

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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December 7, 1999

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Subject: *In re Gail E. and John H. Etzel,*
Chapter 7; Bankr. No. 99-10262

Dear Counsel and Trustee:

Before the Court is East River Electric Power Coop, Inc., and Northeast Counsel of Governments' Objection to Discharge of Secured Interest filed December 7, 1999. As discussed below, because the Objection is procedurally off target, it will be overruled in part. The remainder of the Objection will be treated as an additional objection to Debtors' claimed exemptions.

SUMMARY. Debtors filed a Chapter 7 petition on October 19, 1999. Several deadlines have been established. Under F.R.Bankr.P. 4004(a), the deadline for a party to object under 11 U.S.C. § 727 to the entry of an order discharging all claims against the bankruptcy estate is January 18, 2000. Under F.R.Bankr.P. 4007(c), the deadline for filing a complaint objecting to the discharge of a fraud-based claim under 11 U.S.C. § 523(a)(2), (4), or (6) is also January 18, 2000. A creditor may seek the extension of either deadline by filing and serving an appropriate motion and notice. See F.Rs.Bankr.P. 4004(b) and 4007(c) and Local Bankr. Rs. 4004-1(a) and 4007-1. Finally, the deadline by which a creditor or other party in interest may file an objection to Debtors' claimed exempt property under F.R.Bankr.P. 4003(b) is December 20, 1999,

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On December 7, 1999, East River Electric Power Coop, Inc., and Northeast Counsel of Governments filed a motion for relief from stay, a joinder to the Trustee's objection to exemptions, and an Objection to Discharge of Secured Interest. In the objection, East River Electric Power Coop, Inc., and Northeast Counsel of Governments asked the Court to defer entry of the discharge order under Rule 4004-1(b). They also objected to Debtors' conversion of secured business assets into personal exempt property, and they objected to the "discharge of [their] interest in bankruptcy."

DISCUSSION. A motion under Local Bankr. R. 4004-1(b), which reflects F.R.Bankr.P. 4004(c)(2) and which was cited by East River Electric Power Coop, Inc., and Northeast Counsel of Governments, applies only to an extension of time to file a general discharge complaint and it applies only to an extension requested by the debtor. If East River Electric Power Coop, Inc., and Northeast Counsel of Governments want the deadlines to file a discharge complaint under § 727 or to file a dischargeability complaint under § 523(c) extended, they will need to file and notice a motion as provided by F.Rs.Bankr.P. 4004(b) and 4007(c) and Local Bankr. Rs. 4004-1(a) and 4007-1. Accordingly, to the extent that East River Electric Power Coop, Inc., and Northeast Counsel of Governments have sought relief under F.R.Bankr.P. 4004(c)(2) and Local Bankr. R. 4004-1(b), their Objection to Discharge Secured Interest will be denied.

East River Electric Power Coop, Inc., and Northeast Counsel of Governments's December 7, 1999 Objection to Discharge of Secured Interest also does not comport with F.R.Bankr.P. 7001(6). Under that rule, any objection to the discharge of a particular debt must be sought through a complaint in a formal adversary proceeding. East River Electric Power Coop, Inc., and Northeast Counsel of Governments still have time to file such a complaint or to request an extension of the deadline and may do so without prejudice. Their Objection will be denied to the extent that it does not comply with F.R.Bankr.P. 7001(6).

Finally, East River Electric Power Coop, Inc., and Northeast Counsel of Governments' Objection to Discharge of Secured Interest also raises an objection to Debtors' claimed exemptions. The pleading will still be considered in that capacity. However, East River Electric Power Coop, Inc., and Northeast Counsel of Governments will need to file and serve a new notice of the Objection that gives Debtors and other parties in interest thirteen days to respond. See Local Bankr. Rs. 4003-1 and 2002(d)(1). If a response is timely filed, the Court will set a hearing by order. See Local Bankr. R. 5070-1.

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An appropriate order reflecting this letter decision shall be entered.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve parties in interest)

I hereby certify that a copy of this document
was mailed, hand delivered, or faxed this date
to the parties on the attached service list.

DEC 07 1999

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court, District of South Dakota
By 

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

DEC 07 1999

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

Case: 99-10262 Form id: 122 Ntc Date: 12/07/1999 Off: 3 Page : 1
Total notices mailed: 6

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