

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
LUKE ANTHONY BESSE,) CASE NO. 10-20936 jpk
) Chapter 7
Debtor.)

ORDER DENYING APPLICATION TO REOPEN CLOSED BANKRUPTCY
CASE TO DETERMINE DISCHARGEABILITY OF A DEBT ["APPLICATION"]

The Application was filed as Record No. 14 on July 26, 2013. The gist of the Application is that the debtor failed to list Brandan Bork and Sheri Besse as creditors in the Chapter 7 case, and that the case should be reopened to allow the applicants to file an action with respect to excepting the indebtedness which they allege to be owed them by the debtor from discharge. A hearing on the Application was held on September 13, 2013, at which Brandan Bork and Sheri Besse appeared by attorney William J. Emerson, Jr., and the Chapter 7 Trustee Gordon E. Gouveia appeared by counsel Shawn Cox.

Attorney Cox stated that the Trustee has no interest with respect to the matters addressed by the Application. At the hearing, Attorney Emerson explained that an action is presently pending in the Lake Superior Court in which the applicants are the plaintiffs and the debtor is the defendant. Paragraph 4 of the Application states that this action asserts conversion and breach of contract by the debtor in relation to the plaintiffs. At the hearing, Attorney Emerson stated that the action involved assertions under 11 U.S.C. § 523(a)(6); based upon the description of the action at the hearing, the court believes that 11 U.S.C. § 523(a)(2)(A) may also be implicated.

Under ordinary circumstances, federal courts – in the Northern District of Indiana, the United States Bankruptcy Court – have exclusive jurisdiction by operation of 11 U.S.C. § 523(e)(1) to determine exception from discharge under provisions of 11 U.S.C. § 523(a)(2), 11 U.S.C. § 523(a)(4), and 11 U.S.C. § 523(a)(6). However, in a circumstance in which a

creditor falls within the provisions of 11 U.S.C. § 523(a)(3)(B), another rule comes into play. As stated in Collier 3d Bankruptcy, Par 5.23.09[3][b](2013):

[b] Debt Must Be Scheduled in Time to Permit Timely Filing of Complaint to Determine Dischargeability of Debt; § 523(a)(3)(B); Fed. R. Bankr. P. 4007(c)

If a debt falls within subsection 523(a)(2), (a)(4) or (a)(6), it will not be discharged unless listed or scheduled in time to permit the creditor to receive notice of the deadline under Rule 4007(c) for the filing of a complaint to determine the dischargeability of the debt. However, neither the Code nor the Rules explicitly set forth how to make the determination as to whether a debt is of the kind specified in subsection 523(a)(2), (a)(4) or (a)(6).

One court has held that subsection 523(a)(3)(B) allows an unscheduled creditor whose time to file a dischargeability action has expired under Rule 4007(c) to bring such an action nonetheless, but that the action must be brought in the bankruptcy court because subsection 523(a)(3)(B) requires the court to decide whether the debt is "of the kind specified" in subsections (a)(2), (a)(4) or (a)(6)--determinations over which the bankruptcy court ordinarily has exclusive jurisdiction. The better view, which accords appropriate weight to section 523(c)(1) and the plain language of subsection 523(a)(3)(B), is that the bankruptcy court does not have exclusive jurisdiction of subsection 523(a)(3)(B) nondischargeability determinations. The penalty to the debtor for failing to schedule a debt that may be subject to subsection 523(a)(2), (a)(4) or (a)(6) is the loss of exclusive federal jurisdiction and the 60-day limitations period under Rule 4007(c).

This court's view is that courts other than the United States Bankruptcy Court for the Northern District of Indiana have jurisdiction to determine the exceptions from discharge advanced by the applicants, and thus that these exceptions from discharge are properly presented to the Lake County, Indiana, Superior Court in the already-pending action against the debtor. Because that action has been filed and has been proceeding, this court declines to exercise jurisdiction over any potential action sought to be asserted by the applicants against the debtor with respect to an exception from discharge under 11 U.S.C. § 523(a)(2)/(a)(4)/ and/or (a)(6).

IT IS ORDERED that the Application is denied.

Hammond, Indiana on September 23, 2013.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Debtor's Attorney
Trustee, US Trustee
William J. Emerson