

Atkin v Mendonca (In re Mendonca)

USDC Civil Case No. 93-6272-HO, Bankruptcy Case NO. 686-07533-W13

5/5/94

D. Ct. (J. Hogan) aff'g PSH

unpublished

Creditors filed motion to dismiss Chapter 7 because debtor failed to attend § 341(a) meeting of creditors after conversion from Chapter 13. Bankruptcy court denied motion to dismiss because debtor had not been released from jail in time to attend the § 341 meeting, the meeting was reset and the debtor attended the reset meeting which resulted in no significant prejudice to the creditors. Creditors appealed. District Court dismissed the appeal, ruling that LBR 2003(b) provides only that failure to complete the first meeting of creditors may result in dismissal and the bankruptcy court did not abuse its discretion in denying the motion to dismiss.

Entered

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
FILED

MAY 5 1994

TERENCE H. DUNN, CLERK
BY RS DEPUTY

GARY ATKIN, JO DEAN ATKIN

Appellants,

v.

Civil No. 93-6272-HO

JUDICIAL DEPT OF THE STATE OF
OREGON, KATHERINE H. MENDONCA,

USBC #92-62891-H

Appellees.

JUDGMENT

This appeal is dismissed and this bankruptcy case remanded to the Bankruptcy Court for further appropriate proceedings.

Dated: May 4, 1994.

Donald M. Cinnamond, Clerk

by *Lea Force*
Lea Force, Deputy

JUDGMENT

DOCUMENT NO: _____

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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| In re |) | |
| |) | |
| KATHERINE MENDONCA, |) | |
| |) | Civil No. 93-6272-HO |
| Debtor. |) | |
| _____ |) | ORDER |
| |) | |
| GARY ATKIN and JO DEAN ATKIN, |) | |
| |) | |
| Appellants, |) | |
| |) | |
| v. |) | |
| |) | |
| OREGON DEPARTMENT OF VETERANS' |) | |
| AFFAIRS, KATHERINE MENDONCA, |) | |
| and RONALD R. STICKA, Trustee, |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

Appellants, in this bankruptcy case, sold a parcel of real property to Katherine Mendonca, debtor, who later filed a Chapter 13 bankruptcy petition, which was converted to a Chapter 7 liquidation proceeding. Appellants have been attempting to foreclose on a junior mortgage interest in their favor for a portion of the purchase price.

The debtor failed to attend the 11 U.S.C. § 341(a) first meeting of creditors set in the Chapter 7 proceeding on December 15, 1992, because she was in jail. Appellants moved to dismiss the bankruptcy proceeding on the ground of the debtor's failure to appear at the first meeting of creditors. The first meeting of creditors was reset and held March 2, 1993, which debtor attended and completed. Appellants' motion to dismiss was heard and denied by the bankruptcy court on April 2, 1993.

Appellants appeal to this court on the ground that the motion to dismiss for failure to attend the first meeting of creditors was wrongly denied by the bankruptcy court.¹

Local Bankruptcy Rule 2003(b) requires debtors to attend and complete the 11 U.S.C. § 341(a) first meeting of creditors. Failure to complete the first meeting of creditors may result in dismissal. LBR 2003(b) (emphasis added). A motion to dismiss on this ground rests within the sound discretion of the bankruptcy court. Matter of Atlas Supply Grp., 857 F.2d 1061, 1063 (5th Cir. 1988). Here, there was no abuse of discretion.

This appeal is dismissed and this bankruptcy case remanded to the bankruptcy court for further appropriate proceedings.

DATED this 22nd day of April, 1994.


UNITED STATES DISTRICT JUDGE

¹ Appellants also designate the denial of their motion for relief from the automatic stay as an issue on appeal. Actually, appellants' motion for relief from the automatic stay was granted. At any rate, all parties now agree the issue is moot.