

FILED
at o'clock & min. M
AUG 26 2004
BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (20)

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Jack L. Green,

Debtor.

C/A No. 03-5607-W

ORDER

Chapter 11

ENTERED

AUG 26 2004

L.O.

THIS MATTER comes before the Court upon the Motion for Leave to File an Untimely Proof of Claim (the "Motion") filed by Carolina Casualty Insurance Company ("Carolina Casualty") and the response thereto filed by Jack L. Green (the "Debtor"). At the hearing on this matter, Debtor did not contest the fact that Carolina Casualty did not receive timely notice of Debtor's Chapter 11 bankruptcy filing. Pursuant to 11 U.S.C. § 523(a)(3), a discharge under 11 U.S.C. § 1141 does not discharge an individual debtor from a debt that was:

- (3) neither listed nor scheduled under section 521(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit-
 - (A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
 - (B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

11 U.S.C. § 523(a)(3). Debtor's Plan of Reorganization was confirmed on April 7, 2004, prior to the filing of this Motion, and provided for discharge of all claims and liabilities arising prior to the filing pursuant to § 1141. Given the lack of notice, and no evidence that Carolina Casualty had notice or knowledge within the meaning of § 523(a)(3), the debt shall be deemed nondischargeable.

Further, the lack of notice to Carolina Casualty raises due process concerns that provide

additional support for the nondischargeability of Carolina Casualty's contingent debt.

Finally, the allowance of a late claim based on the facts of this case would potentially modify the distribution to creditors under a heavily negotiated Plan of Reorganization and further prejudice creditors given the potentially large amount of Carolina Casualty's claim. At the hearing it was represented to the Court that Debtor may fund the additional liability, to the extent it arises, from Debtor's exempt assets, and the parties were given additional time to resolve the matter. No resolution having been reached, and given the stipulation by the parties that no notice was given to Carolina Casualty and therefore that the required elements of 11 U.S.C. § 523(a)(3) have been met, it is hereby

ORDERED that the Motion is denied; and it is further

ORDERED that the indebtedness owed to Carolina Casualty by Debtor, as represented by Carolina Casualty on the proposed proof of claim attached to its Motion, is deemed nondischargeable pursuant to 11 U.S.C. § 523(a)(3).

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
August 26, 2004.