

# Not for Publication or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
MATTHEW A. BAKEHORN ) CASE NO. 10-15059  
JOHANNA E. BAKEHORN )  
 )  
Debtors )

## DECISION

At Fort Wayne, Indiana, on January 18, 2011.

In In re Sidebottom, 430 F.3d 893, 898 (7th Cir. 2005), the Seventh Circuit decided that “a debtor may not maintain two or more concurrent actions with respect to the same debts.” See also, Matter of Wilson, 390 B.R. 899, 901 (Bankr. N.D. Ind. 2008) (“[Sidebottom] clearly prohibits a debtor from having two cases pending at the same time when those cases have debts in common.”). That is the situation presented by this Chapter 7 case.

The debtors previously filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on May 26, 2010, which was docketed in this court as Case No. 10-12346. In that case, their discharge was denied because they had received a discharge in a still earlier case filed in 2002. See, 11 U.S.C. § 727(a)(8); U.S. Trustee v. Bakehorn, Adv. Pro. 10-1150, Judgment dated Oct. 14, 2010. Debtors filed this case on November 23, 2010, after the time specified by § 727(a)(8) had passed, in order to obtain the discharge that eluded them in their prior case. Yet, that case is not over. The trustee has identified it as an asset case and, at the time this case was filed, the claims deadline had not yet expired.

Because a discharge was denied in the debtors’ prior case, the creditors in this case include all the creditors from that case, together with the additional creditors that have come into existence

since that case was filed. Consequently, we have two simultaneous cases which involve the same debts. The court reads Sidebottom as establishing an objective, bright-line standard, which asks only whether any debts in the two cases are the same. If so, the subsequent case must be dismissed. More subjective considerations, such as the debtor's good faith (or lack thereof) in making the subsequent filing, the degree to which the second case may interfere with the administration of the previous one, or whether the prior case remains open for reasons beyond debtor's control, are not relevant.

Relying on In re Brandford, 386 B.R. 742, (Bankr. N.D. Ind. 2008) (Klingeberger, J.) The debtors argue that Sidebottom only prohibits a second case where the "debts subject to discharge in a simultaneously pending prior case have not been determined." Id. at 749. Although the difference did not matter to the outcome in Brandford, in evaluating the propriety of the subsequent case the Seventh Circuit made no distinction between debts that survived the prior case because they may be nondischargeable and debts that survived because the debtor did not receive a discharge. For it, the determinative issue was whether the two proceedings involved any of the same debts, see, Sidebottom, 430 F.3d at 896 ("a more fundamental question is . . . whether [a debtor] was entitled to maintain a Chapter 13 proceeding while a Chapter 7 proceeding involving the same debts was pending"), 898 ("there is general agreement that a debtor may not maintain two or more concurrent actions with respect to the same debts" and "simultaneous proceedings over a debt that was excluded from the scope of a general discharge would be impermissible"), not why the same debts may be involved in both proceedings. The circuit characterized the approach that made such a distinction and evaluated the second case in light of the debtor's good faith as part of the minority position, which it rejected. Id. 898.

Sidebottom prohibits debtors from having two cases pending at the same time when those

cases have debts in common. The only flexibility it acknowledges is where the earlier “proceeding was finished except for some technicalities at the end like the filing of a trustee’s final report.” Sidebottom, 430 F.3d at 899. That potential exception does not apply here where the claims in the earlier case had yet to be determined at the time this case was filed. The debtors’ present case may not proceed and will therefore be dismissed. An order doing so will be entered.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court