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KANSAS BANKRUPTCY: CREDITOR WITHOUT NOTICE DENIED LEAVE TO FILE CLAIM OUT OF TIME

On March 10, 2021, the United States Bankruptcy Court for the District Court of Kansas denied a creditor's motion for leave to file its proof of claim out of time, even though, *and because*, the creditor did not receive notice of the debtor's Chapter 12 bankruptcy.

In *In re Hrabe*, (Case No. 19-41366), a creditor provided aerial chemical applications to the debtors' farmland in June 2019. On Oct. 31, 2019, the debtors filed a Chapter 12 bankruptcy petition. The creditor was not listed in the petition or the Schedules. Accordingly, notice was not given to the creditor of the debtors' bankruptcy petition.

Creditors in the debtors' bankruptcy case were required to file a proof of claim by Jan. 9, 2020. The creditor, unaware of the bankruptcy case, failed to file a proof of claim prior to the deadline.

The debtors' bankruptcy case continued without the creditor. During the proposal of the third amended plan on Dec. 1, 2020, the creditor filed a motion for leave to file a proof of claim out of time. The creditor argued the debtors owed them $5,084.35 for the work completed in June 2019 and that the creditor should be allowed to file a proof of claim outside the Jan. 9, 2020 deadline. In denying the creditor's request, the Bankruptcy Court for the District of Kansas evaluated the rules governing proofs of claim; namely Rule 3002(c).

Until 2017, Rule 3002(c) did not allow an exception to the proof of claim deadline to a creditor who was not notified of a bankruptcy. Effective Dec. 1, 2017, Rule 3002(c) was amended to include a 60-day extension to file a proof of claim if notice to creditors is insufficient due to lack of timely filing the list of creditors and their addresses or lack of reasonable time to file a proof of claim if notice was mailed to creditor at a foreign address. (Rule 3002(c)(6)). However, in its analysis, the Bankruptcy Court for the District of Kansas determined that "[r]ule 3002(c)(6)(A) only applies to when the creditor *receives* notice, but insufficient notice." *In re Hrabe*. The extension provision of 3002(c)(6) does not, per the Kansas Bankruptcy Court in this case, apply to creditors

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receiving *no notice*.

Noting that "courts have struggled with the question of whether this amendment to Rule 3002(c) changes the…status quo that a creditor receiving no notice of the bar date cannot request an extension of time to file a claim", the Court found that there is not a majority position on this issue and maintained that the "new" Rule 3002(c)(6)(A) is explicit only that creditors who are given notice, but that notice was given to them late, have grounds for requesting an extension, and then only if they show that the notice was insufficient under the circumstances to give the creditor reasonable time to file a proof of claim (due to a debtor's failure to timely file a list of creditors).

The Court determined here that since the creditor did not receive notice, Rule 3002(c)(6)(A) does not apply. *Id.* Accordingly, the Court denied the creditor's motion because it does not meet one of the proof of claim exceptions under Rule 3002. *Id.*

Although this determination seems harsh, creditors are not wholly without remedy. While *In re Hrabe* does not address whether the creditor's debt would or would not be discharged, it does mention, through the Tenth Circuit case of *Jones v. Arross*, 9 F.3d 79 (10th Cir. 1993), that such a debt may be nondischargeable, allowing a creditor to pursue a debtor (following proper relief channels), notwithstanding the bankruptcy filing. "The Tenth Circuit noted that the claim of [a Chapter 12 creditor] who did not receive notice of the bankruptcy filing would be nondischargeable under §523(a)(3) (stating that discharge under §1228(b) does not discharge an individual debtor from any debt 'neither listed nor scheduled' in time to permit the timely filing of a proof of claim) and [a creditor] could seek stay relief to bring an action against the debtor or wait until the case concluded to do so". **It is always recommended to seek legal advice before collecting debts against bankruptcy debtors to prevent running afoul of bankruptcy prohibitions to the same**.

To the extent *In re Hrabe* has any lessons to teach, one such lesson may be to consider policies and procedures governing communication and contact with past-due account holders (within the parameters of any applicable debt collection, consumer or other laws), which may help anticipate that a bankruptcy may soon be filed, thus triggering additional monitoring for any filed bankruptcy actions and creditor deadlines that follow.