

on Schedule F. With respect to Johnson, she indicated the amount of the claim was unknown and was disputed. With respect to Johnson's attorney, she made no additional comments.

The routine Notice of Commencement of Case was filed on August 13, 1992. It indicated November 10, 1992 was the deadline to file a complaint objecting to discharge or to determine dischargeability of debts falling under 11 U.S.C. section 523(a)(2),(4) or (6).

On September 18, 1992 the Chapter 7 trustee filed a Report of Abandonment of Property and a Report of Trustee in No-Asset Case.

On November 10, 1992 Johnson filed the motion under consideration. He claimed the debtor filed the Chapter 7 case to avoid the Michigan action. He contended she was not seeking general debt relief because she was working and her assets exceeded her liabilities.² In the prayer of his motion, Johnson asked the court to abstain from exercising jurisdiction over:

- a) The disputes between the debtor and the movant which are the subject of court cases already pending in Michigan and Iowa.
- b) The validity of the common law marriage between the debtor and the movant.
- c) The divorce action between the debtor and movant.
- d) The controversies over the contractual agreement between the debtor and the movant during the period of the parties non-marital domestic relations.
- e) The controversies between the movant and the

² The schedules indicate the debtor was employed as a graduate assistant for seven months as of the date the petition was filed. Her net monthly take home pay was \$1,128.26. Her monthly expenditures were \$1,536.98. Her total assets amounted to \$15,600.00. Her total liabilities amounted to \$14,072.98.

debtor's fraudulent activities against the movant, including receiving financial resources and conversion by the debtor.

On November 10, 1992 Johnson also filed a brief in support of his motion. In that document, Johnson stated he was not asking the court to abstain from exercising jurisdiction over the entire Chapter 7 case but requested the court to abstain from exercising jurisdiction and to dismiss "the particular case between the debtor and the Movant".³

On November 12, 1992 the court entered the General Discharge Order in this case. It provided in part:

2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:

(a) debts dischargeable under 11 U.S.C. Sec. 523;

(b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) of 11 U.S.C. Sec. 523(a);⁴

(c) debts determined by this court to be discharged.

On December 24, 1992 the court filed a notice and order for hearing on Johnson's motion. The matter was scheduled for a courtroom hearing on January 20, 1993 at 11:00 a.m.

³ Neither the debtor nor the movant had commenced an adversary proceeding under 11 U.S.C. section 523(a)(5).

⁴ No creditor had filed a complaint objecting to the discharge of a particular debt under 11 U.S.C. section 523(a)(2), (4) or (6) within the time permitted by section 523(c) and Federal Rule 4007(c) of Bankruptcy Procedure.

On January 8, 1993 Thomas S. Reavely entered an appearance on behalf of the debtor⁵ and filed a motion for continuance. On January 12, 1993 he submitted an amended motion.

On January 14, 1993 Johnson filed a resistance to the motion for continuance. His main concern was that his state court action against the debtor had been stayed too long as a result of the bankruptcy filing.⁶ On the same day Johnson filed a motion for a hearing on the pleadings, in which he waived his right to argument on his motion. He also submitted supplemental pleadings to which he attached U.S. District Court Judge Gordon J. Quist's decision dismissing the action Johnson had brought against the debtor and others in the U.S. District Court for the Western District of Michigan. Judge Quist based the dismissal on the domestic relations exception to diversity jurisdiction and, in the alternative, on abstention.

On January 19, 1993 the debtor filed a resistance to Johnson's motion and a brief in support of her position on the issues. Debtor contended she sought bankruptcy relief as a result of substantial costs incurred in defending various lawsuits brought against her by Johnson. Debtor maintained she had not attempted to

⁵ The court file indicates that Attorney James L. Hansen filed the petition on behalf of the debtor. To date, he has not obtained court permission to withdraw as counsel of record under Local Rule 5(d)(4) and is still considered the attorney of record for the debtor.

⁶ Actually the automatic stay terminated on November 12, 1992 when the General Discharge Order was entered. 11 U.S.C. 362(c).

prolong or to avoid litigation involving the dissolution of the alleged common law marriage.

DISCUSSION

A case commenced under Chapter 7 of the Bankruptcy Code is separate and distinct from an adversary proceeding brought to determine the dischargeability of a debt. Compare Fed. R. Bankr. P. 7001(6) with 9014. The Chapter 7 trustee has completed administration of the Chapter 7 case, and a general discharge of debt has been granted. The Chapter 7 case is ready to be closed.

Johnson did not choose to commence an adversary proceeding to determine whether his claims are nondischargeable debts. That is, there is no "particular case between the debtor and the Movant" pending in this court.

Had Johnson commenced an adversary proceeding to determine the status of his divorce claim based on 11 U.S.C. section 523(a)(5), the court might have abstained from deciding the domestic relations controversy on its own motion, after notice and a hearing in accordance with 11 U.S.C. section 305(a) (1) . That is, any subsequent state court judgment would be null and void only to the extent it resulted in a determination the debtor was responsible for a debt otherwise dischargeable under 11 U.S.C. section 523.

Had Johnson commenced an adversary proceeding to determine the nondischargeability of his other claimed damages under 11 U.S.C. subsections 523 (a) (2) , (4) or (6), the court would not have abstained from deciding those controversies because the bankruptcy court has exclusive jurisdiction over dischargeability actions

under those subsections. 11 U.S.C. § 523 (c) . The time to commence such an action has expired. Fed. R. Bankr. P. 4007(c).

CONCLUSION

Wherefore, the court finds that Johnson's motion is moot.

ORDER

THEREFORE, the motion to abstain from exercising jurisdiction and to dismiss is denied.

Dated this 24th day of February, 1993.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE