

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**IN RE:**

**ADRIENNE C RAMSEY**

**CHAPTER 7**

**CASE NO: 10-05228**

**Debtor**

**EMERGENCY MOTION FOR AVOIDANCE OF PREFERENTIAL TRANSFER  
OF DEBTOR'S PROPERTY AND TURNOVER OF PREFERENTIALLY  
TRANSFERRED PROPERTY HELD BY BANK**

Comes now the Debtor, by and through counsel, and moves the Court for a judgment (1) avoiding an involuntary preferential transfer of property of the Debtor and of debtor's husband prior to the petition date (in the form of a garnishment on Regions Bank by the Discover Bank as holder of a judgment on Debtor), (2) directing the turnover of said property from Regions Bank (who has frozen the funds of debtor and her husband in two accounts with Regions) and (3) mandating the delivery of the frozen funds to the Debtor because the money held in the two accounts is either not part of the bankruptcy estate because it belongs to the Debtor's husband or is exempt. In support of this prayer for relief the Debtor would show the Court as follows:

**BACKGROUND, IDENTIFICATION OF PARTIES AND STATEMENT OF  
JURISDICTION**

1. This Chapter 7 case was commenced on November 9, 2010.
2. The Debtor is an individual residing in Baldwin County, Alabama and her husband is Michael P Ramsey who has not filed bankruptcy.
3. Adverse party, Regions Bank, is a creditor in this case but is also the depository institution that maintains two accounts for Debtor, (a) one solely in Debtor's name being account # 0089828992 that had approximately \$200 of Debtor's funds in the account when Regions Bank received the garnishment from Discover Bank, and (b) one joint bank account in the name of Debtor and her husband, being account # 2508438201, that had approximately \$6,800 in the account when Regions bank received the garnishment from Discover Bank.
4. The funds on deposit in account # 2508438201 are either not property of the estate or are exempt as wages of Debtor and exempt as the wildcard exemption to the extent necessary. The great majority of the funds in this account are the property of the Debtor's husband in which the estate has no interest and came from both the husband's salary which is direct deposited into the account and from the husband's BP claim for lost wages which was also recently deposited into the account. Less than \$250 of the funds in

this account belongs to Debtor from her wages which are exempt to the extent of 75% of such wages and the rest are exempt under Debtor's wildcard exemption.

5. The funds on deposit in account # 0089828992 are salary of the Debtor and debtor's husband that the debtor had been putting into the separate account to use to purchase a vehicle and are exempt to the extent of 75% of same or exempt under Debtor's wildcard exemption.

6. The Debtor and her husband are in desperate need of such funds to pay household expenses and their mortgage and if such funds are not unfrozen the debtor and her husband will suffer irreparable harm.

7. Adverse party, Discover Bank, is a creditor in this case and the holder of a judgment against Debtor pursuant to case no: CV-09-648 in the Circuit Court of Baldwin County, Alabama and is represented by John Harrington Nathan of Nathan and Nathan in Birmingham.

8. Debtor has the addresses, fax numbers and phone numbers of both Regions Bank, Garnishment Department (and the manager of the garnishment department) and Regions Financial Corporation, an affiliated company with Regions Bank, named in the garnishment. Debtor also has the address, fax number and phone number of Nathan and Nathan and has notified all three of the adverse parties of the filing of this Emergency Motion and can notify them by whatever method the Court may direct of the setting of this Motion.

9. Regions Bank, Regions Financial Corporation and Nathan and Nathan all do business in this District.

10. To the extent required the Trustee is requested to abandon the property in the two bank accounts described above because (a) the significant portion in account #2508438201 is BP proceeds received by the husband of Debtor and is not property of the estate and (b) all other funds on deposit in both accounts are either not property of the estate in the case of salary of debtor's husband deposited therein or exempt as wages of debtor to the extent of 75% of the portion, if any, that is debtor's or exempt under debtor's wildcard exemption of which more than enough is available. Counsel for debtor has informed the Trustee in this case that he is filing this Emergency Motion and the circumstances thereof and the Trustee has declined to participate.

11. Attached hereto as Exhibit A is a portion of the husband's BP claim showing it was for lost earnings. Attached hereto as Exhibit B is a portion of the Debtor's and husband's bank account statement with Regions showing that the great majority of funds in the account were from the husband's BP claim and wages of debtor and her husband.

12. The Court has jurisdiction over this matter pursuant to 28 U.S.C. 151, 157(a) and 1334(b) and further because it is an allowed motion pursuant to this Court's motion practice.

13. This is a core proceeding as referred to in 28 U.S.C. 157(b)(2) in that it involves avoidance and recovery of a preferential transfer.

#### ALLEGATIONS COMMON TO ALL COUNTS

14. Prior to the date the debtor's bankruptcy petition was filed, the debtor and her husband were joint customers of, and depositor of funds into, Regions Bank.

15. As of November 5, 2010, only four (4) days before the date the petition was filed, the Debtor and her husband had on deposit in Regions Bank the sum of approximately \$6,800 in account # 2508438201 and the debtor had on deposit in Regions Bank the sum of approximately \$200 in account #0089828992.

16. The great majority of the funds in account #2508438201 were BP proceeds received by debtor's husband as lost wages and are therefore not property of the bankrupt estate and the remainder of the funds in such account and all the \$200 funds in the other account were from the salary of both debtor and her husband and are therefore either not property of the estate, or exempt.

