

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

|                            |   |                     |
|----------------------------|---|---------------------|
| IN THE MATTER OF           | ) |                     |
|                            | ) |                     |
| STANLEY & JEANETTE KNEIFL, | ) | CASE NO. BK93-80914 |
|                            | ) | A93-8196            |
| <u>DEBTOR(S)</u>           | ) |                     |
|                            | ) |                     |
| RONALD V. WOLFF,           | ) | CH. 7               |
| Plaintiff(s)               | ) | Filing No. 10, 12   |
| vs.                        | ) |                     |
|                            | ) |                     |
| STANLEY J. KNEIFL and      | ) |                     |
| JEANETTE KNEIFL,           | ) |                     |
| <u>Defendant(s)</u>        | ) |                     |

MEMORANDUM

Hearing was held on March 2, 1994, on the Motion for Summary Judgment filed by the debtor/defendant and the Objection filed by Ronald V. Wolff. Appearing on behalf of debtor was Mark Johnson of Norfolk, Nebraska. Appearing on behalf of Ronald V. Wolff was Charles Caskey of Stanton, Nebraska. 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)(J).

Background

The debtors, Stanley and Jeannette Kneifl, filed Chapter 7 Bankruptcy on June 3, 1993. A creditor, Ronald V. Wolff, initiated this adversary proceeding on October 22, 1993, to object to the discharge of the debtor under 11 U.S.C. § 727(a)(2), (a)(5) & (c)(2). The creditor entered into a leasing arrangement with the debtor by which the debtor leased cattle from the creditor for a daily fee and for a fixed amount of proceeds from resulting milking operations. The creditor has alleged that the debtor fraudulently disposed of the cattle in violation of the lease. The creditor has not yet filed a claim in the underlying bankruptcy case, but the creditor is seeking to have \$39,000 declared as nondischargeable debt in this adversary proceeding.

The debtors filed a Motion for Summary Judgment on December 27, 1993, Filing No. 10. The Motion for Summary Judgment was filed after this Court denied the debtors' Motion to dismiss on December 22, 1993, Filing No. 9. The Summary Judgment alleges that the creditor's adversary action is time barred by Fed. Bankr. R. 4007.

It is undisputed that the creditor received notice of the bankruptcy. It is also undisputed that the creditor received

notice of the first creditor's meeting that was going to be held on July 6, 1993, at 10:00 a.m., BK93-80914, Filing No. 5. This notice also stated the following: "Discharge of Debts: Deadline to file a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Types of Debts: 09/07/93." BK93-80914, Filing No. 5. The first meeting was rescheduled from July 6, 1993, to August 24, 1993, at 9:00 a.m. by the Chapter 7 Trustee. BK93-80914, Filing No. 11. It is undisputed that the creditor attended this meeting.

At the hearing on the Motion to Dismiss, this Court denied the motion because it was concerned with whether the creditor had knowledge of potential fraudulent activity by the debtors within the sixty day bar limit imposed under Fed. Bankr. R. 4004(a) and 4007(c). The debtors in response filed this Summary Judgment motion.

The creditor responded to the Summary Judgment motion by arguing that it did not have notice of potential wrongdoing until the second scheduled meeting of creditors held on August 24, 1993. The creditor alleged that even though it noticed some cattle were missing from the debtors' farm, it was unable to ascertain that the debtors may have wrongfully disposed of the cattle in contravention of the Lease Agreement until the second scheduled creditors' meeting was held on August 24, 1993, Filing No. 12.

Hearing was held and evidence was submitted on March 2, 1993. The Court took the matter under advisement.

#### Decision

The Motion for Summary Judgment is granted. The Court finds that the creditor had knowledge of the alleged wrongful conveyance of the cattle on the August 24, 1993, hearing. This hearing was well before the expiration of the sixty day bar date on September 7, 1993, and the creditor should have filed its objection to discharge pursuant to the time permitted in Rule 4004(a) or filed a motion to extend this time pursuant to Rule 4004(b).

#### Discussion

The debtors have moved for Summary Judgment pursuant to Fed. Bankr. R. 4007; however, Rule 4007(c) is applicable to complaints objecting to discharge that are filed under 11 U.S.C. § 523(c). In this case, the creditor has filed his complaint objecting to discharge pursuant to 11 U.S.C. § 727(a)(2), (a)(5) & (a)(7). The proper rule to follow in an action under § 727 is Fed. Bankr. R. 4004. Fed. Bankr. R. 4004(a) states the following:

In a Chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) 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)....

See also Fed. Bankr. R. 4007(c). There is no substantive difference between Rules 4004(a) and 4007(c). In addition, because all case law cited, except where noted, specifically addresses both rules and because the debtors made the correct substantive arguments, this Court will treat the debtors' summary judgment motion as a motion under Rule 4004.

