

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

IN THE MATTER OF :
RALPH JOHN EATON, JR., : Case No. 91-945-C-H
Debtor. : Chapter 7

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RULING ON CREDITOR'S MOTION TO DISMISS

A hearing was held on October 1, 1991 on Creditor Pamela Sue Eaton's motion to dismiss. Gregory L. Kenyon appeared on behalf of the Debtor; Robert C. Oberbillig for Ms. Eaton (hereinafter Creditor), and John Waters on behalf of the United States Trustee. At the conclusion of the hearing, the Court took the matter under advisement. Briefs were timely filed and the Court now considers the matter fully submitted.

This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (I) & (J). The Court upon review of the motion, resistance, evidence submitted and arguments of counsel now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Debtor filed his voluntary petition for relief pursuant to Chapter 7 of the Bankruptcy Code on April 3, 1991.
2. Pursuant to former Bankruptcy Rule 4004, the last date for filing objections to Debtor's discharge was July 9, 1991.

3. Pamela Sue Eaton, former wife and creditor, filed her motion to dismiss the Debtor's bankruptcy proceeding July 2, 1991. She did not file a motion to extend the time for filing a complaint objecting to discharge.

4. Pursuant to Bankruptcy Rule 4004, the Debtor received a discharge on July 10, 1991.

DISCUSSION

Creditor's motion to dismiss is based on § 11 U.S.C. §§ 707 and 521; but actually contains allegations properly addressed by a complaint pursuant to 11 U.S.C. § 727 or, perhaps, 523(a). In support of her motion to dismiss Creditor alleges the Debtor's sole purpose in filing this bankruptcy is to set aside a property settlement agreement the parties entered into before the bankruptcy filing. Property settlement obligations--but not alimony, maintenance, or support payments--are generally dischargeable in bankruptcy. See Fricke v. Ross (In re Ross), Bky. No. 90-1649-DH, Adv. No. 90-171 (Bankr. S.D. Iowa Nov. 25, 1991) (#204). In addition Creditor alleges the Debtor has misrepresented on his schedules his assets by titling his assets in other peoples' names and has not properly scheduled all of his income. While Creditor's allegations may or may not have merit, her motion to dismiss must be denied because she is not entitled under 11 U.S.C. § 707 to file such a motion.

11 U.S.C. § 521 does not provide a basis for Creditor's motion. Likewise, 11 U.S.C. § 707(a) does not in any way apply to this case. Section 707(b) provides:

After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor. [emphasis added].

The plain language of § 707(b) indicates that creditors, as parties in interest, may not move for dismissal. In re Christian, 804 F.2d 46, 48 (3rd Cir. 1986); Kircher v. Lord (In re Lord), 93 B.R. 678, 680 (Bankr. E.D. Mo. 1988). Instead, the case may be dismissed only where the court, acting independently or on a trustee's motion finds substantial abuse and when the court makes an express finding of substantial abuse. Since neither trustee filed a motion for dismissal and the Court may not do so at the request or suggestion of any party in interest, the motion to dismiss must be denied.

Creditor argues that the Debtor should be denied a discharge pursuant to 11 U.S.C. § 727. A proceeding to object to or revoke a discharge or to determine the dischargeability of a debt should be brought as an adversary proceeding. See Fed.R.Bankr.P. 7001. A complaint objecting to discharge must

be filed not later than 60 days following the first date set for the meeting of creditors. Fed.R.Bankr.P. 4004(a). This time may be extended for cause on motion. Fed.R.Bankr.P. 4004(b). Creditor has failed to pursue her rights under these rules and therefore her request must be denied.

ORDER

IT IS ACCORDINGLY ORDERED that Creditor Pamela Sue Eaton's motion to dismiss is denied.

Dated this 30th day of March, 1992.

RUSSELL J. HILL
U.S. Bankruptcy Judge