Not for Publication

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:	CASE NO.	03-35552 (LMW)
GINA A. SPRING,	CHAPTER	7
DEBTOR.		
CITIBANK USA, N.A.,	ADV. PRO. NO.	04-3007 (LMW)
PLAINTIFF	DOC. I.D. NO.	7
vs.		
GINA A. SPRING,		
DEFENDANT.		

APPEARANCES

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Defendant (pro se)

MEMORANDUM OF DECISION RE:
MOTION FOR JUDGMENT BY DEFAULT

Lorraine Murphy Weil, United States Bankruptcy Judge

The matter before the court is Citibank USA, N.A.'s ("Citibank") Motion For Judgment By Default (Doc. I.D. No. 13, the "Motion")[1] pursuant to which Citibank seeks entry of judgment against the above-captioned debtor (the "Debtor") to the effect that a $2,621.81 credit card debt owing to Citibank is nondischargeable pursuant to Bankruptcy Code § 523(a)(2).[2]

I. PROCEDURAL BACKGROUND

The Debtor commenced this chapter 7 case by petition filed on November 10, 2003 (the "Petition Date"). February 9, 2004 was set as the last date upon which complaints seeking a determination of the nondischargeability of certain claims (including Section 523(a)(2) claims) could be timely filed. The Debtor was examined under oath by counsel for Citibank and the chapter 7 trustee (the "Trustee") at the meeting of creditors required by Bankruptcy Code § 341 (the "Section 341 Meeting") held on December 11, 2003. The Trustee filed a Report of No Distribution on December 28, 2003 (Case Doc. I.D. No. 10), stating that no assets were available in the Debtor's estate for distribution to creditors. The Debtor received her chapter 7 discharge on March 9, 2004 (*see* Doc. I.D. No. 15).

Citibank filed the complaint (Doc. I.D. No. 1, the "Complaint") that initiated this adversary proceeding on January 27, 2004. The Debtor is *pro se* in this proceeding and has failed to plead or otherwise defend.[3] In response to a motion (Doc. I.D. No. 8) filed by Citibank on March 10, 2004, the Clerk entered a default against the Debtor herein on March 12, 2004 (Doc. I.D. No. 9). Citibank

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[1] Citations herein to the docket of this adversary proceeding appear in the following form: "Doc. I.D. No. __." Citations herein to the docket of the above-captioned chapter 7 case appear in the following form: "Case Doc. I.D. No. __."

[2] This is a core proceeding within the purview of 28 U.S.C. § 157(b).

[3] The Debtor is represented by counsel in the chapter 7 case.

filed the Motion on March 29, 2004. The Motion was supported by, among other things, an Affidavit of Citibank (included in Doc. I.D. No. 13).[4] A hearing on the Motion on notice to the Debtor was held on May 19, 2004. The Debtor did not attend that hearing. At the conclusion of the hearing, the court took the matter under advisement. Citibank filed a brief in support of the Motion (Doc. I.D. No. 19, the "Brief") on July 20, 2004. After due deliberation, the court is now prepared to issue this memorandum of decision.

II. DEFAULT JUDGMENT STANDARD

Entry of judgment by default is governed by Rule 55 of the Federal Rules of Civil Procedure (made applicable here by Rule 7055 of the Federal Rules of Bankruptcy Procedure). A debtor who is named as a defendant in an adversary proceeding that arises in the bankruptcy case is always deemed to have appeared in the adversary proceeding for purposes of Rule 55(b)(2) of the Federal Rules of Civil Procedure. *Batstone v. Emmerling (In re Emmerling)*, 223 B.R. 860, 867 (B.A.P. 2d Cir. 1997). *See also* 10A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2686, at 45 (3d ed. 1998) (hereafter, "*Wright, Miller & Kane*") ("[I]n order to ensure defendant an opportunity to defend against plaintiff's application, a court usually will try to find that there has been an appearance by defendant, which has the effect of requiring that notice of the application for a default be given." (footnote omitted)).

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[4] Attached to that affidavit were copies of account statements relating to the subject account for the period of December 24, 2002 through (and including) November 24, 2003 (hereafter, the "Statements"). Citibank filed a second affidavit (Doc. I.D. No. 20) in support of the Motion. Except for the identity of the affiant, the second affidavit asserts identical allegations as the first. Hereafter, the affidavits together constitute the "Affidavit." The Plaintiff also filed that certain Affidavit re Attorney's Fees and Costs (included in Doc. I.D. No. 13) in support of the Motion.

