

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF

HAROLD SCHULZ,

DEBTOR

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CASE NO. BK85-980

CH. 7

MEMORANDUM

A hearing on the application for administrative expenses, Filing No. 165, of Kazaan Fertilizer Company (Kazaan) and objections thereto, Filing Nos. 161 and 163, was held May 2, 1988. John Feller of Beemer, Nebraska, appeared for Kazaan; Thomas Stalnaker of Stalnaker, Becker, Buresh & Gleason, P.C., Omaha, Nebraska, appeared for trustee; John Guthery of Perry, Guthery, Haase & Gessford, P.C., Lincoln, Nebraska, appeared for Farmers & Merchants National Bank (Bank). At the hearing, the Court ordered the parties to submit legal arguments which the Court has received and reviewed.

Statement of Facts

Harold Schultz, debtor, filed for Chapter 11 relief in May, 1985. In May, 1986, debtor converted to Chapter 7. After the Chapter 11 filing and prior to the Chapter 7 conversion, debtor purchased agricultural chemicals from Kazaan. On March 31, 1988, Kazaan filed an application for payment of an administrative expense of \$6,075.96 pursuant to 11 U.S.C. § 503(1)(A).

Discussion

Trustee claims that the application is untimely and should be denied on that basis. Kazaan contends that, because the Court did not set a specific time to file post-petition claims in the Chapter 11, the time to file has not expired. In the alternative, debtor requests an enlargement of time based on excusable neglect.

Bankr. R. 1019 applies to proceedings in a Chapter 7 following conversion from a Chapter 11 or Chapter 13. Subsection (6) requires the debtor or trustee to file a final report within 30 days of the conversion order, which report should include a schedule of unpaid debts. After the filing of the report and ~~the~~ schedule, subsection (7) of Bankr. R. 1019 requires the Court to order that "written notice be given to those entities ... that their claims must be filed within 60 days from the entry of the order." Bankr. R. 1019(7).

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Judith M. Nadler
Clerk of Bankruptcy Court
By _____ Deputy

In the instant case, debtor filed both a schedule of unpaid debts on July 31, 1986, Filing No. 95, and a certificate showing service on Kazaan. The Court finds that this schedule satisfied the requirements of Bankr. R. 1019(6). Simultaneous with the service of the unpaid debt schedule, debtor provided to Kazaan and to the other creditors listed on the schedule a copy of the notice of first meeting of creditors. This notice, Filing No. 92, gives creditors ninety days after August 12, 1986, to file a claim. The notice sets out clearly the rights of creditors and the accompanying deadlines. It meets the substantive requirements of Bankr. R. 1019(7). Kazaan's objections based on Bankr. R. 1019 are overruled.

Bankr. R. 9006 permits enlargement of time after the expiration of a specified period where "the failure to act was the result of excusable neglect." Bankr. R. 9006(b)(1). However, this power is limited when enlarging the time permitted under Bankr. R. 3002(c), which rule states inter alia, the time deadlines for filing proofs of claim or interest. Bankr. R. 9006 permits an enlargement of time "for taking action under Rules ... 3002(c) ... only to the extent and under the conditions stated in those rules." Bankr. R. 9006(b)(3).

Bankr. R. 3002(c) sets forth a ninety-day period for filing proof of claims in a Chapter 7. This ninety-day period begins from the date of the Section 341 meeting. Bankr. R. 3002 permits some exceptions to the ninety-day period; however, none of these exceptions are applicable here.

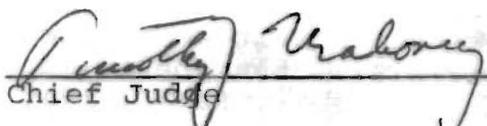
Thus, in the instant case, the Court finds no authority in either Bankr. R. 9006 or 3002 to enlarge the time to file claims in Chapter 7. Kazaan's request to enlarge time is denied.

Kazaan's argument that its request for administrative expense is not a claim and not subject to the limitation of Bankr. R. 3002(c) is overruled. Section 101(4) of Title 11 defines claim as "a right to payment." Kazaan's request for payment of administrative expense falls within the parameters of a "right to payment." In addition, the request for administrative expense in a Chapter 11 becomes a claim in a Chapter 7 because the debt was incurred preconversion.

Trustee's objection to the administrative expense claim of Kazaan is sustained. Bank's objection is moot. Separate Journal Entry will be filed.

DATED: July 6, 1988.

BY THE COURT:


Chief Judge