Fed. Bankr. R. 9006 governs whether a court may extend a specific period. In general, a court may grant a motion to extend a time period that is made after a time period has expired where the failure to act within the time period was due to excusable neglect. Rule 9006(b)(1). However, Rule 4004(a) is excepted from Rule 9006(b)(1), and instead, a time period may be enlarged only to the extent permitted under Rule 4004. Rule 4004 permits a court to extend the filing deadline under the following circumstances:

On a motion of any party in interest, after hearing on notice, the court may extend for cause the time for filing a complaint objecting to discharge. The motion shall be made before such time has expired.

Rule 4004(b).

Rule 4004(a) is strictly followed and is treated as preventing courts from sua sponte extending the time to file an objection to discharge. Themy v. Yu (In re Themy), 6 F.3d 688 (10th Cir. 1993); Byrd v. Alton (In re Alton), 837 F.2d 457 (11th Cir. 1988) (holding that creditor was not entitled to extension of time to file objection to discharge pursuant to Rule 4007(c) after bar date expired because even though objection was based on fraud committed by the debtor and even though the creditor had no notice of the bar date, the creditor had notice of the bankruptcy case within sufficient time to allow creditor to file timely dischargeability complaint): Anwiler v. Patchett (In re Anwiler), 958 F.2d 925 (9th Cir. 1992) (holding that bar date for filing dischargeable complaint under Rules 4004(a) and 4007(c), once set, does not change, absent motion to extend); Farouki v. Emirates Bank International, Ltd., 1994 U.S. App. LEXIS 657 (4th Cir. January 14, 1994) (holding that bankruptcy rules and case law indicate that courts may not use their discretion to enlarge the time periods at issue in Rule 4004(a) on the basis of excusable neglect).

In this case, the creditor filed his complaint objecting to discharge on October 22, 1993, Filing No. 1. The creditor has never filed a motion to request an extension, but bases his position on the fact that his complaint was filed within the sixty days following the date that the 11 U.S.C. § 341 creditors' meeting was actually held. This Court believes that the creditor's interpretation of the bankruptcy rules is more equitable because unscrupulous debtors may use the bankruptcy rules to cancel their § 341 hearings and increase their chances of not having fraudulent activity discovered. However, in this case, the Court is bound by the plain language of the rules and may not use its equitable powers when such use would not comply with the bankruptcy rules.

There is a factual dispute about the first date that the creditor had actual knowledge of the alleged fraud. The first date the creditor had knowledge is not significant because the creditor admitted during the hearing that the creditor had discovered and had knowledge of the debtor's potential wrongdoing by the August 22, 1993, creditors' meeting.

This Court cannot dispute the language of Rule 4004(a), which clearly states and which is interpreted as providing that the sixty day period within which a complaint objecting to discharge may be filed begins to run from the first scheduled date for the first meeting of creditors. For this reason, the Court must recognize September 7, 1993, as the last possible day for the creditor to file its complaint.

The creditor did not file its complaint by this date, and the only alternative for the creditor to keep its action alive under Rule 4004(b) would have been to file a motion to extend the deadline before September 7, 1993. Since no motion to extend the date was filed, the Court must grant the debtors' summary judgment motion because it is undisputed that the creditor had knowledge of the potential fraud before the expiration of the sixty day period.

Separate journal entry to be entered.

DATED: March 7, 1994.

BY THE COURT:

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

CC: Movant, Objector/Resistor (if any), Debtor(s) Atty. and all parties appearing at hearing  
[ ] Chapter 13 Trustee [ ] Chapter 12 Trustee [ ] U.S.Trustee  
Movant is responsible for giving notice of this journal entry to all other parties if required by rule or statute.

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| JEANETTE KNEIFL,           | ) |                        |
|                            | ) | DATE: March 7, 1994    |
| <u>Defendant(s)</u>        | ) | HEARING DATE: March 2, |
|                            | ) | 1994                   |

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion for Summary Judgment filed by the debtor/defendant and the Objection filed by Ronald V. Wolff.

APPEARANCES

Mark Johnson, Attorney for debtor  
Charles Caskey, Attorney for Ronald V. Wolff

IT IS ORDERED:

The Motion for Summary Judgment is granted. See memorandum this date.

BY THE COURT:

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

CC: Movant, Objector/Resistor (if any), Debtor(s) Atty. and all parties appearing at hearing  
[ ] Chapter 13 Trustee [ ] Chapter 12 Trustee [ ] U.S.Trustee

Movant is responsible for giving notice of this journal entry to all other parties if required by rule or statute.