

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA

IN RE:

ERLA JEAN LULUE,

CASE NO. 99-10330-WSS

Debtor.

Chapter 7

**ORDER ON DEBTOR'S MOTION TO ALTER,
AMEND OR VACATE COURT'S FINAL
ORDER OF SEPTEMBER 29, 1999**

This matter is before the Court on the Debtor's motion to alter, amend or vacate the Court's final order of September 29, 1999. James Orr appeared for the Debtor, and Larry Moorer appeared for Oster & Wegener P.L.C. (hereinafter "Oster & Wegener"). On April 30, 1999, Oster & Wegener filed a motion to determine the validity of its lien. After a hearing on June 15, 1999, the Court took the motion under advisement. Both parties submitted briefs on the validity of Oster & Wegener's attorney privilege under Louisiana law in the context of the Debtor's bankruptcy. On August 3, 1999, the Court found Oster & Wegener's privilege to be valid, and gave the parties fourteen days from the date of the order to submit the divorce judgment and additional briefs on the issue of whether the military benefit which the Debtor receives from her former husband is exempt under federal or state law. Oster & Wegener moved for an additional fourteen days in which to submit its brief on August 17, 1999, and the Court allowed the additional time on August 30, 1999. The parties did not file additional briefs, and on September 29, 1999, the Court entered a final order on the validity of Oster & Wegener's lien.

The Debtor filed the present motion to alter, amend or vacate the September 29, 1999 final order on October 12, 1999. The Debtor maintains that the military retirement pay that she receives is exempt under 38 U.S.C. § 5301, which makes certain veteran benefits exempt from claims of creditors. Oster & Wegener assert that 38 U.S.C. §5301 applies only to benefits paid through the Veterans

Administration, and the retirement benefits at issue are paid through the Department of Defense.

The divorce decree under which the Debtor receives a portion of her former husband's military retirement benefits states in paragraph six (6) that the domestic relations court reserved jurisdiction to enter further orders necessary to implement the decree, and "in the event that any Court of competent jurisdiction should subsequently declare the Uniformed Services Former Spouse's Protection Act, 10 USC 1408, et seq., illegal or unconstitutional, to reopen these proceedings to give effect to such declaration or illegality or unconstitutionality;". Title 10 of the United States Code deals with matters related to the Armed Forces. More specifically, section 1408 of Title 10 sets out the procedure for "payment of retired or retainer pay in compliance with court orders." The language in the divorce decree indicates that the benefits awarded are paid by the Armed Forces rather the Veterans Administration. There is no mention of veterans' benefits or of Title 38, the section of the United States Code which deals with veterans' benefits, in the divorce decree. Based on the foregoing, the Court finds that the Debtor has failed to prove that the military retirement benefits received by the Debtor are exempt under 38 U.S.C. § 5301. The Debtor's motion to alter, amend or vacate the Court's final order of September 29, 1999 is due to be denied. It is hereby

ORDERED that the Debtor's motion to alter, amend or vacate the Court's final order of September 29, 1999 is **DENIED**; and it further

ORDERED that the military retirement benefits received by the Debtor are not exempt property under federal or state law.

DATED: February ____, 2000

WILLIAM S. SHULMAN
U.S. BANKRUPTCY JUDGE