

## UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE: )

) Chapter 7

BRIAN LESLIE WAGNER, )

) Bankruptcy No. 01-01490

Debtor. )

**ORDER RE: ADDITION OF CREDITOR**

Debtor filed his Chapter 7 petition on April 26, 2001.

Discharge was entered on August 2, 2001 and the case was closed. Debtor recently reopened this case and filed an Amended Schedule F adding Bradley A. Vander Sanden as a creditor. The Motion to Reopen states that Mr. Vander Sanden was a co-debtor on Debtor's obligation to First Federal Community Credit Union, which was included in Debtor's original Schedule D as a secured creditor. Debtor seeks an order finding that the discharge in this case is effective as to Mr. Vander Sanden. Mr. Vander Sanden has filed a small claims action against Debtor Brian Wagner in Iowa District Court for Linn County, SCSC 167530.

**CONCLUSIONS OF LAW**

Under § 727(b), all prepetition debts are discharged unless the debt is excepted from discharge under § 523(a). In re Baskowitz, 194 B.R. 839, 843 (Bankr. E.D. Mo. 1996).

Section 523(a)(3)(A) excepts from discharge the debt of an unscheduled creditor who was without actual knowledge or notice of the case and who was thereby deprived of the opportunity to timely file a claim and share in the distribution of estate assets. Section 523(a)(3)(B) excepts from discharge the debt of an unscheduled claimant who holds a non-dischargeable debt under § 523(a)(2), (4) or (6), who was without actual knowledge of the case, and who was deprived of the opportunity to timely file a claim and to timely file a complaint to determine dischargeability. Section 523(a)(3) operates as a remedy for a creditor who is denied the opportunity of a meaningful assertion of its claim in the case because the debtor failed to schedule the claim. If the unscheduled debt does not fit within either § 523(a)(3)(A) or (B), it is discharged under § 727.

Baskowitz, 194 B.R. at 843.

A majority of courts find that § 523(a)(3)(A) requires that in a no asset, no bar date, Chapter 7 case, a prepetition debt is discharged regardless of whether the claim is listed in the debtor's schedules. See Waterson v. Hall, 515 F.3d 852, 856 (8th Cir. 2008) (noting this rule did not apply because the case was not truly a "no asset" case); Bankruptcy Law Manual § 4:35 (5th ed. 2007); In re Madaj, 149 F.3d 467, 468-69 (6th Cir. 1998); In re Hauge, 232 B.R. 141, 147-48 (Bankr. D. Minn. 1999) (no harm/no foul when failure to give notice to the creditor is in a no-asset case with no deadline for filing proofs of claims). In a no asset, no bar date, Chapter 7 case, the time for filing a claim never ends and § 523(a)(3)(A) does not apply. A nonscheduled creditor is not prejudiced because no assets are available to distribute to creditors and no deadline is set for filing proofs of claims. Hauge, 232 B.R. at 148; Baskowitz, 194 B.R. at 843.

Under § 523(a)(3)(B), unscheduled debts of the kind specified in § 523(a)(2), (4) or (6) can survive the discharge. The bankruptcy court shares concurrent jurisdiction with state courts to determine dischargeability under § 523(a)(3)

(B). In re Everly, 345 B.R. 791, 976 (B.A.P. 8th Cir. 2006). Either court can consider the elements of § 523(a)(3)(B), which include whether: 1) the creditor was known to the debtor, 2) the debtor failed to schedule the debt, 3) the debtor failed to provide the creditor with notice of the case, 4) the creditor did not have timely actual knowledge, and 5) the debt is of a kind specified in § 523(a)(2), (4) or (6). See Everly, 345 B.R. at 797; In re Lottes, 226 B.R. 634, 637 (Bankr. E.D. Mo. 1998). "The burden of establishing that a creditor has received appropriate notice rests with the debtor." In re Hairopoulos, 118 F.3d 1240, 1244 (8th Cir. 1997). The creditor bears the burden of demonstrating the merits of a claim under § 523(a)(2), (4) or (6). In re Wright, 266 B.R. 848, 851 (Bankr. E.D. Ark. 2001).

### ANALYSIS

This is a no asset case. No deadline was ever set for filing proofs of claims because no property was available for distribution to creditors. Pursuant to the foregoing, any prepetition claim Mr. Vander Sanden has against Debtor was discharged under § 727(b), unless it is of the kind specified in § 523(a)(2), (4) or (6).

Debtor has asked the Court to enter an order finding that the discharge is effective against Bradley Vander Sanden. Based on the foregoing law, Mr. Vander Sanden's claim against Debtor may be excepted from discharge under § 523(a)(3)(B) if it is of the kind specified in § 523(a)(2), (4) or (6). The Iowa courts and the Bankruptcy Court share jurisdiction to make a determination of dischargeability under § 523(a)(3)(B). As Debtor has reopened his case and added Mr. Vander Sanden as a creditor, it is appropriate to require Mr. Vander Sanden to assert such an exception to discharge in this Court within a reasonable time.

**WHEREFORE**, as this is a no asset, no claims deadline, Chapter 7 case, Bradley Vander Sanden may not claim exception from discharge under § 523(a)(3)(A).

**FURTHER**, if Mr. Vander Sanden wishes to assert an exception from discharge under § 523(a)(3)(B), for a debt of the kind specified in § 523(a)(2), (4) or (6), he is directed to file an adversary proceeding in this Court on or before May 30, 2008.

**FURTHER**, if Mr. Vander Sanden does not file an adversary proceeding by May 30, 2008, Debtor may submit a proposed order finding Mr. Vander Sanden's claim is included in Debtor's discharge for the Court's consideration.

**FURTHER**, the Clerk's office is directed to send a copy of this order to Debtor, creditor Bradley Vander Sanden and Judge Jane Spande, Iowa District Court, 2nd Avenue Bridge, Cedar Rapids, IA 52401.

DATED AND ENTERED:

May 6, 2008

PAUL J. KILBURG  
CHIEF BANKRUPTCY JUDGE