

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

IN RE:)
) Chapter 7
VERNON COOPER,)
) Bankruptcy No. 02-03566
Debtor.)

IN RE:)
) Chapter 7
CONNIE ANN COOPER,)
) Bankruptcy No. 03-00235
Debtor.)

ORDER

On April 1, 2003, the above-captioned matter came on for hearing on various motions filed by the Trustee. Debtors appeared by Attorney Joseph Peiffer. Trustee Sheryl Schnittjer appeared in person with her attorney, Thomas McCuskey. Attorney Jon McCright appeared on behalf of creditors. The various motions were argued after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b) (2) (A).

The Trustee filed an application in multiple parts on February 13, 2003. These motions all relate to the Trustee's desire to consolidate these cases for administration. The Trustee filed a motion seeking relief in four parts as follows:

1. Application for Order Administratively Consolidating the Cases of Connie Ann Cooper and Vernon Cooper;
2. Application for Order Extending Deadlines with Respect to Objection to Exemptions;
3. Application for Order Directing the Extension of Time Within Which to Object to Discharge or Dischargeability of the Debtor;
4. Application for a Uniform Date, with Respect to Each Case, for the Filing of Claims by Creditors and Interested Parties.

STATEMENT OF THE CASE

Vernon and Connie Cooper are husband and wife. Routinely, Chapter 7 cases involving spouses are administered without comment. These cases, however, have an unusual procedural history. Connie Cooper filed a Chapter 7 petition in the District of Minnesota on November 18, 2002. While being administered in Minnesota, the First Meeting of Creditors was set for January 24, 2003 and the deadline to object to discharge or to determine dischargeability of certain debts was set for March 25, 2003. On October 11, 2002, an involuntary Chapter 7 petition was filed in the Northern District of Iowa naming Vernon Cooper as Debtor.

After other proceedings which are not relevant here, an order for relief was entered in the Northern District of Iowa case involving Vernon Cooper and the case of Connie Cooper was transferred from the District of Minnesota to the Bankruptcy Court for the Northern District of Iowa on January 27, 2003. Upon receipt of the transferred case involving Connie Cooper, notice of meeting of creditors was sent on January 28, 2003. A meeting of creditors was set for Connie Cooper on March 3, 2003 and a meeting of creditors was set for Vernon Cooper on March 18, 2003. In a notice filed March 26, 2003, a continued 341 meeting of creditors is scheduled for April 15, 2003 for both debtors. Based

upon this non- parallel administration to this point, the Trustee seeks uniformity in administration through consolidation and consistent deadlines.

APPLICATION FOR ORDER ADMINISTRATIVELY CONSOLIDATING

Section 302(b) allows the Court to consolidate cases under certain circumstances. In consolidation, the separate Debtors' assets and liabilities are combined in a single pool for the creditors' benefit. Consolidation can affect the subsequent rights of creditors. It is not appropriate to administratively consolidate cases if it will be detrimental to any class of creditors. A test has been created and applied to determine whether cases can be administratively consolidated. In re Reider, 31 F.3d 1102, 1109 (11th Cir. 1994).

Joint administration, however, is ordinarily the most appropriate vehicle for administration where two petitions are pending by or against spouses. Joint administration is provided for in Fed. R. Bankr. P. 1015(b). It is meant to aid the Court in expediting proceedings and to make the cases less costly. Generally, joint administration provides for jointly-held § 341 meetings and other consistent deadlines. Joint administration is designed for the ease of administration and to permit the payment of only one filing fee where spouses file a joint petition. Unlike administrative consolidation, joint administration does not create substantive rights.

In this case, the test applied in Reider is not satisfied because there does not appear to be sufficient identity between the cases to warrant administrative consolidation. However, as there is substantial overlap in these cases, joint administration is appropriate to handle these cases in the most convenient and cost saving manner possible. As such, the Trustee's Application for Order Administratively Consolidating the Cases is DENIED. However, the Court does direct that these cases be jointly administered to the extent possible under Rule 1015(b). As this Court is now operating under electronic case filing, both files can be maintained separately without involving additional paperwork. However, all pleadings involved in these cases shall be captioned with both Vernon Cooper with his case number of 02-03566 and Connie Ann Cooper with her case number of 03-00235. All pleadings and all rulings shall contain this caption and shall be filed in both cases.

APPLICATION FOR ORDER EXTENDING DEADLINES WITH RESPECT TO OBJECTION TO EXEMPTIONS

Trustee seeks an order extending the deadline within which to object to object to exemptions. At the time Trustee filed the motion on February 13, 2003, Debtor Vernon Cooper had not yet filed complete schedules. Trustee requests that the Court fix a date for objections to exemptions which is the same in both cases. Exemptions under the Bankruptcy Code are controlled by 11 U.S.C. § 522. Deadlines for objecting to a claim of exemption are controlled by Rule 4003(b). This rule states that:

(b) Objecting to a Claim of Exemptions. A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

Fed. R. Bankr. P. 4003(b).

