

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

In Chapter 11 Proceedings
Bankruptcy No. 04-60106

Daniel S. Miller,

Debtor.

Daniel Miller dba Danielson
Grain, dba Danielson Trucking,

Case No.: 04-60106

Gary Hoper,

Plaintiff,

v.

Daniel Miller,

Defendant.

**RESPONSE TO NOTICE OF HEARING AND
MOTION TO AMEND PLAINTIFF'S COMPLAINT**

Comes now the Debtor and in response to the Motion of the Plaintiff, Hoper to amend his complaint, the Debtor states:

1. The Court cannot permit the Amendment to this pleading. Bankruptcy Rules establish strict timelines for filing objections to the dischargeability of certain debts under 11 U.S.C. §523. See Bankruptcy Rule 4007. The time expires in which to file the complaint is 60 days after the First Meeting of Creditors is set. A Motion to Amend the Complaint to add actions objecting to dischargeability is untimely when the Motion to Amend the Complaint is filed after the deadline imposed by Rule 4007. In the present case, the First Meeting of Creditors

was set for April 6, 2004 and the time to object to dischargeability of debt under 11 U.S.C. §523 expired on June 7, 2004.

2. The Motion to Amend seeks to add claim for bushels of wheat that were not included in the original complaint and constitutes a new cause of action. The claim is for 4,616.31 bushels of wheat which the Plaintiff claims was stored as opposed to sold. The claim for this grain is involved in Adversary Proceeding 4-6043. The factual circumstances are entirely different in Count II from the original Complaint. In particular, the claim in the original Complaint involves entirely different grain and an entirely different alleged transaction (storage as opposed to sale). The Second Cause of action relies on claim of conversion of stored assets. The second cause of action then goes on to state that if Plaintiff sold this wheat to the Debtor as opposed to stored it, the Debtor obtained the different wheat by false pretenses, actual fraud and caused a willful and malicious injury. The Court cannot permit the Amendment to relate back as to do so would violate the holding of *In Re Boreman*, 226 B.R. 627, 8th Cir. BAP (Ark.) 1998. The Amendment seeks to added entirely different transactions than were included in the initial proceedings. The request must be denied.

Dated this 16th day of September, 2004.

FLUEGEL, HELSETH, MCLAUGHLIN,
ANDERSON & BRUTLAG, CHARTERED



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