

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

LEONARD L. DeNAEYER, )

CASE NO. BK78-0-1139

BANKRUPT )

FARMERS STATE BANK, KILGORE, )  
NEBRASKA, )

plaintiff )

vs. )

LEONARD L. DeNAEYER, )

Defendant )

MEMORANDUM AND ORDER

Presently before the Court is the plaintiff's motion which seeks authority, after the defendant's answer has been filed, to amend its original complaint. This bankruptcy proceeding was originally filed September 15, 1978. In the order for first meeting, December 12, 1978, was fixed as the last day for the filing of objections to discharge and complaints to determine the dischargeability of any specific debt. Plaintiff filed its original complaint on December 11, 1978. Defendant filed his answer on January 25, 1979. Following a preliminary pretrial conference, this Court entered an order authorizing the plaintiff to move to amend its complaint by March 26, 1979, with leave to the defendant to object thereto by April 9, 1979. On March 21, 1979, the plaintiff moved to amend which was denied for failure to comply with Local Rule 20. On March 26, 1979, plaintiff again moved to amend with compliance by Local Rule 20. Defendant has objected to the amendment.

Pursuant to Local Rule B-16, I consider the plaintiff's second motion to amend.

Much of the proposed amended complaint offered by the plaintiff is the same as the original complaint but restated in more explicit form to show the legal theories relied upon by the plaintiff. However, paragraph VIII seeks to add additional factual allegations which did not appear in the original complaint. These include sub-paragraphs D, E, F, G, H, I and J. There is nothing comparable to these factual allegations in the original complaint and I conclude that to permit the plaintiff to make the additional allegations would circumvent the deadline previously specified by this Court for the filing of complaints to determine the dischargeability of certain debts. I should add that there is a transcript of the testimony at the first meeting of creditors held on October 12, 1978, on file with the Court which discloses that the plaintiff knew at that time of most if not all of the factual basis for the allegations contained in the foregoing paragraphs because of

testimony given at the first meeting. A line has been stricken through the objectionable paragraphs in the plaintiff's pro-offered complaint. Accordingly, it is

ORDERED that the plaintiff's pro-offered complaint be, and it hereby is, deemed filed in this bankruptcy proceeding except that sub-paragraphs D, E, F, G, H, I and J of Paragraph VIII are not authorized to be included in the amended complaint; and it is further

ORDERED that the defendant shall have until May 25, 1979, in which to file a responsive motion with regard to other possible objectionable provisions of the amended complaint or its answer.

DATED: May 9, 1979.

BY THE COURT:

  
Bankruptcy Judge

Copies mailed to each of the following:

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