As stated, a meeting of creditors has been held but not concluded. A

continued § 341 meeting, as to both Debtors, is set for April 15, 2003. If the § 341 meeting is concluded on that date, the Trustee shall have an additional 30 days thereafter within which to file any objection to the claim of exemptions.

Trustee's apparent purpose in filing these motions is to arrive at consistent deadlines and to obtain sufficient time within which to evaluate both cases because of their unusual posture. Trustee's desire to seek a consistent deadline for objecting to exemptions has been satisfied as both Debtors will complete their § 341 meeting on the same date and the deadline for filing objections to those exemptions will, therefore, also be consistent.

The second component of Trustee's filing these motions was to seek sufficient time within which to evaluate this case. At the time of the filing of this motion, the schedules had not been filed in their entirety. The schedules are now apparently complete. From the present date, Trustee has in excess of 40 days within which to evaluate this case to determine if objections to any exemptions should be lodged. Alternatively, Trustee has a reasonable period within which to evaluate this case and, if good cause is shown why it should be extended, to file another motion for extension. However, at the present time, no compelling reason exists why the deadline should be extended.

As such, Trustee's Application for Order Extending Deadlines with Respect to Objection to Exemptions is DENIED without prejudice against further requesting an extension if subsequent facts demonstrate a need as defined under bankruptcy law.

APPLICATION FOR ORDER EXTENDING TIME WITHIN WHICH TO OBJECT TO DISCHARGE OR DISCHARGEABILITY OF THE DEBTOR

In this motion, Trustee seeks to extend the deadline for complaints filed under 11 U.S.C. § 523 as well as complaints filed under 11 U.S.C. § 727.

The Court will first address the issues concerning the motion to extend deadline for determination of dischargeability issues under 11 U.S.C. § 523. Connie Cooper filed her Chapter 7 bankruptcy petition in the District of Minnesota which was eventually transferred to the Northern District of Iowa. This petition was filed on November 18, 2002. While the case remained in Minnesota, a first meeting of creditors was set for January 24, 2003 with a deadline to file complaints objecting to discharge of March 25, 2003.

When the case of Connie Cooper was transferred to the Northern District of Iowa, a meeting of creditors was set for March 3, 2003 and a deadline to file complaints objecting to discharge was set for May 2, 2003. Complaints dealing with 11 U.S.C. § 523 dischargeability issues is controlled by Rule 4007(c) which states generally that:

(c) A complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On a motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4007(c).

Debtor asserts that Trustee did not timely file this motion to extend and, secondly, objects that Trustee is not a party in interest as defined by Rule 4007. Under the deadline set by the Minnesota court, the deadline for filing

complaints objecting to discharge was set for March 25, 2003.

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Trustee, in this case, filed the motion extending deadlines on February 13, 2003. The motion to extend is timely filed.

However, the motion must also be filed by a party in interest. This is an undefined term but a party in interest must be one that has standing to litigate the dischargeability complaint. Ordinarily, either the debtor or a creditor is the party with standing to litigate dischargeability complaints and the case trustee does not have standing to request an extension of the deadline for dischargeability complaints. In re Farmer, 786 F.2d 618 (4th Cir. 1986). Under the present circumstances, neither Debtor nor an individual creditor has filed a motion for extension. Only the Chapter 7 Trustee has filed such a motion and the case trustee is not a party in interest authorized to file a request for such an extension.

Therefore, the Application for Order Directing the Extension of Time Within which to Object to Dischargeability under § 523 is DENIED based upon lack of standing by the Chapter 7 Trustee. The Court specifically notes that this is the only basis for this ruling and any other issues involving deadlines or expiration of deadlines within which to file complaints under § 523 are not resolved in this ruling. Any issues subsequently raised in this case under § 523 will be resolved when ripe for determination.

Trustee also requests an extension of time within which to file objections to discharge pursuant to 11 U.S.C. § 727. The deadlines for filing objections are the same as previously noted. The motion to extend was timely filed before the expiration of the deadline to object in both cases. Rule 4004 of the Federal Rules of Bankruptcy Procedure sets out the time lines within which to file § 727 complaints objecting to discharge. A motion of any party in interest to extend these deadlines must be made before the time has expired. In this case, the motion was timely filed. Parties who are entitled to litigate objections to discharge under § 727 are ordinarily the U.S. Trustee, creditors and the Chapter 7 trustee. The Chapter 7 Trustee is a party in interest cognizable as a party able to seek an extension of the deadline.

