

Gerald Rogers, Case No. 602-66860-fra7
Appellate No. 05-6323-HO

3/14/06 Dist. Ct. (Hogan) aff'g
FRA

Unpublished

Debtor filed a lawsuit in state court shortly after he was granted a chapter 7 discharge and his case had been closed. The cause of action had not been disclosed in the bankruptcy case. When the trustee learned of the lawsuit, he had the case reopened and claimed the asset as property of the estate. Debtor then converted the case to chapter 13 and proposed to fund the plan primarily with the proceeds of the lawsuit. The chapter 13 trustee moved to reconvert to chapter 7 on several grounds.

The Bankruptcy Court ruled that the lawsuit was property of the chapter 7 bankruptcy estate and, at the time that the lawsuit was initiated, the Debtor did not have standing to file it. The motion to reconvert was granted on good faith and feasibility grounds. Debtor appealed.

The District Court, in affirming the Bankruptcy Court, agreed that the lawsuit was a pre-petition asset and remained property of the chapter 7 estate after the case was closed. Debtor, through lack of standing or by judicial estoppel, could not file the lawsuit. Moreover, the Bankruptcy Court did not commit error in not sua sponte giving the Debtor additional time to file an amended chapter 13 plan before reconverting to chapter 7, as the Debtor had neither asked for nor filed a motion for additional time to respond to the motion to reconvert.

E06-6

The underlying bankruptcy opinion is at E04-15.

FILED 06 MAR 13 14 59 JSDC-ORE

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON
MAR 14 2006
LODGED _____ REC'D _____
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

GERALD L. ROGERS,

Civ. No. 05-6323-HO

Appellant,

ORDER

Case 02-64860

v.

FRED LONG, Chapter 13 Trustee,

Appellee.

Gerald L. Rogers appeals an order of the bankruptcy court denying confirmation of his chapter 13 reorganization plan and granting the chapter 13 trustee's motion to reconvert the bankruptcy case to chapter 7.

Discussion

The court does not repeat the factual and procedural background aptly set forth in the memorandum opinion (MO). ER-106-09.

The bankruptcy court properly concluded that Rogers was aware by the petition date that he had allegedly suffered an injury from the conduct of Qwest Corporation, and that the claim

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Dated 3-14-06
By [Signature] Deputy

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against Qwest belonged to the estate. ER-111 (MO at 6, n.2). Under Oregon law, the claim accrued prior to Rogers filing the bankruptcy petition. See Gaston v. Parsons, 864 P.2d 1319, 1324 (Or. 1994). The court need not address Rogers's argument that the bankruptcy court erred by applying In re Swift, 129 F.3d 792, 798 (5th Cir. 1997) to determine when his claim accrued. Whether In re Swift or Gaston applies, the claim accrued prior to the filing of the petition. The date a claim accrues under Oregon law is determined by existing precedent from Oregon's appellate courts. The letter request of Rogers's attorney to certify this question to the Oregon Supreme Court is therefore denied. See Western Helicopter Svcs., Inc. v. Rogerson Aircraft Corp., 811 P.2d 627, 630 (Or. 1991).

The bankruptcy court properly determined that as a result of judicial estoppel or lack of standing from Rogers's failure to schedule the claim against Qwest, the value of all property distributed under the plan on account of unsecured claims is less than the amount that would be paid if the estate were liquidated under Chapter 7, in violation of 11 U.S.C. § 1325(a)(4). ER-114-15 (MO at 9-10). Authority cited by Rogers for the proposition that a chapter 13 debtor generally has standing to assert a pre-petition claim does not address the situation where, as here, the debtor failed to schedule the claim. Based on Rogers's failure to satisfy Section 1325(a)(4), the court finds that it need not

resolve Rogers's challenge to the bankruptcy court's determination that he failed to meet his burden to prove that he proposed the Chapter 13 plan in good faith.

The bankruptcy court did not err by failing to sua sponte provide time for Rogers to file an amended or alternative chapter 13 plan before reconverting the case to Chapter 7. Section 1307(c)(5) of Title 11, United States Code, may be read literally to preclude dismissal or conversion unless the debtor requests, and the court denies, additional time to file a new or amended plan.¹ The court rejects this reading because it would grant debtors the ability to prevent conversion or dismissal simply by failing to ask for additional time. Rogers did not ask for additional time in response to the chapter 13 trustee's motion to reconvert, and did not file a motion for additional time.

The bankruptcy court's factual findings are sufficient to

¹(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including--

* * *

(5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan[.]

11 U.S.C. § 1307(c)(5).

3 - ORDER

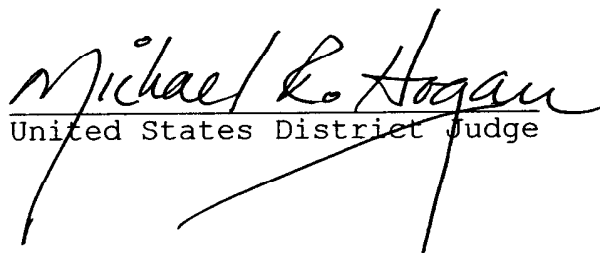
give this court a clear understanding of the bases and grounds for the decision. In re Leavitt, 171 F.3d 1219, 1223 (9th Cir. 1999).

Conclusion

Based on the foregoing, the decision of the bankruptcy court is affirmed.

IT IS SO ORDERED.

DATED this 13th day of March, 2006.


United States District Judge