

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA

KEITH FISCHER and) CASE NO. 184-00114
CHARLENE FISCHER,) CHAPTER 7
)
Debtors.) MEMORANDUM DECISION
) AND ORDER

Keith and Charlene Fischer filed a Chapter 7 petition July 7, 1984. A discharge order was entered January 17, 1985. An order approving the trustee's report of a no asset case and closing the case was entered January 30, 1985.

On April 29, 1987, the debtors filed a "First Amendment to Schedule A-3" in this same case. This amendment purported to add a \$6,151.24 debt owed to Sioux Valley hospital, Sioux Falls, South Dakota, to the original schedule. On May 26, 1987, attorney Robert Jones, representing Allied Collection Service, Inc., objected to the amendment citing Bankruptcy Rule 1009.

A hearing on the objection to the amendment was held December 11, 1987, in Aberdeen, South Dakota. Deanna Dawson appeared representing the debtors. Curt Ewinger appeared on behalf of Mr. Jones, attorney for the collection service. The parties were given the option of submitting briefs, which neither side exercised.

Bankruptcy Rule 1009(a) provides in pertinent part "a voluntary petition, list, schedules, statement of financial

affairs, statement of executory contracts, or chapter 13 statement may be amended by the debtor as a matter of course at any time before the case is closed." This language is perfectly clear that the amendment must be made "before the case is closed." The attorney for the debtor has provided no argument or authority to convince the Court that the rule cannot be taken at face value. Nor has the Court uncovered any cases that would controvert the obvious negative implication of the rule. The proper remedy for the Debtors is to move to reopen the case for the purpose of amending their Schedule A-3. 11 U.S.C. 350(b); Bankruptcy Rule 5010. In Re Common, 69 B.R. 458 (Bkrcty. N.D. Ill. 1987); In Re Scism, 41 B.R. 384, 11 C.B.C. 2d 137 (Bkrcty. W.D. Okla. 1984).

Accordingly, it is hereby

ORDERED, that the creditor Allied Collection Service, Inc.'s, objection to the Debtors' amendment to their Schedule A-3 is sustained without prejudicing the Debtors' right to move to reopen the case for the purpose of amending their Schedule A-3. It is further

ORDERED, that this opinion shall constitute the findings of facts and conclusions of law pursuant to Bankruptcy Rules

7052 and 9014 and Federal Rule of Civil Procedure 52.

Dated this 19th day of February, 1988.

BY THE COURT:

Irvin N. Hoyt
Bankruptcy Jhdge

ATTEST:

PATRICIA MERRITT, CLERK

By: _____
Deputy

(SEAL)

Deput

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(SEAL)