A bankruptcy court may extend the deadline if equitable grounds exist for doing so. In re Perkins, 271 B.R. 607, 612 (B.A.P. 8th Cir. 2002). In this case, Trustee, as in the

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previous matters, seeks consistency in the establishment of deadlines for the determination of dischargeability. The deadline to file complaints objecting to the discharge of Debtor Vernon Cooper has been set as May 19, 2003. The deadline to file objections to discharge as to Connie Ann Cooper has been set in the Northern District of Iowa as May 2, 2003. In reviewing this matter, the Court finds that because of the transfer of the case from initial administration in Minnesota to the Iowa Bankruptcy Court, sufficient equitable grounds exist to extend the deadline for objecting to discharge under § 727 for the brief period of time necessary to make it consistent with the deadline previously set in the case of Vernon Cooper.

As such, the deadline to file complaints objecting to discharge of both Debtor Vernon Cooper and Connie Cooper under 11 U.S.C. § 727 is set for May 19, 2003.

APPLICATION FOR A UNIFORM DATE, WITH RESPECT TO EACH CASE, FOR THE FILING OF CLAIMS BY CREDITORS

Filing of claims is controlled by Rule 3002(c) of the Federal Rules of Bankruptcy Procedure. This Rule provides in part that in a Chapter 7 liquidation, a proof of claim is timely filed if it is filed no later than 90 days after the

first date set for the meeting of creditors under § 341(a) of the Code. However, Rule 3002(c)(5) also provides that if notice of insufficient assets to pay a dividend is given to creditors pursuant to Rule 3002(e), and subsequently the Trustee notifies the Court that payment of a dividend appears possible, the Clerk shall notify the creditors of that fact and the fact that they may file proofs of claim within 90 days after the mailing of the notice.

In the case of Connie Cooper, the Minnesota Bankruptcy Court sent notice to all creditors that, at that time, it appeared that this was a no asset case and that proofs of claim need not be filed. When the case was transferred to Iowa, it was noticed as an asset case and, pursuant to Rule 3002(c)(5), the deadline for filing proofs of claim was established as 90 days after this notice. The deadline for filing proofs of claim in the case of Connie Cooper was appropriately set for June 5, 2003.

Additionally, the case of Vernon Cooper was originally filed in the Bankruptcy Court for the Northern District of

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Iowa. The deadline for filing proofs of claim under Rule 3002 was also set for June 5, 2003.

The Trustee seems to be seeking an extension of this deadline. However, Rule 3002 is explicit that the deadline is not later than 90 days after the mailing of the notice of possible dividends. It is instructive that Rule 3003 allows for the extension of time within which to file proofs of claim in Chapter 9 and Chapter 11 cases. However, the ability to seek extensions of time in Chapter 7 cases has extremely narrow exceptions. Under the circumstances of this case, the time within which creditors must file claims has been properly set by the Clerk. This Court concludes that there are no recognized statutory exceptions under Rule 3002 with which to grant the Trustee's application for an extension of this date. In any event, the Court concludes that the claims dates are the same and sufficient time exists under the present circumstances for all diligent creditors to file claims in these cases.

As such, the Application by Trustee relating to the claims date is DENIED to the extent that any extension shall be granted and the dates previously set for the filing of claims in these cases shall remain as previously set.

WHEREFORE, pursuant to the foregoing, Trustee's Application for Order Administratively Consolidating the Cases of Connie Ann Cooper and Vernon Cooper is DENIED. However, all filings shall be captioned with both Vernon Cooper, No. 02-03566, and Connie Ann Cooper, No. 03-00235, and filed in both cases.

FURTHER, Trustee's Application for Order Extending Deadlines with Respect to Objection to Exemptions is DENIED without prejudice.

FURTHER, Trustee's Application for Order Directing the Extension of Time Within Which to Object to Discharge or Dischargeability is DENIED as to § 523 complaints, based on the Chapter 7 Trustee's lack of standing.

FURTHER, Trustee's Application for Order Directing the Extension of Time Within Which to Object to Discharge or Dischargeability is GRANTED as to § 727 complaints. The deadline to file complaints objecting to discharge of both Debtor Vernon Cooper and Debtor Connie Cooper under § 727 is set for May 19, 2003.

FURTHER, Application for a Uniform Date, with Respect to Each Case, for the Filing of Claims by Creditors and Interested Parties is DENIED as to any extension of the current deadline. The deadline for filing claims in both cases remains as previously set, June 5, 2003.

SO ORDERED this 7th day of April, 2003.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE
