

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

In the Matter of

STEVEN ROGER PENNEY,

Debtor.

DICK FERGUSON,

Plaintiff,

V.

STEVEN ROGER PENNEY,

Defendant.

Case No. 88-02139-C J

Chapter 7

Adv. Pro. No. 89-0009

**ORDER CONTINUING TRIAL**

On October 23, 1990 a notice and order for trial on the above captioned complaint to determine dischargeability of debt under 11 U.S.C. section 523(a)(2)(A) and section 523(a)(4) was entered on the adversary docket. The trial was scheduled to commence at 1:00 o'clock p.m. on November 14, 1990. Among other things, the notice and order directed that "[t]rial briefs must be filed, and they must be filed five days before the trial date."

As of today's date, no trial briefs have been filed. The undersigned directed her law clerk to contact both attorneys of record to remind them that the briefs were overdue and that the briefs had to be filed by 4:00 o'clock p.m. today. Both attorneys indicated they would not be filing any trial briefs. Plaintiff's counsel advised that he would file a post trial brief if ordered to do so.

That trial briefs must be filed in advance of the trial date

is not a new requirement in this district. Both attorneys should be well aware that the court expects to receive briefs that clearly identify what each party anticipates the evidence will prove and why each party believes that evidence will support their position under the controlling statutes and case law. The undersigned makes every effort to review the appropriate filings and to consider the arguments set forth in the briefs prior to the hearing date. This results in more bench rulings and less cases under advisement.

The court can not condone the blatant refusal to file trial briefs. Parenthetically, the court notes that the parties did not file a stipulated final pretrial order by September 15, 1989 as required by the stipulated scheduling order entered on March 16, 1989. They have not filed that order to date. Additionally, the plaintiff's motion for summary judgment, which was filed on July 5, 1990, addressed only one of the grounds for nondischargeability and the memorandum of authorities in support of that motion cited only one case--from the Fourth Circuit. The resistance to the plaintiff's motion for summary judgment alleged a waiver of any claim of fraud but did not present supporting case law for that position. Review of the tape of the August 21, 1990 telephonic hearing on the motion for summary judgment reveals that the court reviewed a number of facts with regard to the section 523 (a) (4) action and cited a number of cases,, including Eighth Circuit law, that the parties should have reviewed and considered in the interim.

THEREFORE, IT IS ORDERED that the trial on November 14, 1990 at 1:00 o'clock p.m. be continued to December 13, 1990 at 1:30

o'clock p.m. The parties shall file a stipulated final pretrial order by December 6, 1990.

IT IS FURTHER ORDERED that the plaintiff must file a trial brief setting forth what the plaintiff believes the evidence will show and how that evidence will support plaintiff's complaint to determine nondischargeability under section 523(a)(2)(A) and section 523(a)(4). In the event the trial brief is not filed by December 3, 1990, this adversary proceeding will be dismissed without further hearing and notice.

IT IS FURTHER ORDERED that the defendant must file a trial brief setting forth what the defendant believes the evidence will show and how that evidence will support defendant's answer to the complaint. In the event the trial brief is not filed by December 3, 1990, the court will not hear any opening statement or closing argument by defendant at the time of trial and will entertain a motion for directed verdict at the close of the plaintiff's case.

Signed and dated this 13th day of November, 1990.

LEE M. JACKWIG  
CHIEF U.S. BANKRUPTCY JUDGE