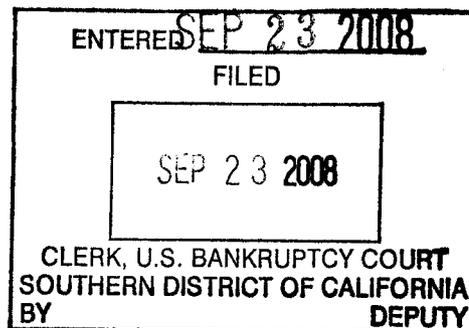


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WRITTEN DECISION – NOT FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re:

Joseph Francis Kelley and  
Shirley Susan Kelley,

Debtors.

Alicia Dwyer,

Plaintiff,

v.

Joseph Francis Kelley and  
Shirley Susan Kelley

Defendants.

) Bankruptcy No. 07-01152-LT

) Adversary No. 07-90263

) SUPPLEMENT TO MEMORANDUM  
DECISION DATED JULY 15, 2008

The Court issues this Supplemental Memorandum Decision and herein renders its decision as to the appropriate amount of Credit Card<sup>1</sup> interest properly deemed non-dischargeable. In its Memorandum Decision dated July 15, 2008 (the "Memorandum Decision"), this Court requested that Ms. Dwyer provide the Court with a calculation of appropriate interest on the Credit Card account. In rendering this accounting Ms. Dwyer was

<sup>1</sup> Capitalized Terms not defined herein shall have the meaning set forth in the Memorandum Decision.

1 limited to calculations of Credit Card interest based on already submitted evidence, and  
2 Ms. Dwyer was required to calculate interest in a manner that took into account that some  
3 portion of the interest was her responsibility. Defendants were provided an opportunity to  
4 file a counter declaration. Memorandum Decision p. 20-21.

5  
6 This Court having reviewed the Declaration of Alicia Dwyer dated August 4, 2008  
7 and the Declaration of Daniel J. Winfree dated September 5, 2008 determines that  
8 nondischargeable interest shall be included in the Judgment available to Ms. Dwyer in the  
9 amount of \$4,489.16.

10  
11 In making this determination the Court makes the following findings of fact:

12  
13 1. Total Finance Charges. Ms. Dwyer incurred finance charges during the  
14 relevant time period in the total amount of \$6,789.16. *See* Trial Ex. 2, 5 and 6. The Court  
15 calculated this amount by totaling the finance charges on all Credit Card statements  
16 submitted into evidence other than the September, 2004 statement which reflects Credit  
17 Card charges after Ms. Dwyer paid the Credit Card in full. Thus, the Court included all  
18 finance charges on Credit Card statements submitted into evidence other than the \$1.62  
19 reflected by the September, 2004 statement.<sup>2</sup>

20  
21 The Court's total differs from the \$7,643.74 total contained in Ms. Dwyer's August 4,  
22 2008 Declaration. In reconciling this discrepancy, the Court reviewed Ms. Dwyer's  
23 calculations as contained in Trial Exhibit 4 ("Exhibit 4"). The Court assumed that  
24 Ms. Dwyer utilized Exhibit 4 to prepare her August 4, 2008 Declaration as it contains

25  
26 \_\_\_\_\_  
27 <sup>2</sup> As discussed in the Memorandum Decision, Ms. Dwyer borrowed funds from another source to  
28 payoff her Credit Card balance. While Ms. Dwyer undoubtedly incurred interest charges in  
connection therewith, Ms. Dwyer failed to provide any evidence in this regard. Thus, Ms. Dwyer is  
not entitled to include any amount of interest accruing after Credit Card payoff in her non-  
dischargeable judgment.

1 entries that total \$7,643.74. Based on this review, the Court identified the following errors  
2 which lead to the difference between the numbers.

3  
4 First, in Exhibit 4, Ms. Dwyer used \$367.95 for the finance charge for May, 2003.  
5 The actual finance charge for that period was \$355.78. Ms. Dwyer improperly used the  
6 amount of "purchases and adjustments" for that month, rather than the finance charge.

7  
8 Second, in Exhibit 4, Ms. Dwyer improperly double counts the finance charge for  
9 December of 2003. The Court is not sure how this occurred. Ms. Dwyer correctly shows  
10 the December charge as \$404.82, but then shows a January charge of \$404.00. Instead, the  
11 correct January charge was \$431.49 (this charge is shown as a February 1, 2004 charge) and  
12 the correct February charge is \$417.70 (this charge is shown as a February 29, 2004 charge.)

13  
14 Third, in Exhibit 4, Ms. Dwyer omitted 31 cents from the March 2004 charge.

15  
16 Finally, in Exhibit 4, Ms. Dwyer included \$438.72 of "interest" for September of  
17 2004. In fact, review of the September statement shows that this was the amount of  
18 payments made on the Credit Card during August presumably on account of purchases  
19 made after payment in full of expenses related to the Property Sale. The August statement  
20 was not introduced into evidence.

21  
22 When these reductions and the one 13 cent increase are made to Ms. Dwyer's total, it  
23 equates to the total reached by the Court.

24  
25 2. Appropriate Deductions From Total Finance Charges. Ms. Dwyer used an  
26 estimated amount of \$100.00 per month as the amount of interest allocable to her on account  
27 of personal charges unrelated to the Property Sale related charges authorized by Mr. Kelley.

28

1 This monthly estimate exceeds the \$69.33 payable by her on the first Credit Card statement  
2 submitted into evidence, an amount of interest entirely allocable to Ms. Dwyer.

3  
4 As charges against the Credit Card continued thereafter, the balance allocable to  
5 Ms. Dwyer increased for a period of time. However, Ms. Dwyer ceased all charges against  
6 the Credit Card for her personal benefit as of February 13, 2003. Trial Ex. 2, 5, and 6.

7  
8 In addition to personal charges, however, principal amounts under the Credit Card  
9 properly allocable to Ms. Dwyer also increased as a result of late payment charges. Ex. 5  
10 and 6. This Court previously found that these amounts accrued only as a result of the timing  
11 of payment. Thus, these amounts are not properly included in the non-dischargeable  
12 judgment. Memorandum Decision p. 21-22.

13  
14 During the period prior to payment in full of the Credit Card in July of 2004,  
15 Ms. Dwyer also made payments on the Credit Card. This Court previously found that such  
16 payments would be allocable to a reduction of the amounts for which Ms. Dwyer bore  
17 responsibility. Memorandum Decision p. 21.

18  
19 Thus, in analyzing appropriate interest and reviewing Ms. Dwyer's calculations, this  
20 Court utilized a starting balance allocable to Ms. Dwyer, increased it by all personal charges  
21 and late payment fees, and reduced this balance by any payments made prior to payment in  
22 full. The Court utilized interest rates as set forth in the Credit Card statements admitted into  
23 evidence. These statements reflect several interest rate increases prior to payment in full.

24  
25 Ms. Dwyer calculates interest at \$100.00 per month over a 23 month period. Thus,  
26 she deducts \$2,300.00 from total interest. The Court notes that the applicable period  
27 appears more correctly to be 21 months as the first Credit Card statement at issue was issued  
28 in November of 2002, and the Credit Card was paid in full on July 1, 2004.

1 The Court concludes that over a 21 month period, interest allocable to Ms. Dwyer as  
2 evidenced by the Credit Card statements was only slightly greater than \$100.00 a month on  
3 average and that the additional \$200.00 Ms. Dwyer deducts more than compensates for this  
4 slight overage. In short, the Court finds, based on its mathematical review, that  
5 Ms. Dwyer's estimate is largely correct and, if incorrect, slightly overstates the interest  
6 allocable on her account. As Ms. Dwyer bears the burden of proof on this issue, the Court  
7 will not increase the interest component of the non-dischargeable judgment to conform it to  
8 the slight discrepancy ascertained by the Court.

9  
10 3. Mr. Kelley's Response. The Court finds that the Declaration provided by the  
11 counsel for Mr. Kelley was not helpful to the Court. It argues that interest should be  
12 charged at the earliest rate of 12.99% over the entire 21 month period. This argument  
13 ignores the fact that the Credit Card statements were introduced into evidence without  
14 objection and that they evidence interest rate increases on the Credit Card account.

15  
16 As a result, this Court supplements its previous Memorandum Decision and finds that  
17 Ms. Dwyer is entitled to include in the judgment, as a nondischargeable portion of her  
18 claim, interest in the amount of \$4,489.16. The total amount of the non-dischargeable  
19 portion of Ms. Dwyer's claim is thus \$16,379.91.

20  
21 Ms. Dwyer is directed to prepare and submit an appropriate judgment promptly.

22  
23 DATED: September 23, 2008

24   
25 LAURA S. TAYLOR, JUDGE  
26 United States Bankruptcy Court  
27  
28