

IN THE UNITED STATES BANKRUPTCY COURT

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FOR THE DISTRICT OF UTAH

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In re)	Bankruptcy Case No. 81C-03502
)	
LAWRENCE H. JACOBSEN, aka)	
Larry Jacobsen)	
)	
JULIE E. JACOBSEN, aka)	
Julie E. Blohm)	
)	
Debtors.)	MEMORANDUM DECISION

Debtors filed their Chapter 7 petition on November 25, 1981, but omitted Steven K. Martin, a creditor, from their schedules and mailing matrix. The case was designated a probable no asset case and, pursuant to Rule 203(b), Bankruptcy Rules of Procedure, the Clerk sent notice that it was unnecessary to file claims. Thus, a time limit for filing claims was not fixed. See Rule 203(b). See also Rule 302(e) (4).

After an order of discharge had been entered and after the case had been closed, no asset, the debtors moved to reopen the case to add Mr. Martin as a creditor and thereby obtain a discharge of his claim. Although Mr. Martin filed a timely objection on the grounds that the debtors knew of his claim and that he was not aware of their bankruptcy, through inadvertence the Court overlooked his objection and signed an order allowing the case to be reopened. The case was reopened and the Clerk sent Mr. Martin notice that he was given one month to file a complaint objecting to discharge

of the debtors. Although the Clerk's notice speaks of an objection to discharge, both objections to discharge pursuant to Section 727(c) and requests for the determination of the dischargeability of debts pursuant to Section 523 are included.

Section 523(a)(3) provides that a debt which is not properly scheduled in time to permit timely filing of a proof of claim if the debt is not one specified in Section 523(a)(2), (4), or (6) or in time to permit both timely filing of a proof of claim and timely request for a determination of dischargeability if the debt is one specified in Section 523(a)(2), (4), or (6) is not discharged unless the creditor had notice or actual knowledge of the case in time for such timely filing or such timely filing and request. But Section 523(a)(3) does not apply in no asset cases when no time limit for filing claims is fixed and when the creditor added upon reopening is given additional time to file a request for a determination of the dischargeability of its debt and to object to discharge. Therefore, notwithstanding the error in granting the motion to reopen this case without consideration of Mr. Martin's objection, the order allowing the case to be reopened will stand. Given that this was a no asset case and that Mr. Martin has been afforded an opportunity to file a complaint under Section 727(c) or Section 523, the order allowing the case to be reopened results in no prejudice to Mr. Martin other than the loss of his opportunity to examine the debtor at the meeting of creditors. This loss can be remedied by permitting Mr. Martin to examine the debtor pursuant to Rule 205.

IT IS THEREFORE ORDERED that the order signed on September 27, 1982, allowing this case to be reopened to add the claim of Steven K. Martin will stand. Mr. Martin is granted until December 3, 1982, to examine the debtors pursuant to Rule 205, if such an examination is desired.

DATED this 17 day of November, 1982.

BY THE COURT:

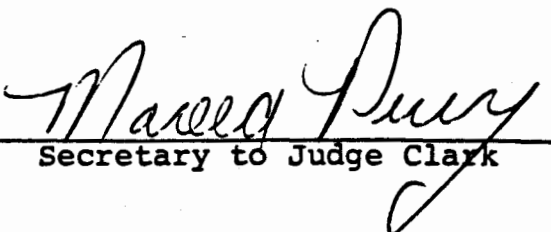

GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I hereby certify that I mailed a copy of the foregoing order to the following this 17 day of November, 1982.

Richard Calder, Esq.
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Secretary to Judge Clark