

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
ENISE SMITH, JR.) CASE NO. 04-98519-MHM
)
Debtor)

ORDER

On February 22, 2005, Jeremy Jones, on behalf of U.S. Title Pawn ("Creditor") filed a pleading objecting to the discharge of Creditor's debt on the grounds that "we still have security interest in the 1988 Chevy Beretta." Pursuant to Bankruptcy Rule 7001, a proceeding to determine dischargeability must be commenced as an adversary proceeding with the filing of a complaint and payment of a filing fee of \$150.00. The bar date in this case was March 4, 2005. Therefore, Creditor's pleading will be construed as an incomplete complaint, but sufficient to preserve Creditor's rights under 11 U.S.C. §523(c).

Creditor's pleading was filed *pro se* by an individual who does not appear to be an attorney. A corporation or partnership must be represented in this court by a licensed attorney. *Palazzo v. Gulf Oil Corporation*, 764 F.2d 1381, 1385 (11th Cir. 1985), *cert. denied*, 474 U.S. 1058 (1986). Additionally, the court strongly recommends that Creditor employ a bankruptcy attorney for assistance.¹

Finally, the only ground stated by Creditor to challenge the dischargeability of its claim against Debtor is that its claim is secured. Holding a secured claim, however, does not provide any legal grounds for excepting the claim from discharge. Creditor does not appear to understand

¹ Mr. Jones may contact the Lawyer Referral and Information Service at (404)521-0781.

that, although a bankruptcy discharge will eliminate² Debtor's personal liability to Creditor³, the discharge does not affect Creditor's rights in the collateral. Creditor's rights to collect its claim by proceeding against the collateral is limited only by the automatic stay (which terminates when Debtor's discharge is entered and the case closed) and by the value of the collateral.

Consequently, as Creditor has not set forth adequate grounds to seek a determination that its claim is not dischargeable, if Creditor proceeds without alleging additional facts that would provide good grounds to challenge the dischargeability of its claim, Creditor may subject itself to sanctions for filing a frivolous pleading. Accordingly, it is hereby

ORDERED that the pleading of Creditor is construed as an incomplete pleading intended to commence an adversary proceeding to determine the dischargeability of its claim against Debtor. If Creditor completes the commencement of the adversary proceeding within 15 days of the date of entry of this order, the adversary proceeding will be deemed filed effective February 22, 2005. If Creditor fails to complete the commencement of the adversary proceeding within the time allowed, then Creditor's pleading shall stand denied.

IT IS SO ORDERED, this the 8th day of March, 2005.


MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

² Technically, Debtor's personal liability is not "eliminated" by the discharge; it is, rather, rendered legally unenforceable.

³ "Personal liability" means the ability of Creditor to proceed against Debtor personally, for example by obtaining a judgment against Debtor and then executing on that judgment by garnishment or by placing a lien on Debtor's real property.