

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN

FILED

APP. 02 1986

CLERK  
U.S. BANKRUPTCY COURT

In re:

Case Number:

DALE L. SCHEFFLER  
DIANE M. SCHEFFLER

EF11-85-02127

Debtors.

OPINION AND ORDER

The debtors proceed pro se and allege that there was an improper appearance at the 11 U.S.C. § 341 meeting held on November 7, 1985, and motion this court for relief. The court has duly considered the debtors' allegations and motion. For the reasons indicated herein the motion is denied.

Attorney David Erspamer attended the above mentioned § 341 meeting and acted on behalf of First American Agriculture Loans of Colfax, Inc. Mr. Erspamer did not provide his appearance at this meeting on the record or otherwise. However, he did file a proper notice of appearance on December 13, 1985. See Bankruptcy Rule 9010(b). Apparently during the course of the § 341 meeting Attorney Erspamer warned the debtors that they might be fined by the court if they failed to respond to questions. The debtors allege that Attorney Erspamer did not appear properly and therefore they answered questions under duress. The debtors further allege that this prejudiced them and motion this court for relief.

Initially the court notes that it is not clear that Bankruptcy Rule 9010(b) requires an attorney to file a notice of appearance prior to attending the § 341 meeting. Regardless, the court does not see how the failure of Attorney Erspamer to provide an appearance on the record or on an appearance list prejudiced the debtors. The debtors had sworn on oath under penalty of perjury to tell the truth, the whole truth, and nothing but the truth. Certainly the debtors are not alleging that they would have altered their answers if they had known that Attorney Erspamer had not yet filed a notice of appearance. If they were aware that he had not filed a notice of appearance they could have simply asked him to provide one. If they did not know he had not yet filed a notice of appearance then it is inconceivable that the debtors were prejudiced thereby.

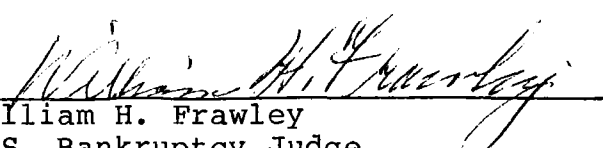
This opinion shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 9052.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT, the debtors' motion seeking relief for an improper appearance is hereby denied.

Dated: April 2, 1986.

BY THE COURT:

  
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William H. Frawley  
U.S. Bankruptcy Judge

cc: Attorney David Erspamer  
Mr. Dale L. Scheffler  
Mrs. Diane M. Scheffler