

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 00-42121

FLOYD L. MOHAWK,  
  
Debtor.

ORDER GRANTING MOTION TO  
EXTEND TIME

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At Minneapolis, Minnesota, June 20, 2000.

The above-entitled matter came on before the court for hearing on the motion of the Chapter 13 Trustee to extend the time to serve and file objections to confirmation and the concurrent objection to confirmation of the Debtor's Chapter 13 plan. Terri Georgen appeared on behalf of the Chapter 13 Trustee. Craig Andresen appeared on behalf of the Debtor. Lawrence Zielke appeared on behalf of Banc One National Association and Homecomings Financial Network. Following the hearing, the motion for extension of time was taken under advisement. The objections to confirmation were continued to a later date pending the Court's decision on the motion for extension of time. Having reviewed the files and records of the proceeding herein, the affidavits, and the arguments of counsel, the Court makes the following:

FINDINGS OF FACT

The Debtor in this case, Floyd L. Mohawk ("Debtor") filed a petition for Chapter 13 bankruptcy relief on April 27, 2000. On May 1, 2000, the Clerk of Court prepared a notice setting the meeting of creditors pursuant to § 341 of the Bankruptcy Code for

May 30, 2000. That same notice set the confirmation hearing for June 1, 2000. Such notice was served upon all interested parties on May 3, 2000. The dates contained in the notice conformed to the normal practice of setting the meeting of creditors approximately 30 days after filing the petition and setting the confirmation hearing on the judge's monthly Chapter 13 hearing calendar for the month following the meeting of creditors. This court's Chapter 13 hearings are always held on the first Thursday of the month.

Pursuant to the normal practices of the Chapter 13 Trustee and due to the number of cases filed, this particular case was not ready for review by the Trustee's attorney until May 25, 2000. The attorney reviewed the file over the Memorial Day weekend (May 27-29) and determined that the Trustee may wish to object to confirmation for failure to meet the "best efforts" requirement of § 1325(b)(1)(B).

The Trustee's first opportunity to examine the Debtor regarding these concerns occurred on May 30 at the meeting of creditors. At that point, only one day remained before the hearing on confirmation. Because the Local Rules require service of objections to confirmation five days prior to the hearing on confirmation, the Trustee brought a motion seeking to extend the time for filing such objection pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1).

## CONCLUSIONS OF LAW

Federal Rule of Bankruptcy Procedure 9006(b)(1) provides:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1). The parties do not dispute that the Trustee's objection to confirmation was not filed within the time period specified by the Local Rules.<sup>1</sup> Accordingly, the question before the court is whether the failure to comply with the Rules was the result of excusable neglect, thus allowing the court to enlarge the time for objecting to confirmation. By the terms of Rule 9006(b)(1), a court's decision whether to enlarge the time period is discretionary. Fed. R. Bankr. P. 9006(b)(1).

The seminal case discussing excusable neglect is Pioneer Investment Services v. Brunswick Associates Limited Partnership, 507 U.S. 380 (1993). In that case the Supreme Court held that excusable neglect encompasses both simple, faultless omissions and omissions caused by carelessness. Id. at 388. The determination as to whether neglect is excusable is an equitable one, taking into account all relevant circumstances surrounding

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<sup>1</sup> Although the hearing on confirmation was continued, thus apparently negating the need for an extension of time, the issue was not rendered moot as a result. This is because the Debtor's plan would have been confirmed as a matter of course at the prior hearing date in the absence of the Trustee's pending motion.

the party's omission. Id. at 395. Factors to consider include "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Id.

The Eighth Circuit has recently elaborated on the Pioneer factors. In Lowry v McDonnell Douglas Corp., 211 F.3d 457 (8th Cir. 2000), the court stated that "[t]he four Pioneer factors do not carry equal weight; the excuse given for the late filing must have the greatest import." Id. at 463. While the court noted that the neglect need not be caused by circumstances beyond the control of the movant, it held that the focus must be on the nature of the neglect. Id.

I begin, then, with the reason given for the delay. The Trustee essentially makes two arguments in this regard: (1) that pursuant to normal office procedures, the file was not ready for review until May 25, 2000, and (2) that due to the timing of the § 341 meeting, the Trustee did not have an opportunity to examine the Debtor until two days before the scheduled confirmation hearing.

The recent clarification by the Eighth Circuit does not change the result in this case. I find the reason for the delay offered by the Trustee to be excusable. Based upon the record before me, it does not appear that the Trustee's normal

procedures typically result in this sort of problem. Indeed, the failure of the normal procedures to allow adequate time to object was the result of a strange confluence of dates that would only repeat again where a petition is filed toward the end of the month, the meeting of creditors is scheduled on the last two or three days of the next month, and the next available Chapter 13 calendar falls on the first two or three days of the following month. In addition, the work load encountered in the Trustee's office makes it impracticable to review files any more than a week before the meeting of creditors. In other words, it was more than just inattention that led to the failure to file the objection sooner. Moreover, to the extent that the Trustee could not prepare an objection until after examining the Debtor, the delay in filing was entirely outside of the Trustee's control. Based upon the totality of the circumstances, the Trustee's omission was excusable.

With respect to the other Pioneer factors, the Debtor does not appear to dispute that the Trustee acted in good faith. However, the Debtor does argue that it was prejudiced by the delay and that such prejudice could have been reduced if the Trustee had served the motion prior to or at the meeting of creditors or even if the Trustee had served the motion earlier in the day that it was actually served. While this argument may have had some merit, the prejudice incurred by the Debtor was a

lack of time to respond to the motion. Any such prejudice was cured by the continuance of this hearing from June 1 to June 20. Accordingly, I do not think that these factors weigh against a finding of excusable neglect.

Based on the foregoing, I will grant the Trustee's motion for an extension of time.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Trustee's motion for extension of time to serve and file objections to confirmation is GRANTED;
2. The pending objections to confirmation are continued to a date selected by counsel.

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Nancy C. Dreher  
United States Bankruptcy Judge