Although the Debtor has failed to plead, a motion for judgment by default is not granted as a matter of right. Rather, the court in its discretion may conduct a hearing "requir[ing] some proof [from the Plaintiff] of the facts that must be established in order to determine [the Debtor's] liability." *Wright, Miller & Kane* § 2688 at 60-61. *See also Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 96 (2d Cir. 1993) ("[A]s a general rule a . . . court should grant a default judgment sparingly . . . when the defaulting party is appearing *pro se*."). At the court's discretion, such proof may be made by affidavit. *See* Fed. R. Civ. P. 43(e) (made applicable here by Fed. R. Bankr. P. 9017). Further, "where the allegation is one of fraud, it is appropriate that the court [evaluate] . . . the evidence to insure that the drastic remedy of a determination of non-dischargeability is not entered without the presentation of a prima facie case." *United Counties Trust Co. v. Knapp (In re Knapp)*, 137 B.R. 582, 585 (Bankr. D. N.J. 1992). *See also General Electric Capital Corp. v. Bui (In re Bui)*, 188 B.R. 274, 276 (Bankr. N.D. Cal. 1995) ("A plaintiff must demonstrate a *prima facie* case by competent evidence in order to obtain a [d]efault [j]udgment."). A plaintiff has made a satisfactory prima facie showing where, from the evidence presented, "a factfinder could reasonably find every element that the plaintiff must ultimately prove to prevail in the action." *Fisher v. Vassar College*, 114 F.3d 1332, 1336 (2d Cir. 1997) (*en banc*), *cert. denied*, 522 U.S. 1075 and *reh'g denied*, 523 U.S. 1041 (1998) (*abrogated on other grounds by Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000)).

III. FACTUAL BACKGROUND

The following "facts" have been either gleaned by the court from the Debtor's bankruptcy schedules and Statement of Financial Affairs filed with this court (included in Case Doc. I.D. No. 1, collectively, the "Schedules") or Citibank has made a *prima facie* showing of the same pursuant

to the Affidavit.[5] Accordingly, the following "facts" are deemed established for the purposes of this memorandum.

Prior to December 24, 2002, the Debtor submitted an application for a Sears Card (the "Card"). Sears National Bank ("SNB") subsequently opened a credit card account (the "Account") for the Debtor to be governed by the terms and conditions of the Sears National Bank Sears Card Account and Security Agreement (the "Agreement"). Paragraph 2 of the Agreement provides as follows:

> **ACCEPTANCE AND LIABILITY.** I am responsible for all amounts owed on my account. I agree to repay all amounts owed on my account according to the terms of this agreement. This agreement is effective when any accountholder or authorized user either uses the account, activates the card, or takes any other action which indicates acceptance of the account or card.

(Agreement ¶ 2.) Paragraph 4 of the Agreement provides as follows:

> **OPTION TO PAY IN INSTALLMENTS.** If I do not pay the total [Account] balance in full each month, I agree to pay at least the minimum payment [as that term is defined in paragraph 12 of the Agreement, the "Minimum Payment"] within 30 days (28 days for February statements) of my billing date.

(Agreement ¶ 4.) At all relevant times, the credit limit on the account (as provided for in paragraph 8 of the Agreement) was $2,250.00. (*See* Statements.)

For the period from at least December 24, 2002 through June 2, 2003, the Debtor apparently did not use the Card and thereby maintained a zero balance on the Account. (*See id.*) However, between June 3, 2003 and June 6, 2003, the Debtor purchased $2,214.97 of goods from Sears on the

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[5] Such proof includes the Statements and Exhibits A, B, and C which are annexed to the Brief. Exhibit A is the Affidavit. Exhibit B is a copy of an uncertified transcript of the Section 341 Meeting. In response to an order from this Court dated September 21, 2004, Citibank filed a certified copy of that transcript (Doc. I.D. No.23, the "Transcript") on October 12, 2004. Exhibit C is a copy of the Agreement (as hereinafter defined).

Card.[6] (Affidavit ¶ 4.) On June 3, 2003, the following charges were posted against the Account: a $423.99 charge for a camcorder; a $508.77 charge for a 35" television; $200.03 for cutlery and dinnerware; and $239.45 for miscellaneous items of clothing. (*See* Statements.) The following day, June 4, 2003, two additional charges were posted to the Account: $194.57 for miscellaneous items of clothing; and $568.71 for bedding and home goods. (*Id.*) Finally, on June 6, 2003, a charge of $79.45 was posted to the Account for "portrait studio" photos. (*Id.*)[7] The Debtor signed credit card slips and used her Card to make the subject purchases. (Affidavit ¶ 4.) Citibank has not received any payments toward those charges. (*Id.*)

As noted above, the Debtor commenced this chapter 7 case approximately five months later. The Debtor first contacted an attorney to discuss the commencement of this case on or about June 19, 2003. (Transcript at 10.) In her sworn Schedules, the Debtor stated that she had no current income as of the Petition Date. (*See* Schedules (Schedule I – Current Income of Individual Debtor(s)).) The Schedules state that the Debtor had no income for the period January 1, 2003 through the Petition Date, $10,000.00 in income for calendar year 2002, and $22,000.00 in income for calendar year 2001. (*See* Schedules (Statement of Financial Affairs, Items 1, 2).) The Schedules

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[6] SNB is (or at least was) a wholly-owned subsidiary of Sears Financial Holding Company, which, in turn, is (or at least was) a wholly-owned subsidiary of Sears, Roebuck and Co. (*See* Agreement ¶ 1.) Citibank holds the subject debt as an assignee of SNB. For purposes of simplicity, this opinion will treat Citibank as if it were at all times the creditor in respect of the Account.

[7] Finance charges ($231.84) and "late payment charges" ($175.00 (five months at $35.00 per month)) in the total amount of $406.84 (collectively, the "Charges") were assessed against the Account purportedly in accordance with the terms of the Agreement. (*See* Statements; Agreement ¶¶ 15-19.) However, because the only evidence before the court establishes a late charge of $20.00 per month and not $35.00 per month as assessed by Citibank (*see* Agreement ¶ 19), the Charges will be reduced to $331.84 (i.e., finance charges of $231.84 and late payment charges of $100 (five months at $20.00 per month)).

further state that the Debtor's monthly expenditures as of the Petition Date were $1,160.00 (Schedule J - Current Expenditures of Individual Debtor(s).) At the time the subject debt was incurred, the Debtor was two months late on her car payments, which eventually led to repossession of the subject vehicle. (Transcript at 11.) The Schedules state that, as of the Petition Date, the Debtor had no real property assets and $4,150.00 in personal property assets. (*See* Schedules (Schedule A – Real Property and Schedule B – Personal Property).) The Schedules further state that as of the Petition Date, there were no secured claims against the Debtor, a priority claim in the amount of $900.00 and $22,500.00 in general unsecured claims, $20,000.00 of which was credit card debt. (*See* Schedules (Schedule D – Creditors Holding Secured Claims, Schedule E – Creditors Holding Unsecured Priority Claims and Schedule F – Creditors Holding Unsecured Nonpriority Claims).) Of that credit card debt, the Debtor had approximately $17,500.00 in unpaid credit card debt (other than Card debt) that was several years old. (Transcript at 13-14.)

IV. NONDISCHARGEABILITY

Bankruptcy Code § 523(a)(2)(A) excepts from discharge "any debt— for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by— false pretenses, a false representation, or actual fraud . . . ." 11 U.S.C.A. § 523(a)(2) (West 2005). To prove a prima facie case under Bankruptcy Code § 523(a)(2)(A), Citibank must make the required showing with respect to the following elements: (1) the Debtor made representations; (2) knowing them to be false; (3) with the intent and purpose of deceiving Citibank; (4) upon which representations Citibank actually and justifiably relied; and (5) which proximately caused the alleged loss or damage sustained by Citibank. *See AT&T Universal Card Services v. Mercer (In re Mercer)*, 246 F.3d 391, 403 (5th Cir. 2001) (*en banc*); *Rosenblit v. Kron (In re Kron)*, 240 B.R. 164, 165

(Bankr. D. Conn. 1999) (Krechevsky, J.). Exceptions to discharge must be strictly construed in favor of the debtor in order to effectuate the fresh start policy of bankruptcy. *Id.* at 165. Furthermore, the "debtor's conduct must involve moral turpitude or intentional wrong; mere negligence, poor business judgment or fraud implied in law (which may exist without imputation of bad faith or immortality) is insufficient." *Id.* at 165-66.

