

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of :
THOMAS D. LYNCH, : Case No. 92-01357-D J
TEMPIE A. LYNCH, : Chapter 7
Debtors.

- - - - -

ORDER DENYING MOTION TO VACATE AUGUST 10, 1992 ORDER

On August 20, 1992 the debtors filed a motion to set aside this court's August 10, 1992 order granting Dennis Shook, a claimant in a civil case against the debtor, relief from the automatic stay. On August 27, 1992 Shook filed a resistance to the debtors' motion.

Shook submitted the underlying motion to lift stay, bar date, certificate of notice and proposed order to the clerk's office on July 27, 1992. Local Rule 14(d)(1). Shook had served the motion and the eight day bar date notice on all interested parties on July 24, 1992. Local Rule 14(b)(2)(A). The bar date notice clearly indicated the deadline for filing objections to the motion was August 1, 1992. Local Rule 14(b)(1).

The clerk's office returned the motion and related documents on the date they were received because Shook failed to tender the \$60.00 filing fee. Local Rule 14(d)(2) and (3). A memorandum returning unfiled documents indicated Shook could ask the court to direct the refused documents be filed as of the date originally tendered if the request was made within eight days of the original submission date and if Shook could establish substantial cause in support of his motion.

On August 3, 1992 Shook resubmitted the motion and related documents as originally tendered. He did not seek to have the documents filed as of July 27, 1992.

No interested party filed an objection to the motion by the originally noticed deadline.¹ The court entered the order granting relief from the stay on August 10, 1992.

In support of the pending motion, the debtors contend the motion for relief from the stay should have been served again after being refiled. In the alternative, the debtors maintain their objection should be considered at this point in time because their attorney had contacted the clerk's office to verify the motion had been filed. They relied on the clerk's information that the motion had not been filed and had been returned to the movant.

In his objection, Shook argues that the debtors received the motion and the bar date notice and, therefore, could have filed a timely objection. Shook also contends that his attorney discussed the motion to lift stay with James L. Ottesen² during an unrelated state court trial on July 27, 1992.

Having reviewed the court file and the written arguments of

¹ Taking into consideration the three day grace period set forth in Fed. R. Bankr. P. 9006 (f) the actual deadline was August 4, 1992.

² According to the bankruptcy court's file, Michael L. Roeder is debtors' counsel. Nothing filed in this matter to date explains why James L. Ottesen, an unsecured creditor on Schedule F, filed the pending motion on behalf of the debtors.

the parties, the court concludes that the pending matter is moot. Indeed, even the underlying motion for relief from stay was moot at the time the court entered the order on the motion for relief from stay. That is, the motion for relief from stay did not target any property of the estate, and the court had entered a general discharge of debt in this case on July 28, 1992.³ The automatic stay terminated on that date in accordance with 11 U.S.C. section 362(c).

Even if the stay had not expired by operation of law, the court would not have granted the motion to set aside the August 10, 1992 order. A party receiving a bar date notice should respond to that notice in a timely fashion. The clerk's office files objections received in response to motions returned for failure to comply with certain filing requirements.⁴ When the motion is resubmitted as originally tendered,⁵ the clerk's office checks the

³ No party in interest filed an objection to the general discharge by the July 27, 1992 deadline. Shook filed a timely complaint to determine the dischargeability of his claim. That matter is still pending.

⁴ The only time an objection to a motion would be returned is if it were not in compliance with the local rules. If an objection responding to a bar date notice were returned and could not be resubmitted within the original bar date time frame, the objecting party could seek to have the document entered as of the date originally tendered if substantial cause could be established.

⁵ Whether the movant requests the motion be entered as of the date originally tendered is not critical to this procedure. Moreover, the court specifically discourages such a motion in this situation.

docket and the original bar date. If the bar date has run and no objections have been filed, the proposed order is sent to the appropriate judge for signature. If the bar date has run and objections have been filed, the matter is sent to the calendar clerk for a hearing assignment. If a bar date has not passed by the time the motion is resubmitted, the clerk's office continues to monitor the motion accordingly.

THEREFORE, IT IS ORDERED that the debtors' motion to set aside the August 10, 1992 order is denied.

Dated this _____ day of September, 1992.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE