

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)
)
THOMAS A. HOLT,) CASE NO. BK96-82049
)
DEBTOR) A97-8007
_____)
RICHARD J. HRUZA, JR.,)
) CH. 11
Plaintiff)
vs.)
)
THOMAS A. HOLT,)
)
Defendant)

AMENDED AND SUBSTITUTED MEMORANDUM

Hearing was held on Motion to Dismiss Adversary on April 24, 1997. Appearances: Donald Girard for the defendant and Greg Jensen for the plaintiff. This memorandum contains findings of fact and conclusions of law required by Fed. Bankr. R. 7052 and Fed. R. Civ. P. 52. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(I).

Order

The debtor, Thomas Holt, filed a petition for relief under Chapter 11 of the Bankruptcy Code on September 16, 1996. The first meeting of creditors pursuant to 11 U.S.C. § 341 was scheduled for November 15, 1996, and notice of that meeting was sent out by the Clerk of the Bankruptcy Court. The last date to file a complaint to determine the dischargeability of certain types of debts, i.e. those included in 11 U.S.C. § 523(c) was set at January 14, 1997.

The first meeting of creditors was not held on November 15, 1996 because of inclement weather, and was rescheduled by the court and actually held on December 12, 1996.

On January 13, 1997, the plaintiff mailed his complaint to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(6), which is a debt procedurally included in 11 U.S.C. § 523(c). The complaint was received by the U.S.

Bankruptcy Court on January 15, 1997, one day after the deadline provided for in the initial notice sent out by the Clerk of the Bankruptcy Court.

The defendant filed an answer to the plaintiff's complaint on February 18, 1997 and filed a motion to dismiss, which this court construes as a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c), on March 3, 1997. In the motion, the defendant alleges that the plaintiff's complaint was filed out of time, and therefore, should be dismissed.

Fed. R. Bankr. P. 4007(c) provides, in part, as follows:

A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a) . . . On motion of any party in interest, after hearing on notice the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

Fed. R. Bankr. P. 4007(c). The first date set for the meeting of creditors was November 15, 1996, and sixty days following that date was January 14, 1997. The plaintiff did not request an extension of time before the time had expired. Thus, the complaint was not timely filed.

In addition, this court is prohibited by Fed. R. Bankr. P. 9006(b)(3) from enlarging the time limits of Rule 4007(c). Rule 9006(b)(3) provides: "The court may enlarge the time for taking action under Rule[] . . . 4007(c) . . . only to the extent and under the conditions stated in those rules." The court may therefore only enlarge the time for taking action under Rule 4007(c) if a party makes a motion for such enlargement prior to the expiration of the sixty day period. Since an extension was not requested in this case, this court is powerless to extend the time period, even by one day.

Accordingly, the plaintiff's complaint to determine the dischargeability of a debt pursuant to § 523(a)(6) is dismissed as untimely filed. The motion filed by the defendant is granted.

Separate journal entry to be filed.

DATED: May 1, 1997

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

Copies faxed by the Court to:

GIRARD, DONALD 308-532-5275

Copies mailed by the Court to:

Greg Jensen, P.O. Box 310, Ord, NE 68862
United States Trustee

Movant (*) is responsible for giving notice of this journal entry to all other parties (that are not listed above) if required by rule or statute.

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FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:)	
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THOMAS A. HOLT,)	CASE NO. BK96-82049
)	A97-8007
<u>DEBTOR(S)</u>)	
)	CH. 11
RICHARD J. HRUZA, JR.,)	Filing No. 7, (11 & 12)
Plaintiff(s))	
vs.)	<u>JOURNAL ENTRY</u>
THOMAS A. HOLT,)	
)	DATE: May 1, 1997
<u>Defendant(s)</u>)	HEARING DATE: April 24, 1997

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to Dismiss Adversary by the Defendant/Debtor and Resistance by Plaintiff.

APPEARANCES

Donald Girard, Attorney for defendant
Greg Jensen, Attorney for plaintiff

IT IS ORDERED:

Motion to Dismiss granted. See memorandum filed this date.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

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