

In the United States Bankruptcy Court

for the Northern District of Iowa

ROBERT EUGENE AKERS SR.
HELEN BARBARA AKERS

Bankruptcy No. L92-00626C

Debtor(s).

Chapter 13

DONALD L. CARR II

Adversary No. 92-1130LC

Plaintiff(s)

vs.

ROBERT EUGENE AKERS SR.
HELEN BARBARA AKERS

Defendant(s)

ORDER ON MOTION TO DISMISS

On June 22, 1993, the above-captioned matter came on for hearing pursuant to assignment on Defendants' Motion to Dismiss the pending adversary proceeding. The Plaintiff appeared pro se. The Defendants appeared by Attorney Jeffrey Berg.

The file establishes that the Debtors filed a Chapter 7 Bankruptcy on March 31, 1992 (L92-00626C). On July 6, 1992, an Adversary Proceeding (92-1103LC) was filed by the Plaintiff, Donald L. Carr. Mr. Carr alleges that the Debtors should be denied discharge pursuant to 11 U.S.C. §§727(a)(2)(A), 727(a)(3), 727(a)(4), 727(a)(5), and 727(a)(7). After the filing of this adversary proceeding, the Debtors filed a Notice of Conversion in which they converted the pending Chapter 7 case to a Chapter 13 proceeding. The Defendants then filed the presently pending Motion to Dismiss. The conversion of this case from a Chapter 7 to a Chapter 13 was granted by Court Order on March 4, 1993.

The matter remaining for the Court's determination is the Defendants' Motion to Dismiss this adversary proceeding. The adversary proceeding alleges that the Defendants-Debtors did not make full disclosure of their assets in their initial Chapter 7 filing. More specifically, the Plaintiff asserts that the Defendants were parties to a lawsuit (Akers v. City of Cedar Rapids, Linn County, LA 19162) within one year immediately preceding the filing of this Bankruptcy. Plaintiff alleges that this failure to disclose constitutes grounds for denial of discharge pursuant to 11 U.S.C. § 727. The Defendants, however, assert that under a Chapter 13 proceeding, 11 U.S.C. §727 has no applicability and therefore, the adversary proceeding is moot and should be dismissed.

The rule appears well settled that 11 U.S.C. § 727 is unique to Chapter 7 of the Bankruptcy Code. A reading of 11 U.S.C. § 103(b) reveals that Subchapter II of Chapter 7 applies only to Chapter 7 cases. As 11 U.S.C. § 727 is found in Subchapter II, a literal reading of these sections establishes that § 727 is indeed limited to Chapter 7 of the Bankruptcy Code and has no applicability to Chapter 13.

As such, 11 U.S.C. § 727 may not be utilized in an attempt to deny discharge to Debtors seeking protection under any other Chapter of the Code, including Chapter 13. The foregoing reading of these applicable sections appears to have unanimous support. In re Parker, 49 B.R. 61, 62 (Bankr. E.D. Va. 1985)

Consequently, when Debtors converted their case from a Chapter 7 to a Chapter 13, Plaintiff no longer retained § 727 as an arrow in his quiver of available remedies. As § 727 is no longer available to the Plaintiff, the pending adversary proceeding is moot and the Motion to Dismiss must be granted.

The foregoing may appear to be a somewhat harsh result, however, the Plaintiff is not without available remedies under Chapter 13. The issue of "good faith" does remain available to the Plaintiff to raise any residual issues. Upon conversion, the Debtors filed a plan, and whether or not the filing of this plan raises doubts as to the Debtors' good faith, is an issue completely separate from that presented in this ruling.

WHEREFORE, for the reasons set forth herein, the Debtors' Motion to Dismiss is granted without prejudice.

FURTHER, for the reasons set forth herein, the Plaintiff is granted until July 22, 1993, within which to raise any objection to confirmation of the proposed plan.

SO ORDERED this 30th day of June, 1993.

PAUL J. KILBURG

Paul J. Kilburg
U.S. Bankruptcy Judge