

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 01-33024

VIJAY JETHANANDANI, M.D.
ARUN JETHANANDANI, M.D.

Debtors

AL NOTHER

Plaintiff

v.

Adv. Proc. No. 02-3020

VIJAY JETHANANDANI, M.D.

Defendant

MEMORANDUM ON MOTION TO DISMISS

APPEARANCES: THE TAYLOR LAW FIRM
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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

The court has before it the Motion to Dismiss filed on March 1, 2002, by Debtor Vijay Jethanandani, M.D. (Defendant). The Defendant seeks dismissal of the Plaintiff's Complaint as untimely pursuant to FED. R. BANKR. P. 4007(c).

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(I) (West 1993).

I

The Debtors filed a Joint Chapter 7 Petition on June 19, 2001. Their Statements and Schedules were later filed on July 11, 2001. The Plaintiff was named, on Schedule F, as an unsecured, nonpriority claimholder. No address was listed for the Plaintiff.¹

On September 6, 2001, the Debtors filed an Amendment to Schedule F. The Amendment provided, in part, the following mailing address for the Plaintiff: 27 E. 612 Mack Rd, Wheaton, IL 60187. Appended to the Amendment is a Certificate of Service, certifying that a copy of the Amendment was served on the Plaintiff by mail at the Wheaton address. That address corresponds with the one claimed by the Plaintiff in his "Response of Plaintiff Al Nother to Defendant Vijay Jethanandani's First Set of Interrogatories," filed in related state court litigation on September 7, 2001.²

¹ A debtor's schedules must contain the full mailing address of each creditor. See FED. R. BANKR. P. 1007(b)(1); 4 KING, COLLIER ON BANKRUPTCY ¶ 523.09[2][b], at 523-64 (15th ed. rev. 2002) ("Lists or schedules of creditors . . . serve no useful purpose unless they include[] the addresses to which notices may be sent.").

² The address is provided at Paragraph 2 of the Response. In Paragraph 3, however, the address is listed as "27 W. 612 Mack Road."

However, by the Affidavit of Al Nother submitted to this court on April 10, 2002, the Plaintiff states that he permanently moved from the Wheaton address on August 22, 2001, and, as a result, did not receive the Amendment - and thus did not receive notice of the Defendant's bankruptcy - until the second week of October, 2001.³ The Plaintiff's Complaint, seeking nondischargeability under 11 U.S.C.A. § 523(a)(6)⁴ and (a)(3)(B),⁵ was subsequently filed on January 28, 2002.

II

³ The Complaint contains two contradictory statements. First, the Plaintiff alleges that he did not first receive notice until December, 2001. See Complaint, ¶ 54. Also, due to what the court presumes is a typographical error, the Plaintiff also states that he "did have actual knowledge of Jethanandani's Bankruptcy filing in time for him to file such a complaint." See *id.* at ¶ 55.

⁴ A discharge under [Chapter 7] . . . does not discharge an individual debtor from any debt—

. . . .

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity[.]

11 U.S.C.A. § 523(a)(6) (West 1993 & Supp. 2001).

⁵ A discharge under [Chapter 7] . . . does not discharge an individual debtor from any debt—

. . . .

(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—

. . . .

(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.A. § 523(a)(3)(B) (West 1993 & Supp. 2001).

Section 523(a)(6) complaints must be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a).” FED. R. BANKR. P. 4007(c). Creditors must be given at least thirty days advance notice of this deadline. *See id.*

In the present case, the creditor’s meeting was initially set for July 24, 2001, and the corresponding bar date was September 24, 2001. Clearly, the Plaintiff’s January 28, 2002 Complaint was not timely filed.

Nonetheless, § 523(a)(3)(B) provides for the nondischargeability of § 523(a)(6) debts where the creditor did not have “notice or actual knowledge of the case” in time to promptly file for a claim. *See* 11 U.S.C.A. § 523(a)(3)(B). Therefore, a creditor whose debt fits within section 523(a)(3)(B) because of inadequate notice is entitled to file a complaint later than other creditors.

The Defendant makes no argument that the Plaintiff had timely notice of the bankruptcy by any manner other than service of the Amendment to Schedule F. Instead, the Defendant relies solely on the sufficiency of his September 6, 2001 Amendment mailing to the Plaintiff’s Wheaton address.

III

Because matters outside the pleadings have been presented to (and not excluded by) the court, the Defendant’s Motion to Dismiss will be treated as one for summary judgment. *See* FED. R. CIV. P. 12(b), (c); FED. R. BANKR. P. 7012(b). By his affidavit, the Plaintiff has demonstrated the existence of a “genuine issue of material fact” regarding whether he received notice prior to

the September 24, 2001 bar date. A summary judgment motion may not succeed in the presence of a genuine issue of material fact, *see* FED. R. CIV. P. 56(c); FED. R. BANKR. P. 7056, and the Motion to Dismiss must therefore be denied.

An order consistent with this Memorandum will be entered.

FILED: April 29, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in the Memorandum on Motion to Dismiss filed this date, the court directs that the Motion to Dismiss filed by the Defendant on March 1, 2002, is DENIED.

SO ORDERED.

ENTER: April 29, 2002

BY THE COURT

/s/

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE