

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

TELEPHONE (605) 224-0560
FAX (605) 224-9020

August 16, 2000

Catherine E. Mattson, Esq.
Counsel for Holly Hayden
210 Main, Suite E
Rapid City, South Dakota 57701

Dennis C. Whetzal, Esq.
Chapter 7 Trustee
Post Office Box 8285
Rapid City, South Dakota 57709

Lawrence W. Bihlmeyer, Esq.
Counsel for Debtor
Post Office Box 8274
Rapid City, South Dakota 57709

Bruce J. Gering,
Assistant U.S. Trustee
230 South Phillips Avenue, Suite 502
Sioux Falls, South Dakota 57104

Subject: *In re Ronald E. Tidwell*,
Chapter 7; Bankr. No. 98-50422

Dear Counsel and Trustees:

The matter before the Court is the Motion to Reopen Case filed by Holly Hayden on August 8, 2000. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, the Court concludes that Hayden's Motion must be denied.

SUMMARY. Robert E. Tidwell ("Debtor") filed a Chapter 7 petition on July 31, 1998. The last date to file a complaint objecting to the dischargeability of a debt under 11 U.S.C. § 523(a)(2), (4), (6), or (15) was November 2, 1998. Timely notice of the case and the pending November 2, 1998 deadline was given to creditor Holly Hayden by the Bankruptcy Clerk. On October 5, 1998, an order was entered granting Hayden's motion to examine Debtor under Fed.R.Bankr.P. 2004. The November 2, 1998 deadline passed

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without any dischargeability complaint being filed. Debtor received his discharge on November 3, 1998. The case was closed as a no asset case on November 17, 1998.

On August 8, 2000, Hayden filed a motion asking the Court to reopen the case. In her motion, Hayden stated she and Debtor had divorced in May 1996 and that as part of the divorce agreement Debtor assumed responsibility to pay certain credit card debts and to hold Hayden harmless therefore. In August 1997, Debtor was held in contempt by the divorce court for failing to pay one of the credit card debts he had assumed. Eventually, the divorce court ordered Debtor to sell a vehicle and apply \$4,400 in proceeds on the credit card debt, to apply his 1997 and 1998 income tax refunds toward this debt, to pay the balance of the debt within 18 months of September 1997, and to get Hayden's name off the account. At the time Debtor filed bankruptcy on July 31, 1998, the credit card debt was still \$7,500.

According to Hayden, after Debtor filed bankruptcy and after her counsel examined Debtor under Rule 2004, she, Debtor, and their counsel agreed that Debtor would 'reaffirm' the credit card debt. This oral agreement was made October 13, 1998, before the November 2, 1998 dischargeability complaint deadline. However, a written agreement was never signed.

The parties went back before the divorce court. On April 10, 2000, the divorce court again held Debtor in contempt for failing to apply car sale proceeds and a tax refund to the credit card debt. To purge himself from the contempt order, the divorce court allowed Debtor to pay \$300 per month on the debt until it was paid in full. Thereafter, Debtor raised with the divorce court the issue that the credit card debt had been discharged in bankruptcy and that Hayden could not maintain a contempt action in state court. Hayden withdrew her contempt claim and the divorce court vacated its April 10, 2000 contempt order.

According to Hayden, the credit card company is now looking to her for payment. She filed this motion before the Bankruptcy Court asking it to reopen the bankruptcy case so that (1) Debtor could be ordered to 'reaffirm' the credit card debt, (2) Hayden could be reimbursed for payments she has or will make to the credit card company, and (3) Debtor could be ordered to pay her attorneys' fees, sales tax, and costs.

DISCUSSION. The time for entering an enforceable reaffirmation agreement has passed. See 11 U.S.C. § 524(c). The agreement would have had to have been memorialized before November 2, 1998 to be

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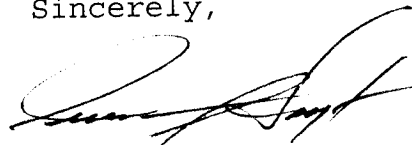
enforceable. Since the parties do not have a reaffirmation agreement that was signed before November 2, 1998, there is no need for this Court to reopen the case to file an unenforceable reaffirmation agreement. Therefore, Hayden's motion will be denied.

It appears that the real relief sought by Hayden is an order declaring the subject credit card debt and companion hold harmless agreement non dischargeable. Under Local Bankr. R. 5010-1, a bankruptcy case does not need to be reopened to permit a party to file a dischargeability complaint.

The Court notes that the time for filing a complaint under § 523(a)(15) has passed. See 11 U.S.C. § 523(c) and Fed.R.Bankr.P. 4007(c). There is no deadline for filing a complaint under § 523(a)(5). If Hayden intends to commence an action under § 523(a)(15), or under both § 523(a)(5) and (a)(15), the timeliness of her (a)(15) complaint will have to be resolved first. This Court has not yet ruled on whether the deadline established by Rule 4007(c) by can be extended for equitable reasons.

An order will be entered denying Hayden's motion without prejudice.

Sincerely,



Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve copy on parties to whom letter is addressed)

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.

AUG 16 2000

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

AUG 16 2000

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

Case: 98-50422 Form id: 122 Ntc Date: 08/16/2000 Off: 3 Page : 1

Total notices mailed: 4

Trustee Whetzal, Dennis C. PO Box 8285, Rapid City, SD 57709
Aty Bihlmeyer, Lawrence R. PO Box 8274, Rapid City, SD 57709-8274
Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321
Aty Mattson, Catherine E. 201 Main Suite E, Rapid City, SD 57701