

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA



IN THE MATTER OF

LARRY L. DAVIS and
NADINE A. DAVIS,

DEBTORS

CASE NO. BK85-2942

ORDER

Hearing was held August 29, 1986, in Lincoln, Nebraska, on a motion filed May 7, 1986, by creditor, Elizabeth Spaugh, requesting an extension of time to file an objection to the debtors' discharge. At the hearing Ms. Spaugh appeared on her own behalf and the debtor, Larry Davis, appeared on his own behalf. Mrs. Davis was not present and no one appeared on her behalf.

This case is a pretty good example of what happens when a non-lawyer attempts to weave through the statute and rules concerning bankruptcy. The debtors filed their Chapter 7 bankruptcy on December 19, 1985. Shortly thereafter, the order for meeting of creditors was mailed to all of the creditors scheduling the first meeting on February 12, 1986, in Lincoln, Nebraska. The order states on its face, among other things, that April 14, 1986, is fixed as the last day for filing of objections to the discharge of the debtor and that same date is fixed as the last date for filing of a complaint to determine the dischargeability of any debt pursuant to 11 U.S.C. §523-c. The order further states that if an objection to discharge or a complaint to determine dischargeability has been filed and is pending on the discharge hearing date, May 15, 1986, the discharge hearing will be rescheduled by further order.

Ms. Spaugh is a creditor listed on the debtors' schedules as unsecured.

Ms. Spaugh apparently appeared at the first meeting of creditors and, according to her recollection, was not permitted to ask any questions of the debtors.

On December 23, 1985, Ms. Spaugh, through an attorney, filed the motion for relief from the automatic stay alleging that she had sold some real property to the debtors subject to FmHA financing and that she had permitted the debtors to move into the property before the closing date. In addition, she alleges that the debtors did not obtain financing and refused to leave the

premises or pay the appropriate rent. ^{Prior to} ~~Apart of~~ bankruptcy she ^{had} filed a lawsuit in an attempt to have the debtors ejected and on the date of trial the debtors filed bankruptcy.

A hearing was set on the motion for relief on January 16, 1986. On January 8, 1986, the motion for relief was withdrawn. Such withdrawal was by Ms. Spaugh's legal counsel. On March 19, 1986, Ms. Spaugh wrote to the Court, this time without legal counsel, and requested permission to discuss matters with the debtors and informing the Court that if the Davises did not reaffirm the debt by April 10, 1986, she would file an objection to discharge.

The Court, not being permitted by law to correspond with parties to a bankruptcy case, referred the correspondence to the Bankruptcy Clerk office. Employees of that office sent to Ms. Spaugh a proof of claim form. She filed the proof of claim on April 15, 1986, but did not file any complaint objecting to discharge under §727 or §523.

On May 6, 1986, Ms. Spaugh apparently called the Bankruptcy Clerk "to see why she hadn't received anything back on her objection to discharge." Apparently she was informed that she had missed the date for filing a complaint to object to discharge and that the best thing for her to do was to file a motion for an extension of time for such filing. On May 7 she filed a motion for extension of time. In that motion she alleged that she has been denied due process of law because of the procedures at the creditors' meeting and because of misunderstandings with the U.S. Bankruptcy Court and that she feels that she should have an opportunity to tell her side of the story to the Bankruptcy Judge before a discharge is granted.

On May 9, 1986, the Bankruptcy Court directed that the Clerk's office set the motion for hearing and specifically directed that the debtors should not be discharged until after the matter was settled. However, the discharge hearing scheduled for May 15, 1986, was not canceled, the debtors appeared, and on May 21, 1986, a discharge was entered.

Also on May 21, 1986, an order for status hearing was mailed to Ms. Spaugh setting her motion for extension of time to object to discharge for hearing on July 10. That order told Ms. Spaugh to send notice to all creditors on the matrix as well as the debtor of the hearing to be held on July 10. She failed to mail out the notice and so the hearing was not held.

A second order for status hearing was sent to Ms. Spaugh on July 17 setting the matter for hearing on August 29, 1986.

In the meantime, apparently nobody in the Clerk's office, nor the Court, nor Ms. Spaugh realized that the discharge had already been entered.

Notice of the August 29 hearing was properly mailed and the hearing was held on August 29.

Mr. Davis appeared and objected strenuously to the whole proceeding on the grounds that he had obtained a discharge on a timely basis and that she had failed to comply with the requirements of the Code by failing to file the appropriate complaint by April 14, 1986. She, on the other hand, alleged that her failure to file the complaint was due almost entirely to the comedy of errors in dealing with the Bankruptcy Court and that Mr. Davis was not harmed because he knew her intent all along.

Section 727 and §523 of the Bankruptcy Code both put heavy burdens upon a creditor who desires to object either the total discharge of a debtor or the dischargeability of a specific debt. The Code and the rules put short time periods on the creditor for filing such objections. The reason for this is so that the debtor can get on with life and know the status of the case. If no one files an objection to discharge or dischargeability by a certain date, usually within 60 days following the date of the first meeting of creditors, the debtor is free and clear.

The Court, in this instance, believes that most of Ms. Spaugh's problems were caused by her own refusal or inability to talk to a lawyer. At one point in time she did spend the money to hire an attorney to file a motion for relief from the automatic stay. However, from that time forward, she apparently failed to consult with an attorney concerning the requirements for objecting to discharge and lays the blame for her confusion upon the Bankruptcy Court and the Clerk's Office. That blame is not accepted by the Court.

On the other hand, it appears from her efforts, correspondence and statements in open court, that it is possible she received conflicting or at least confusing information concerning her rights and duties. She timely filed a motion for extension of time to file a complaint. By timely, this Court means that it was filed before the discharge hearing was held and it alleged problems with the administrative procedure which at least gave the Court cause to believe a hearing should be held to sort out the mess. Inhouse procedures in the Clerk's office failed to catch the extension and, therefore, Mr. and Mrs. Davis attended a discharge hearing and received a discharge with no objection having been filed.

Weighing all of the circumstances, it is the opinion of the Court that Ms. Spaugh should be given a limited amount of time to file the appropriate documents with the Court either objecting to discharge or dischargeability of the debt. This Court is not given to providing advisory opinions to creditors or debtors. However, this is a case where perhaps more time, effort and expense can be eliminated if a quasi advisory opinion is given.

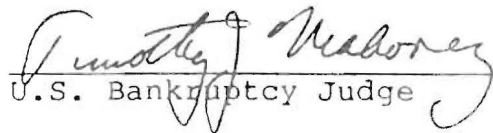
That opinion is this. Ms. Spaugh had best read closely §727 and §523. In addition, Ms. Spaugh should talk with legal counsel concerning potential sanctions for filing frivolous complaints in the United States Courts. If, after such reading and consultation, Ms. Spaugh still feels that she has a valid right to object to discharge or dischargeability, such a complaint should be filed. This Court is not hinting at any anticipated result. However, this Court is hinting that it will look long and hard at any complaint filed to make certain that it does comply with all the technical requirements of the Bankruptcy Code and the Federal Rules of Civil Procedure as they apply in the Bankruptcy Court.

It is hereby ordered:

1. The discharge of debtors, Larry L. Davis and Nadine A. Davis, is hereby set aside.
2. Creditor, Elizabeth Spaugh, is granted until October 1, 1986, to file a complaint objecting to discharge or a complaint objecting to the dischargeability of the particular debt.
3. If such complaint is not on file by the end of the day on October 1, 1986, the previously granted discharge will be reinstated.
4. No creditors need to be provided notice of the setting aside of this discharge until October 2, 1986. If the discharge is reinstated on that date, no creditors will be required to receive notice of any of this action.
5. Copies of this opinion shall be mailed by the Clerk's office to the creditor, Elizabeth Spaugh, the debtors, the debtors' counsel and the trustee.

DATED: September 10, 1986.

BY THE COURT:


U.S. Bankruptcy Judge