A. Representation, Falsity of Representation and Intent to Deceive

Although the dischargeability of credit card debts pursuant to Bankruptcy Code § 523(a)(2)(A) has not yet been addressed by the Court of Appeals for the Second Circuit, generally "courts hold credit card debts to be dischargeable absent a determination that the debtor did not intend to repay the charges when they were incurred." *AT&T Universal Card Services Corp. v. Williams (In re Williams)*, 214 B.R. 433, 435 (Bankr. D. Conn. 1997) (Krechevsky, J.). In accordance with the view held by a majority of courts, this court has held that each use of a credit card is a representation of an intent to pay the subject debt in accordance with its terms. *American Express Centurion Bank v. Truong (In re Truong)*, 271 B.R. 738, 745 (Bankr. D. Conn. 2002).[8] When a cardholder, through use of the card, makes a representation of her intent to pay, such a representation is "false if there is use *without* that intent." *Mercer*, 246 F.3d at 408 (emphasis in original). *See also Anastas v. American Savings Bank (In re Anastas)*, 94 F.3d 1280, 1286 (9th Cir.

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[8] This court has expressly rejected the view that each use of a credit card is a representation of the debtor's financial ability to pay the subject debt. *Truong*, 271 B.R. at 745 n.13. A debtor's lack of ability to pay "*may* support finding the debtor did *not* intend to pay, but *only* if she was aware of her financial condition and knew she *could not* (and therefore did *not* intend to) make even the minimum monthly payment to the issuer." *Mercer*, 246 F.3d at 409 (emphasis in original). *See also id.* ("If the debtor has *no* idea how the money will get paid back, or if it will get paid back, then he may hope to repay--he may even want to repay--but he certainly does *not* intend to repay." (emphasis in original; citation and internal quotation marks omitted)).

1996) ("The correct inquiry is whether the debtor either intentionally or with recklessness as to its truth or falsity, made the representation that he intended to repay the debt."). Accordingly, the court must determine whether Citibank has made a prima facie case of the Debtor's subjective intent not to make payments on the Account in accordance with the Agreement at the time of her June 2003 Card usage.

Intent to defraud is rarely proved by direct evidence. To discern a debtor's subjective intent, this court has adopted a "totality of the circumstances" approach that applies the following non-exhaustive list of objective factors (as enumerated by the court in *Citibank South Dakota N.A. v. Dougherty (In re Dougherty)*, 84 B.R. 653, 657 (B.A.P. 9th Cir. 1988) (*abrogated on other grounds by Grogan v. Garner*, 498 U.S. 279 (1991)): (1) time elapsed between the charges and the bankruptcy filing; (2) whether the debtor consulted an attorney with respect to the filing of bankruptcy prior to incurring the subject charges; (3) number and amount of charges; (4) financial condition of debtor when the charges were incurred; (5) if the charges exceeded the credit limit; (6) if multiple charges were incurred on the same day; (7) if the debtor was employed (and if not, the debtor's prospect for employment); (8) the debtor's financial sophistication; (9) if there were any sudden changes in the debtor's spending habits; and (10) if charges were made for the purchase of luxury items or necessities. *See Truong*, 271 B.R. at 746. The foregoing factors, together with any other pertinent facts and circumstances, "may provide sufficient circumstantial evidence for a court to infer that a debtor intended, at the time the debt was incurred, not to pay it." *Universal Bank, N.A. v. Owen (In re Owen)*, 234 B.R. 857, 860 (Bankr. D. Conn. 1999) (Krechevsky, J.). As explained below and after examining the totality of the circumstances, the evidence presented by Citibank would allow a factfinder reasonably to find that, at the time of the subject purchases, the Debtor did

not intend to pay the Account debt in accordance with the Agreement (i.e., did not intend to make the Minimum Payment on a (timely) monthly basis).

On June 3, 2003, the Debtor commenced a four day purchasing spree that resulted in $2,214.97 of charges to the Account. There were substantial charges for luxury items, including a 35" television set and video camera equipment, and multiple charges were incurred on the same day. Prior to said purchases, the Debtor maintained a zero balance on the Card going back to December 24, 2002. The charges in question totaled just shy of the Account's balance limit of $2,250.00, and therefore represent a drastic change in the Debtor's spending habits.

Additionally, the Debtor was in very poor financial condition at the time the purchases were made. The Debtor had been unemployed since December 2002.[9] The Debtor's Petition reveals that, as of the Petition Date, she had no source of income, her total monthly expenditures exceeded her total monthly income by $1,160.00. The court may infer that her financial condition was substantially the same on June 3, 2003, approximately five months earlier. At the time the purchases were made, the Debtor had existing credit card debts totaling approximately $17,500.00.[10] Moreover, the Debtor was two months late on her car payments, which (as noted above) eventually led to repossession of the vehicle.

The Debtor entered into consultations for legal representation in bankruptcy on June 19, 2003, a mere 13 days after the Debtor's Card usage. The short time lapse between the purchasing spree and consultation for legal representation in bankruptcy supports the inference that the Debtor

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[9] The Debtor testified at the Section 341 Meeting that she was employed for two weeks in 2003 for a total of eight hours. (Transcript at 10.) She was unemployed in June, 2003. (*Id.*)

[10] The Debtor testified that the subject credit cards were "maxed" out "[a] few years ago at college" and were unavailable for use in June, 2003. (Transcript at 13, line 21 – 14, line 3.)

did not intend to pay for her purchases in accordance with the Agreement. That inference further is supported by the fact that the Debtor never made a single monthly payment on the Account towards the purchases. Finally, and significantly, the Debtor testified at the Section 341 Meeting that she was unable to pay even the Minimum Payment on the Account.[11]

Based upon the all of the foregoing, a factfinder could reasonably infer that the Debtor, at the time she made the purchases, knew that she would be unable to pay for them in accordance with the terms of the Agreement, and, therefore, did not intend to do so. Accordingly, Citibank has made a prima facie showing that (1) the Debtor made representations; (2) knowing them to be false; (3) with the intent and purpose of deceiving Citibank.

B. Reliance and Causation

Citibank must make a prima facie case that it relied upon the Debtor's misrepresentation and that such reliance was both actual and justifiable. *Mercer,* 246 F.3d at 411. A showing by Citibank that "it would *not* have approved the loan [i.e., charges incurred] in the absence of debtor's promise [or representation] to pay (through card-use)" establishes actual reliance. *Id.* at 415 (emphasis in original). Citibank has made the required showing of actual reliance on the Debtor's representation of intent to pay. (*See* Affidavit ¶ 4.)

Additionally, Citibank has made the required showing that such reliance was "justifiable." "[T]he credit card issuer justifiably relies on a representation of intent to repay as long as the account

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[11] When asked why she did not make any payments, the Debtor responded: "I'm saving to make the minimum because I figured the minimum was not – if I made less than that, it wouldn't make a difference." (Transcript at 13, lines 11-13.) The Debtor may have intended to pay the subject debt in some general sense, but a factfinder could reasonably find that the Debtor knew she could not pay that debt in a manner consistent with the terms of the Agreement (i.e., the Debtor knew that she could not make the Minimum Payments on a (timely) monthly basis).

is not in default and any initial investigations into a credit report do not raise red flags that would make reliance unjustifiable." *Anastas,* 94 F.3d at 1286. For some time prior to the purchasing period of June 3, 2003 through June 6, 2003, the Debtor did not use the Card, and therefore maintained a zero balance. The Debtor had no prior defaults on the Account. At the time the Account was opened – sometime before December 24, 2002 – the Debtor maintained regular income. Therefore, a finder of fact could conclude that Citibank did not have "reason to believe [that] . . . [the Debtor] would *not* carry out [her] . . . representation, through card-use, of intent to pay," *Mercer,* 246 F.3d at 423, concerning the purchases made from June 3, 2003 through June 6, 2003. The foregoing would also establish causation. *Truong,* 271 B.R. at 748 n. 17.[12]

V. ATTORNEY'S FEES AND COSTS

In addition to seeking a nondischargeable money judgment against the Debtor, Citibank has requested reasonable attorney's fees and expenses (comprised of "Fees" and "Costs") in its prayer for relief. (Complaint at 9.)[13] While there is no general right to attorney's fees in bankruptcy actions, "such fees may be awarded in accordance with state law." *BankBoston, N.A. v. Sokolowski (In re Sokolowski),* 205 F.3d 532, 535 (2d Cir. 2000). *See also Collingwood Grain, Inc. v. Coast Trading Co. (In re Coast Trading Co.),* 744 F.2d 686, 693 (9th Cir. 1984). "However, where the litigated issues involve not basic contract enforcement questions, but issues peculiar to federal bankruptcy law, attorney's fees will not be awarded absent bad faith or harassment by the losing

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[12] Finally, because the underlying debt is nondischargeable, the Charges are nondischargeable also. *Cf. Cohen v. De La Cruz,* 523 U.S. 213 (1998) ("We hold that [Section] . . . 523(a)(2)(A) prevents the discharge of all liability arising from fraud . . . .").