17. Also prior to the petition date, the debtor was indebted to Discover Bank pursuant to a default judgment entered against debtor in favor of Discover Bank on March 10, 2010 in the amount of approximately \$16,000 in the case of Discover Bank v Adrienne Ramsey, CV-09-648 in the Circuit Court of Baldwin County, Alabama.

18 As a result of debtor's failure to pay this judgment, on or about November 2, 2010 Discover Bank filed a writ of garnishment on Regions Bank and Regions Bank was served with the garnishment on or about November 5, 2010.

19. On or about November 8, 2010 Regions Bank froze the funds in both accounts and this bankruptcy petition was filed the next day, November 9, 2010. A copy of the Alacourt report showing the garnishment is attached hereto as Exhibit C.

20. Counsel for Debtor faxed a letter to Regions Bank notifying them of the bankruptcy and spoke to a representative of Regions who stated that Regions would continue to hold the funds in both accounts in frozen status until receipt of an order from this Court.

21. The debtor, through her undersigned counsel, has made demand upon Regions Bank and Regions Financial Corporation to release and deliver the frozen funds to the debtor in accordance with 11 U.S.C. 542, but Regions Bank has respectfully declined to do so absent an order of this Court mandating such turnover.

22. The debtor has duly claimed the frozen funds as exempt on her Schedule C of her petition and no party has objected to said claim of exemption.

#### COUNT I: AVOIDANCE OF PREFERENTIAL TRANSFER

23. Debtor incorporates herein by reference the allegations contained in paragraphs 1 through 22 above.

24. The freezing of the frozen funds by Regions Bank/Regions Financial Corporation amounted to a preferential transfer as described in 11 U.S.C. 547(b) in that:

(a) The freezing of the frozen funds effected a removal of the frozen funds from the use and dominion of the debtor and her husband, and so constituted a transfer;

(b) The freezing of the frozen funds was made for the benefit of a creditor, Discover Bank;

(c) The freezing of the frozen funds directly resulted from Discover Bank's attempt to collect an antecedent debt owed by Debtor before the freezing took place, i.e. Discover Bank's judgment against Debtor;

(d) The freezing of the frozen funds was made while the Debtor was insolvent;

(e) The freezing of the frozen funds took place well within the ninety (90) days before the date of the filing of debtor's chapter 7 petition; and

(f) The levy/garnishment by Discover Bank, if allowed to be completed, will result in Discover Bank receiving more payment with respect to its claim than it would receive if the garnishment had not been made and Discover Bank received payment of its claim to the extent provided by the provisions of the Bankruptcy Code.

25. For all of the reasons set forth above, the Trustee is entitled to obtain an order of this Court avoiding the garnishment upon, and the freezing of, the frozen funds.

26. The Trustee, however, despite request by the debtor, has declined to pursue her claim under Section 547(b) against Discover Bank and Regions Bank.

27. Accordingly, pursuant to 11 U.S.C. 522(h) the Debtor herself may, and she hereby does, seek an order of this Court avoiding the garnishment upon, and the freezing of, the frozen funds.

## COUNT II: TURNOVER OF PREFERENTIALLY TRANSFERRED PROPERTY FROM TRANSFEREES THEREOF

28. Debtor incorporates herein by reference the allegations contained in paragraphs 1 through 27, above.

29. Pursuant to 11 U.S.C. 522(h) and 550, the debtor may obtain turnover of any avoided transfer from any initial, mediate or intermediate transferee thereof.

30. Regions Bank and/or Regions Financial Corporation, which are affiliated corporations, is the initial transferee of the frozen funds, in that it has held the frozen funds in its own possession since its receipt of the garnishment.

31. Discover Bank is also a transferee of the frozen funds in that the frozen funds are being held for its benefit by Regions Bank.

32. Accordingly, this Court should enter an order directing Regions Bank and Discover Bank, jointly and severally, to turn over the frozen funds to the debtor.

WHEREFORE, Debtor respectfully prays that the Court enter judgment:

1. Avoiding Discover Bank's garnishment upon, and Regions Bank's freezing of, the funds of debtor and her husband in Accounts 2508438201 and 0089828992 maintained at Regions Bank;

2. Mandating that Discover Bank and Regions Bank/Regions Financial Corporation, jointly and severally, return the frozen funds to the debtor, and specifically, without limitation, allow debtor and her husband access to such funds without interference by Discover Bank or the Circuit Court of Baldwin County, Alabama; and

3. Providing the debtor with all other just and proper relief.

Dated November 11, 2010

Respectfully Submitted,

/s/ Ronald F. Suber  
Ronald F. Suber (Sub 3612)  
PO Box 1297  
Fairhope, AL 36533  
(251) 209-3269  
[ronald.suber@att.net](mailto:ronald.suber@att.net)

#### CERTIFICATE OF SERVICE

I hereby certify that on this the 12th day of November, 2010 a copy of the foregoing pleading was served upon the Trustee by serving same through the ECF system and on the following by telephone, fax, email and first class mail, postage prepaid:

Regions Bank  
Attn: Sandy Harvelle, Garnishment Manager  
PO Box 830590  
Birmingham, AL 35283  
Fax (205) 261-7106

Regions Financial Corporation  
Attn: Garnishment Department  
1900 5<sup>th</sup> Ave N  
Birmingham, AL 35203  
Fax (205) 261-7106

Discover Bank  
c/o John H Nathan, Esq  
Nathan and Nathan  
Counsel for Discover Bank  
in CV 09-648  
PO Box 1715  
Birmingham, AL 35201  
Fax (205) 323-5403

/s/ Ronald F Suber  
Ronald F Suber