

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

JAMES GRADY,
Engaged in Farming,

Debtor.

Case No. 87-1254-W

UNITED STATES OF AMERICA,

Plaintiff,

Adv.Pro.No. 87-0150

Chapter 7

v.

JAMES GRADY,
JANE GRADY,

Defendants.

ORDER ON MOTION FOR JUDGMENT ON THE PLEADINGS

On July 16, 1987 the United States filed an adversary action objecting to discharge pursuant to 11 U.S.C. section 523(a)(7). The United States alleges that the Secretary of Agriculture's imposition of a \$22,000.00 civil penalty for violations of regulations governing interstate movement of cattle is nondischargeable. Defendant James Grady has answered contending in part that the United States' action is barred by the three-year statute of limitations found at 11 U.S.C. section 523(a)(7)(B). Defendant Jane Grady has answered maintaining the court has no jurisdiction of her because she has not filed bankruptcy. On October 14, 1987 the defendants filed motions for judgment on the pleadings

based upon the aforementioned grounds. The United States filed its resistance on October 21, 1987.

Fed. R. Civ. P. 12(c) authorizes parties to move for judgment on the pleadings. Bankruptcy Rule 7012(b) provides that Fed. R. Civ. P. 12(c) applies in adversary proceedings.

A motion for judgment on the pleadings should not be granted unless the movant clearly establishes that no material issue of fact remains to be resolved and the movant is entitled to judgment as a matter of law. Iowa Beef Processors, Inc. v. Amalgamated Meat Cutters Etc., 627 F.2d 853, 855 (8th Cir. 1980). A trial court faced with a motion for judgment on the pleadings is required to construe all well pleaded factual allegations of the non-moving party as true, and to draw in favor of that party all reasonable inferences from these facts. Quality Mercury, Inc. v. Ford Motor Co., 542 F.2d 466, 468 (8th Cir. 1976), cert. denied, 433 U.S. 914, 97 S.Ct. 2986, 53 L.Ed.2d 1100 (1977).

Counsel has notified the court that there are no factual disputes. Facts pertinent to the resolution of this matter are as follows.

1. On May 7, 1987 James Grady filed a petition for relief under Chapter 7. Jane Grady is not a joint debtor in James' bankruptcy nor has she filed her own bankruptcy.

2. On or about January 31, 1986 the Secretary of Agriculture rendered a decision and order against the defendants in which James Grady was assessed a civil penalty

of \$22,000.00 payable within 30 days after the decision and order became final.

3. The Secretary imposed the penalty for violation of 9 C.F.R. sections 71.18, 78.9, regulations governing the interstate movement of cattle to prevent the spread of brucellosis.

4. On or about March 7, 198-6 the Secretary's decision became final.

5. The events giving rise to the penalty occurred during 1983.

6. James Grady failed to pay the penalty.

7. James Grady listed a debt to the United States on Schedule A-3 and seeks discharge of the debt.

DISCUSSION

The operative Code provision is section 523(a)(7) which in part provides:

(a) A discharge under section 727 ... of this title does not discharge an individual debtor from any debt--

...

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty--

(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or

(B) imposed with respect to a transaction or event that occurred before three years

before the date of the filing
of the petition;

James Grady argues that because the events leading to the penalty took place in 1983, the three-year limitation set out in subclause (B) precludes the government from objecting to the discharge of the penalty. Grady construes subclause (B) as modifying all of subsection (7). The government on the other hand argues that the three year limitation only applies to tax penalties, not to other governmental penalties. In support of its argument, the government cites In re Daugherty, 25 B.R. 158 (Bankr. D. Tenn. 1982). In that case a state court ordered a mining company to pay a \$60,000.00 civil penalty to the state of Tennessee for gross violations of the state's surface mining regulations. The company never paid the penalty. The company later filed a Chapter 7 bankruptcy and sought to discharge the penalty. The question before the court was whether the penalty was discharged because it was imposed as a result of events occurring more than three years before the date of the bankruptcy filing. The court interpreted subsection (B) as only applicable to tax penalties. The court reasoned:

The structure of clause (7) of the statute and its subclauses persuades the court to hold that the applicability of the 3-year period of subclause (B) is limited to tax penalties. If Congress had intended otherwise the language of subclause (B) would have either immediately preceded or followed the phrase 'not compensation for actual pecuniary loss'.

Id. at 161.

This court finds the Daugherty rationale persuasive. Applying the rationale to this case, this court concludes the penalty imposed by the Secretary is not barred by the three-year limitation.

Jane Grady is named as a defendant in this adversary. She, however, is not a debtor. Therefore the court has no jurisdiction to consider a section 523 objection directed against her.

CONCLUSION AND ORDER

WHEREFORE, for the reasons set forth above, the court finds that the three-year limitation found at 11 U.S.C. section 523(a)(7)(B) does not apply to the penalty in question and that the court has no jurisdiction to consider a section 523 objection directed against defendant Jan Grady.

THEREFORE, James Grady's motion for judgment on the pleadings is denied. Jane Grady's motion for judgment on the pleadings is granted.

Signed and filed this 31st day of March, 1988.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE