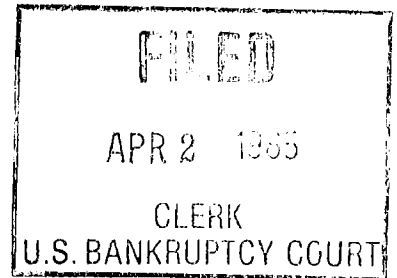


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

THOMAS JAMES ROBINSON
SHARON MARIE ROBINSON,

LF7-84-01995

Debtors.

FARMERS CREDIT COMPANY, INC.

Plaintiff,

Adversary Number:

v.

84-0330-7

THOMAS JAMES ROBINSON and
SHARON MARIE ROBINSON,

Defendants.

FINDINGS OF FACT, CONCLUSION OF LAW
AND
ORDER DENYING MOTION FOR LEAVE TO AMEND COMPLAINT

Farmers Credit Company, Inc., by Attorney Robert J. Zeman, having filed a motion for leave to amend and a memorandum in support; and Debtors Thomas James and Sharon Marie Robinson, by Attorney Carl H. Creedy, having filed a memorandum in opposition; the Court, being fully advised in the premises, FINDS THAT:

1. On October 5, 1984, Sharon Marie and Thomas James Robinson filed for relief under Chapter 7 of the Bankruptcy Code.
2. This Court set October 31, 1984, as the date for the 11 U.S.C. sec. 341(a) creditors' meeting and notified creditors

that December 31, 1984, was the last day for the filing of a complaint to determine the dischargeability of a debt. See Fed.R.Bankr.P. 4007(c) (time for filing complaint).

3. On December 28, 1984, Farmers Credit Company, Inc. (FCC), filed a complaint alleging that the Debtors sold secured property with an intent to hinder, delay or defraud FCC, transferred property with an intent to hinder, delay or defraud FCC and have failed to explain satisfactorily the deficiency of assets to meet liabilities.

4. The complaint contains a prayer for relief from the dischargeability of the FCC debt under 11 U.S.C. secs. 523(a)(2)(A) & (B) (obtaining money, property or credit by false representations), 523(a)(4) (fraud while acting in a fiduciary capacity) & 523(a)(6) (willful and malicious injury to property of another). (The complaint also contains an objection to discharge and a request for costs and disbursements.)

5. On February 4, 1985, the Debtors filed an answer.

6. On March 15, 1985, FCC filed a motion for leave to amend its complaint. The proposed amended complaint adds conclusory allegations that the Debtors obtained money or credit by false representations.¹ (Apparently the Plaintiff believes "that financial information furnished to Plaintiff understated

¹ In view of the disposition of this matter under Fed.R.Bankr.P. 7015, it is unnecessary to determine whether the proposed amendments are sufficient under Fed.R.Bankr.P. 7009 (averments of fraud shall be stated with particularity).

Defendants' financial obligations and that Plaintiff relied on that financial information in extending credit." Pretrial Statement (filed February 27, 1985).)

7. Under Fed.R.Bankr.P. 4007(c) a complaint to determine the dischargeability of any debt pursuant to 11 U.S.C. sec. 523(c) shall be filed not later than 60 days following the first date set for the 11 U.S.C. sec. 341(a) creditors' meeting. The amended Complaint requests relief pursuant to section 523(c).

8. Under Fed.R.Bankr.P. 7015 (which applies Fed.R.Civ.P. 15 to bankruptcy adversary proceedings), a party may amend its pleading by leave of court--which shall be freely given when justice so requires--after a responsive pleading is filed. However, the amendment only relates back to the original filing if the new allegation arose out of the conduct, transaction, or occurrence set forth in the original pleading.

9. "'The basic test [for relation back] is whether the evidence with respect to the second set of allegations could have been introduced under the original complaint, liberally construed" In re Wahl, 28 B.R. 688, 690 (Bankr.W.D.Ky. 1983). "The search, then, under Fed.R.Civ.P. 15(c) is for 'a common core of operative facts in the two pleadings.'" In re Morgan, 41 B.R. 259, 261 (Bankr.D.Tenn. 1984).

10. To prove the allegations in its second complaint, FCC must introduce evidence to show, inter alia, that the Debtors furnished financial information to FCC, that the information was false and that FCC relied on said information. Such evidence

would be irrelevant and inadmissible to prove the allegations in the original complaint.

11. Accordingly, even if FCC were permitted to amend, its proposed claims would not be timely.

CONCLUSION OF LAW

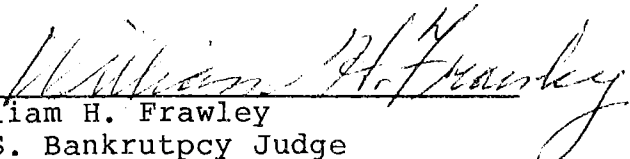
FCC's motion should be denied.

ORDER

IT IS ORDERED THAT the Farmers Credit Company, Inc., motion for leave to amend be, and the same hereby is, DENIED, without costs.

Dated: April 2, 1985.

BY THE COURT:



William H. Frawley
U. S. Bankruptcy Judge

cc: Attorney Robert J. Zeman
Attorney Carl H. Creedy