[13] As noted above, Citibank filed an Affidavit re Attorney's Fees and Costs (included in Doc. I.D. No. 13).

party." *Sokolowski*, 205 F.3d at 535 (citation and internal quotation marks omitted). In the present action, Citibank seeks a determination that a $2,621.81 credit card debt owing to Citibank is nondischargeable pursuant to Bankruptcy Code § 523(a)(2). Since the issue "involves a unique, separate area of federal law," *Coast Trading*, 744 F.2d at 693, and no prima facie case of "bad faith or harassment" has been made, Citibank is not entitled to have its Fees added to the nondischargeability claim.

Furthermore, even if a right to recover the Fees existed under federal law (which it does not), Citibank has not properly pled that "claim." A general demand for attorney's fees in the prayer for relief does not state a proper claim for attorneys' fees, as required by the relevant procedural rules. *See* Fed. R. Bankr. P. 7008(b) ("A request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third party complaint, answer, or reply as may be appropriate."). *See also Hartford Police F.C.U. v. DeMaio (In re DeMaio)*, 158 B.R. 890, 892 (Bankr. D. Conn. 1993) (Krechevsky, J.) ("Statements made in a *prayer* are insufficient to satisfy the requirement that attorney's fees be stated as a *claim*." (emphasis in original)). *Accord V. M. v. S. S. (In re S.S.)*, 271 B.R. 240, 244 (Bankr. D. N.J. 2002) (denying attorneys fees to the successful creditor in a nondischargeability proceeding); *Garcia v. Odom (In re Odom)*, 113 B.R. 623, 625 (Bankr. C.D. Cal. 1990) (denying attorneys fees to the successful creditor in a nondischargeability proceeding).

The court, in its discretion, may award costs in an adversary proceeding. Under Bankruptcy Rule 7054(b), the prevailing party in an adversary proceeding is not prima facie entitled to recover costs. *See* Fed. R. Bankr. P. 7054(b) ("The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides."). The prevailing party bears the burden of establishing a basis for the award, and the costs which may be awarded are set forth

in 28 U.S.C. § 1920. *See* 6 William L. Norton, Jr., *Norton Bankruptcy Law and Practice* § 142:5 (2d ed. 2004). However, in unusual circumstances – such as a showing of misconduct on the part of the prevailing party or the inability of the unsuccessful party to pay – courts tend not to impose costs. *See id. See also Stuebben v. Gioioso (In re Gioioso)*, 979 F.2d 956, 963 (3d Cir. 1992) ("[I]n its sound exercise of discretion, a bankruptcy court could deny costs if it would be futile to award them."). Based on the record, the Debtor does not have the ability to pay the Costs of this adversary proceeding.[14] Accordingly, Citibank is not entitled to an award of Costs here.

For all of the reasons stated above, Citibank's claim for Fees and Costs is denied.

VI. CONCLUSION

For the reasons discussed above, the court has determined that (a) the debt owed to Citibank in the amount of $2,546.81 was not discharged in this chapter 7 case, but (b) Citibank's request for recovery of Fees and Costs is denied. Judgment to that effect shall enter.

BY THE COURT

DATED: March 7, 2005

Lorraine Murphy Weil
United States Bankruptcy Judge

[14] In her sworn Schedules, the Debtor stated that she had no current income as of the Petition Date. (*See* Schedules (Schedule I - Current Income of Individual Debtor(s)).)

OPINION SERVICE LIST

Case No.:	03-35552 (LMW)
Adv. Case No.:	04-3007 (LMW)
Doc. ID.:	7
Name:	In re Gina A. Spring

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Ms. Gina A. Spring	Defendant (pro se)

2. Judges:

Judge Alan H.W. Shiff
Judge Robert L. Krechevsky
Chief Judge Albert S. Dabrowski

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Signature of Sender Kathleen S. Money

Date sent 3/7/05