

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

MICHAEL ALLAN FOSTER,)

BANKRUPT)

CASE NO. BK79-0-88

MEMORANDUM AND ORDER

Michael Allan Foster filed his voluntary petition in bankruptcy with this Court on January 29, 1979. The only two creditors listed by Mr. Foster are Carol J. Wilcoxon and Troy Wilcoxon. The description contained in the schedules indicates that the claims of the Wilcoxens arise out of an automobile accident for which the bankrupt may be liable. On April 17, 1979, prior to the discharge being entered, Michael Allan Foster filed his application to dismiss this bankruptcy proceeding without prejudice. Notice of the application to dismiss without prejudice was set for hearing and notice to creditors given. At the hearing on the motion to dismiss, the bankrupt and his attorney appeared. No one appeared in opposition to the application.

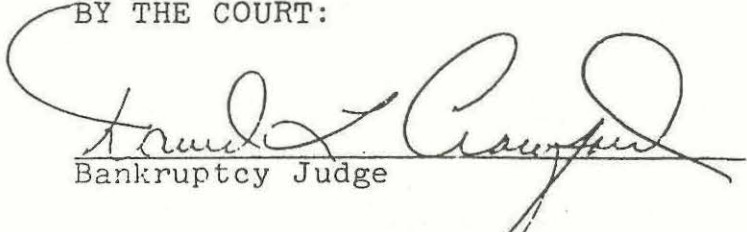
From information provided at the hearing on the motion to dismiss, it appears that there is no lawsuit pending by the Wilcoxens against Mr. Foster. Accordingly, a discharge will not relieve Mr. Foster of any potential liability since a negligence claim must be pending in a court proceeding on the date the voluntary proceeding in bankruptcy is filed to be provable. See Section 63a(7). Resulting from the foregoing is that if the negligence action is not pending, the indebtedness is not provable, and the discharge under §17 of the Act relates only to provable debts. If Mr. Foster is prohibited from dismissing this bankruptcy proceeding, the bankruptcy proceeding will have been useless, there being no other debts owed by the petitioner and, therefore, the discharge operating as to no debts. Accordingly, the Court concludes that it is equitable to permit Mr. Foster to dismiss this bankruptcy proceeding without prejudice. It is

ORDERED that the application to dismiss without prejudice be, and it hereby is, sustained; and it is further

ORDERED that the dismissal is without prejudice to Mr. Foster's right to be discharged in a future proceeding from any debts scheduled in this proceeding.

DATED: May 1, 1979.

BY THE COURT:


Bankruptcy Judge