

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF )

ROBERT I. SEAMARK and )  
DONNA J. SEAMARK, )

DEBTORS )

TONKA MILLS, INC., a )  
Minnesota Corporation, )

Plaintiff )

vs. )

ROBERT I. SEAMARK and )  
DONNA J. SEAMARK, )

Defendants )

CASE NO. BK80-1761

A81-78

MEMORANDUM AND ORDER

This matter came on for hearing upon the motion to dismiss filed by the defendant and the stipulation filed by the parties submitting the matter without hearing. The evidence is that the plaintiff filed its complaint to determine dischargeability which was received by the Court on February 2, 1981, after the Court had previously set February 4, 1981, as the deadline for filing such complaints. Upon receipt by the Clerk's office of the complaint, the Clerk's office returned to the attorney for the plaintiff the complaint for the reason that it was not accompanied by the appropriate filing fee and was not accompanied by appropriate copies of the summons. The plaintiff's attorney resubmitted the complaint and the filing fee by depositing in the mail on February 4, 1981, and they were received by the Clerk's office in due course.

The date upon which the complaint originally was filed controls in the Eighth Circuit even if the document is not accompanied by the appropriate filing fee. See Thorndal v. Smith, Wild, Beebee & Cades, 339 F.2d 676 (8th Cir. 1965). Accordingly, the complaint was timely filed and it is

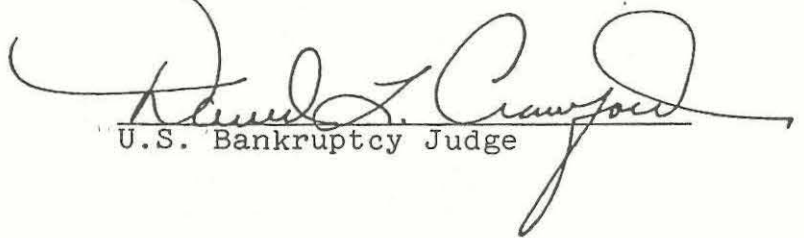
ORDERED that the defendants' motion to dismiss is denied; and it is

ORDERED that defendants file their answer within seven days from the date of this order; and it is further

ORDERED that an order for progression accompany this order.

DATED: April 1, 1981.

BY THE COURT:

  
U.S. Bankruptcy Judge

Copies mailed to each of the following:

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