

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 FERN JOHNSTON,) CASE NO. BK87-726
)
 DEBTOR.) A87-421
)
 NATIONAL BANK OF NELIGH,) CH. 7
)
 Plaintiff)
)
 vs.)
)
 FERN JOHNSTON, et al.)
)
 Defendant)

MEMORANDUM

Before a United States Bankruptcy Judge for the District of Nebraska regarding Court order filed September 15, 1987, (Filing No. 12).

APPEARANCES

David Copple, Attorney, P.O. Box 78, Norfolk, NE 68701

Jeffrey Stoehr, Attorney, 6910 Pacific, Suite 200, Omaha, NE 68106

C.G. Wallace, III, Attorney, 11213 Davenport Street, Suite 200, Omaha, NE 68154

A hearing on the National Bank of Neligh's motion for extension of time to file an objection to dischargeability was heard on September 14, 1987. This Court ordered the National Bank of Neligh to file an objection within fifteen days after receipt of documents requested from Lazy EJ Ranches, Inc. On September 10, 1987, counsel for Lazy EJ Ranches, Inc., mailed certain materials to Bank. On September 22, 1987, counsel for debtor mailed materials to Bank. On October 5, 1987, Bank wrote to debtor's counsel and asked for additional information, and on October 8, 1987, debtor's counsel wrote to Bank's counsel stating that all the information requested had been provided. This letter went on to say: "I have no idea what you are talking about since the information regarding real estate owned by the corporation has been provided you. If you have some specific information that you are seeking regarding my client within the context of a bankruptcy in NEBRASKA will provide it. Otherwise, contact Mr. Stoehr and make a specific request since it is our opinion that all information requested has been provided." No further

FILED
JUN 14 1988
Judith M. Napier
Clerk, U.S. Bankruptcy Court
By _____ Deputy

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communications occurred between the parties, and on October 27, 1987, Bank filed an adversary proceeding objecting to discharge. Debtor claims Bank's filing was out of time.

The Court finds that the October 8, 1987, letter written by debtor's counsel is sufficient notice to Bank that all materials had been supplied unless Bank subsequently identified a specific document, which Bank did not do. Bankr. R. 9006(a) is the applicable rule for computation of time periods. It reads:

In computing any period of time prescribed ... by order of court, ... the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless this is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is a filing of a paper in court, a day on which weather or other conditions have made the clerk's office inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days.

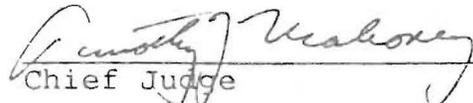
Applying this methodology to the instant case, the fifteen-day period ordered by this Court began on Friday, October 9, 1987, the next day following the letter written by debtor's counsel. The fifteen-day period from and including October 9 ended on Friday, October 23, 1987. However, subsection (f) of Bankr. R. 9006 provides for additional time when a "requirement to do some act ... within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail, three days shall be added to the prescribed period." Adding three days to the fifteen-day period ending Friday, October 23, 1987, would extend the period ordered by the Court to Monday, October 26, 1987.

The objection to discharge was not filed by Bank until Tuesday, October 27, 1987. It was, therefore, filed out of time, and Bank's complaint is dismissed.

Separate journal entry this date.

DATED: June 14, 1988.

BY THE COURT:


Chief Judge