

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
WINCHESTER DIVISION

In re:

No. 01-14160  
Chapter 13

DORIS DELORES GLENN

Debtor

**MEMORANDUM**

Appearances: Keith S. Smartt, McMinnville, Tennessee, Attorney for Debtor

Robert S. Peters, Swafford, Peters & Priest, Winchester, Tennessee,  
Attorney for Stanton Oil Company, Inc.

HONORABLE R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

This case is before the court on the debtor's objection to claim #13 filed by Stanton Oil Company, Inc. The only issue for the court to decide is whether the claim is barred by the statute of limitations set forth at TCA § 47-2-725. Having determined that the claim is barred by the four year statute of limitations, the claim shall be disallowed.

Stanton Oil Company, Inc., ("Stanton") supplied gasoline and other products to the debtor who operated a convenience store on New Smithville Highway in Warren County, Tennessee. Stanton also owned the fuel equipment at the location, including the tanks, the pumps, piping, and the canopy. As of January 2, 1995, the debtor owed Stanton the sum of

\$89,169.77, including interest and principal. No payments have been made on the debt since that time.

On March 19, 1998, Stanton sold all of its equipment at the location to Central Oil Company. The debtor consented to the sale. The agreement and bill of sale, dated March 19, 1998, contained the following language:

3. Glenn (the debtor) agrees to this arrangement, acknowledges that she is indebted to Stanton on an old account which is not merged into this agreement, and she releases Stanton from the said contract and will hold him harmless from it.

The contract referred to is the supply agreement between the debtor and Stanton dated October 22, 1987.

This case was filed July 2, 2001. Since no payment has been made on the account since January 2, 1995, the claim is barred by the four year statute of limitation, TCA § 47-2-725, unless the 1998 Agreement and Bill of Sale tolled the statute of limitations.

Under Tennessee law, in order to toll the statute of limitations on an indebtedness, there must be an acknowledgment of the debt and an expression of a willingness to pay the debt. *Hall v. Skidmore*, 180 Tenn. 23, 171 S.W. 2d 274 (Tenn. 1943). A voluntary, unconditional payment of interest on a debt is an act that implies a willingness to pay the debt such that the statute of limitations will be tolled. *Graves v. Sawyer*, 588 S.W. 2d 542 (Tenn. 1979). However, the mere assumption of a debt by a third party does not toll the statute of limitations. *Hobbs v. Brainard*, 919 S.W. 2d 337 (Tenn. App. 1996).

While the Agreement and Bill of Sale contains an acknowledgment signed by the debtor that "she is indebted to Stanton on an old account," it does not contain an expression of

a new willingness to pay or a new promise to pay. In view of the stipulated fact that no payment has been made on the account since January 2, 1995, and absent an expression of willingness to pay, the statute of limitations ran continuously from January 2, 1995, expiring on January 2, 1999. The parties have not argued it, but the same result apparently would follow under the six year statute of limitations. TCA § 28-3-109(a). The court will enter an order disallowing the claim of Stanton Oil Company, Inc.

This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TENNESSEE  
SOUTHERN DIVISION

In re:

No. 01-14160  
Chapter 13

DORIS DELORES GLENN

Debtor

**ORDER**

In accordance with the court's Memorandum entered this date,

It is ORDERED that the debtor's objection to claim is sustained and claim #13 filed by Stanton Oil Company, Inc., in the amount of \$89,169.77 is DISALLOWED.

ENTER:

BY THE COURT

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R. THOMAS STINNETT  
UNITED STATES BANKRUPTCY JUDGE

(Entered 10/14/03)