

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )  
 )  
MARCUS LOYD ALEXANDER, ) CASE NO. BK79-0-487  
 )  
BANKRUPT )  
 )  
PATAGONIA LEASING COMPANY, )  
An Arizona Corporation, )  
 )  
Plaintiff )  
 )  
vs. )  
 )  
MARCUS L. ALEXANDER, )  
 )  
Defendant )

MEMORANDUM OPINION

The defendant has filed a motion to dismiss these proceedings for the reason that the plaintiff has failed to join the defendant's guardian and conservator as a party to this action and, without joinder, defendant asserts that complete relief cannot be afforded to any of the parties to this action. For the reasons stated herein, this motion must be denied.

Motions to dismiss for failure to join a necessary party are governed by Rule 12(b), Fed. R. Civ. P., as adopted by Bankruptcy Rule 712. Rule 12(b) requires motions raising this defense to be made before pleading where further pleading is permitted. Defendant, by and through his guardian, filed an answer in these proceedings prior to filing the motion, and the motion is therefore untimely.

By the terms of Rule 21, Fed. R. Civ. P., adopted by Bankruptcy Rule 721, parties may be dropped or added at any time on motion of any party or at the Court's own initiative. However, on the record before the Court at this time, there is no basis for a determination that defendant's guardian/conservator is a party necessary to this action. The guardian/conservator's duty to protect the interests of his ward is assured by Rule 17(c), Fed. R. Civ. P., as adopted by Bankruptcy Rule 717, which permits the appointed representative to sue or defend on behalf of the incompetent person. The Court is unaware of any other interest which the defendant's representative might have in this action which would require joining the representative as a party.

A separate order is entered in accordance with the foregoing.

DATED: October 30, 1979.

BY THE COURT:

