Michael Baker, (“Mike Baker”), the president and co-manager of Kentuckiana, about having Kentuckiana purchase an automobile for him since he was without one. He also proposed to repay Kentuckiana for the automobile by having payments taken from his paycheck. Bill White also spoke with Doug Wood, (“Wood”), chairman of the Kentuckiana’s board of directors, about having the matter approved by the board. Wood said that he felt that such a transaction did not need board approval since it was a function of management. Pat Baker stated that based on Bill White’s suggestion that he “lose certain documents pertaining to your commission,” he called Wood and Beverly Gregory (“Gregory”), also a board member.² Pat Baker testified that he told Wood and Gregory that Kentuckiana intended to terminate the Whites’ employment. According to Pat Baker, both board members said that they supported management’s decision one hundred percent.

¹ Billie Barnett did not appear to testify at the trial.

² Gregory died some time before trial and was not available for testimony or discovery.

Of all the witnesses who testified at trial, this Court found Wood's testimony to be the most credible and persuasive. Wood ran his own business for thirty years prior to taking a position as an agricultural lender with one of the local banks around 1998. Wood became a shareholder in Kentuckiana in 1974 after the death of his father. He served two terms as chairman of the board for Kentuckiana, with the most recent term during the time the Whites were terminated. Wood testified that Bill White had in fact approached him about allowing Kentuckiana to purchase a vehicle. Wood told him that he would have to discuss that with Pat and Mike Baker since such approval was a function of management. Wood also testified that Pat Baker told him that he was thinking about terminating the Whites' employment specifically stating, "the car was one reason, and they had a declining confidence in their general ability and in how they were performing their duties." He confirmed that Baker never mentioned that the Whites' bankruptcy was a reason for termination. Wood's position was that the board hired management and management made personnel changes. He also stated that he did not object to their termination.

One of the primary goals of the Bankruptcy Code is to relieve the honest but unfortunate debtor of indebtedness so that the debtor may make a fresh start. *In re Krohn*, 886 F.2d 123, 125 (6th Cir. 1989)(citing *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 54 S.Ct. 695, 699 (1934)). To protect debtors from discriminatory treatment by private employers, Congress enacted 11 U.S.C. § 525(b) which provides:

(b) No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt--

(1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act;

(2) has been insolvent before the commencement of a case under this title or during the

case but before the grant or denial of a discharge; or

(3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

Under this section the essential element to prove in a claim of discriminatory termination of employment is that the employee's filing for bankruptcy, insolvency, or discharge of a debt is the sole reason for termination. *Stockhouse v. Hines Motor Supply, Inc.* 75 B.R. 83, 85 (D. Wy. 1987). See also *In re Helms*, 46 B.R. 150 (E.D. Mo. 1985) and *In re Hopkins*, 66 B.R. 828 (W.D. Ark. 1986).

The statutory term "solely because" has been construed differently by various courts. See generally *In re Sweeney*, 113 B.R. 359, 362-363, (N.D. Ohio 1990), citing *In re Rath Packing Co.*, 35 B.R. 615, 619 (N.D. Iowa 1983).³ In construing a statute, a court begins with the language of the statute. *Williams v. Taylor*, 529 U.S. 420, 431, 120 S.Ct. 1479, 1487 (2000). Furthermore, in the Sixth Circuit, this court is bound to apply the 'plain meaning' of the language in the Bankruptcy Code. *In re Eagle-Picher Industries, Inc.*, 999 F.2d 969, 972 (6th Cir. 1993).

The Whites were able to establish in their pleadings and at trial a prima facie case that Kentuckiana engaged in discriminatory treatment in violation of 11 U.S.C. § 525(b), which protects against such discriminatory treatment by private employers. While this Court finds the manner in which Pat Baker terminated the Whites showed a callous lack of feeling for two long-time employees, it does appear from

³ The Court there states: "Nowhere in the Code or its legislative history is the seemingly obvious term 'solely because' defined. Courts considering 525 questions have placed various interpretations on the term, ranging from 'only because,' *In re Hinders*, 22 B.R. 810, 812 (Bkrcty.S.D.Ohio 1982), 'only reason,' *In re Gibbs*, 9 B.R. 758, 763 (Bkrcty.D.Conn.1981), 'except for the fact,' *In re Son-Shine Grading, Inc.*, 27 B.R. 693, 695 (Bkrcty.E.D.N.C.1983), to 'reason independent of' *In re Richardson*, 27 B.R. 560, 565 (Bkrcty.E.D.Pa.1982). In addition, the court in *In re Rose*, 23 B.R. 662, 668 n. 8 (Bkrcty.D.Conn.1982), noted, but did not specifically adopt, the debtor's suggestion that 'solely could be considered as meaning 'primarily' or 'predominately'.' *In re Rath Packing Co.*, 35 B.R. 615, 619 (N.D. Iowa 1983).

the totality of the particular facts and circumstances, which included the testimony of Wood, that Kentuckiana has overcome the Whites' prima facie case. The vehicle purchase issue was sufficient reason for Bill White's termination, and was a factor in the decision to terminate the employment of the Whites. Since Shirley White was terminated simply because she was married to Bill White, this court also finds that she was not terminated solely for filing bankruptcy.

A separate final judgement shall be entered in accordance with the foregoing.

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JUDGMENT

Pursuant to Federal Rules of Bankruptcy Procedure 7054 and 9021 and the Court's Memorandum Opinion entered this same date and incorporated herein by reference,

IT IS ORDERED, ADJUDGED AND DECREED that the Plaintiffs' claim for relief pursuant to 11 U.S.C. § 525(b) be, and hereby is, **DENIED** and this case is **DISMISSED WITH PREJUDICE**.

This is a final and appealable Order and there is no just reason for delay.

Dated: