

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In re:	:	Case No. 00-0994-DH
HENDRIKUS J. BROERZE,	:	
	:	
	:	Chapter 7
Debtor.	:	
	:	

**ORDER— MOTION TO ALLOW FILING OF COMPLAINT OBJECTING TO
DISCHARGE OF DEBTOR AND RESISTANCE THERETO**

This matter pends upon the motions of Judy Potter and Stanley Potter to allow filing of complaints objecting to discharge and Debtor’s resistance thereto.

The court has jurisdiction of these matters pursuant to 28 U.S.C. § 1334 and order of the District Court of this district. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A), (I), and (J). The court now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 and 7052.

FINDINGS OF FACT

The court finds as follows:

1. Hendrikus J. Broerze (hereinafter Debtor) filed his voluntary Chapter 7 Petition on March 24, 2000.
2. Judy Potter is the ex-wife of Debtor, and Stanley Potter is the father of Judy Potter. Judy Potter is employed in the office of her attorney.
3. Both Judy Potter and Stanley Potter (hereinafter Creditors) were scheduled as creditors holding unsecured nonpriority claims.

4. Creditors were served notices on March 26, 2000, that a petition had been filed by the debtor and that the deadline to file a complaint objecting to the discharge of the debtor or to determine dischargeability of debt was June 24, 2000.

5. Creditors were given notice on March 26, 2000, that the first meeting of creditors would be held on April 25, 2000, at 9:00 A.M.

6. Creditors appeared at the meeting of creditors without counsel.

7. Creditors allege that Debtor should be denied a discharge on the basis that Debtor knowingly and fraudulently made a false oath or account and/or presented a false claim in his schedules.

8. Creditors filed motions for extension of time to object to discharge on June 23, 2000. Debtor filed a resistance to these motions on June 27, 2000.

9. Both motions were set for telephonic hearing on August 17, 2000, by order entered on August 7, 2000.

10. The telephone hearing was held on August 17, 2000, and both motions were denied at the time of the hearing and by minute order filed on August 18, 2000.

11. Both creditors now pray that they be permitted to file a complaint objecting to the discharge of the debtor. A copy of the proposed complaint is attached to the respective motions.

12. The respective complaints state that they are grounded on 11 U.S.C. §§ 727(a)(2)(A), 727(a)(4)(A), 727(a)(4)(B) and 727(a)(5).

13. In the complaints, Creditors make the following allegations.

- (a) Debtor knowingly and fraudulently made a false oath or account and/or presented a false oath.
- (b) In Schedule H, Debtor lists Judy Potter as a co-debtor on a Sears account when Sears denies that Judy Potter is obligated on the account. By so scheduling her, Debtor jeopardizes her credit rating in that the bankruptcy will be reported on her credit report.
- (c) Debtor fails to schedule a lawnmower when in fact a lawnmower was purchased in 1998.
- (d) Debtor schedules \$775.00 as a monthly house expense when in fact his wife contributes to this payment.
- (e) Debtor schedules \$50.00 per month as a monthly water/sewer bill when in fact his bi-monthly debt is approximately \$43.00.
- (f) Debtor schedules \$10.00 per month as a life insurance debt when in fact this is for a term life insurance policy in the name of his adult son.
- (g) Debtor schedules \$50.00 per month as support for an additional dependent living in his home when in fact his only son is a non-disabled adult. Debtor shares his home with no one except his wife.
- (h) Debtor schedules \$25.00 per month as alimony when in fact it should be scheduled as a property settlement.
- (i) Debtor schedules monthly obligations on credit cards without scheduling those debts on other schedules.

DISCUSSION

Through inartfully drafted motions, Creditors request the court to permit them to file equally inartful complaints objecting to discharge after the deadline for filing such complaints. Creditors cite no authority, statutory or otherwise, to support their motions.

Creditors argue that they filed motions for extension of time to file objections prior to the deadline for objecting to discharge. At that time, they had adequate information to form the basis of their complaints. Debtors contend that the additional time to file objections was requested so that they could receive subpoenaed documents and file a more complete complaint, rather than proceed in a “piecemeal fashion.” Because they were ready and able to file objections to discharge prior to the objection deadline, they argue that the court should grant their motions and allow the adversaries to proceed. Creditors contend that a denial of this motion would reward Debtor for failing to provide complete information at the Fed. R. Bankr. P. 2004 examination, and unfairly prejudice Creditors for filing unsuccessful extension motions. The court disagrees.

Creditors were served notices on March 26, 2000 that Debtor filed a petition for Chapter 7 relief. This notice indicated that the first meeting of the creditors was scheduled for April 25, 2000. The creditor meeting was, indeed, held on that date with both of the movant creditors in attendance. The notice further indicated that the deadline for filing objections to discharge of the Debtor or to determine dischargeability of debts was June 24, 2000. On June 6, 2000, Creditor Judy Potter filed a motion to conduct a

Rule 2004 examination. The motion was granted and the examination was held on June 20, 2000. Subsequently, Creditors filed motions to extend the time for filing objections to discharge.

On August 17, 2000, a hearing was held on Creditors' motions to extend time for filing objections. After arguments by the parties, the court rendered its decision. In denying Creditors' motion the court held that Rule 4004(b) granted the court the authority to extend the time for filing objections when "cause" is shown.

Generally, deadlines contained in the Bankruptcy Rules are to be strictly construed. In re Grillo, 212 B.R. 744, 746 (Bankr. E.D. N.Y. 1997). An extension should only be granted for "cause," and the court held that Creditors had not carried their burden in establishing "cause." In particular, the court found that Creditor Judy Potter waited almost two months before commencing any discovery, and Creditor Stanley Potter commenced no discovery before the deadline. The emerging standard in granting extensions to file objections to discharge is to require "the creditor to establish at least a reasonable degree of due diligence to be accorded an extension." In re Desiderio, 209 B.R. 342, 345 (Bankr. E.D. Pa. 1997); see also, In re Davis, 195 B.R. 422, 424 (Bankr. W.D. Mo. 1996)(requiring "some minimum degree of due diligence" before creditor moves for an extension). Further, Rule 9006(b), which allows certain extensions as a result of excusable neglect, does not apply to objections to discharge or the dischargeability of debts. In re Desiderio, 209 B.R. at 345.

The court found that Creditors did not provide evidence of sufficient due diligence and did not carry their burden to show “cause” for an extension. Therefore, the motions to extend time for filing objections were denied.

Creditors have still not offered any explanation which would mitigate their failure to conduct due diligence in determining whether they had a valid objection. Nor have they chosen to procedurally attempt to present such an explanation before the court. Rather, Creditors attempt to appeal to the court’s sense of equity, and request that they be allowed to proceed against Debtor. The court cannot grant this request.

As the Eighth Circuit stated in In the Matter of Boucher, 728 F.2d 1152, 1156 n.7 (8th Cir.1984), “An attorney has no right to rely on a motion for extension of time to take the place of an objection to discharge. A protective objection should have been filed on or prior to the [deadline].” If, as stated in their motion, Creditors felt they had sufficient justification or evidence to file the complaint, they should have filed protective objections on or prior to June 24, 2000. Accordingly, Creditors’ motions are denied.

In his resistance, Debtor requests he be awarded attorney fees of \$500 for having to defend this motion. The court is not inclined to grant such an award. Debtor characterizes the matters addressed in the motion as trivial and frivolous. The court finds nothing trivial about inaccurate statements of income and expenses which present a false picture of a debtor’s financial situation. Further, there is nothing trivial about the allegation that Debtor has not fulfilled his duties under 11 U.S.C. § 521 by failing to schedule all his creditors. These allegations are particularly troubling if his counsel is aware of such inaccuracies and omissions, and has not taken steps to amend the

schedules. Further, Debtor has not provided documentation of fees and expenses as required by In re Pothoven, 84 B.R. 579 (Bankr. S.D. Iowa 1989).

ORDER

IT IS ACCORDINGLY ORDERED as follows:

1. Creditor Judy Potter's Motion to Allow Filing of Complaint Objecting to Discharge of Debtor is DENIED.

2. Creditor Stanley Potter's Debtor is Motion to Allow Filing of Complaint Objecting to Discharge of Debtor is DENIED.

3. Debtor Hendrikus J. Broerze's prayer for \$500 in attorney fees is DENIED.

Dated this _____ day of September, 2000.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT