

SIGNED.



Dated: September 29, 2005

Randolph J. Haines

RANDOLPH J. HAINES
U.S. Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re) Chapter 7
MICHAEL J. WELSH,)
Debtor.) NO. 2-02-15106-PHX-RJH

KERSTIN A. MONTIERETH)
Plaintiff,) ADVERSARY NO. 05-00104

v.)
MICHAEL J. WELSH,) MEMORANDUM DECISION ON
Defendant.) MOTION FOR SUMMARY JUDGMENT

Plaintiff Kerstin Montiereth claims to be a creditor of the Debtor and that she did not receive notice of the pendency of this bankruptcy case, or the time to object to discharge, prior to entry of the Debtor's discharge on March 31, 2003. Consequently she has filed a complaint seeking an opportunity to object to discharge under Bankruptcy Code §§ 523 and/or 727.

Plaintiff bases her status as a creditor on two judgments rendered by the California Superior Court for Contra Costa County on November 26, 2002 and April 16, 2003. Both of those judgments were entered after this case had been filed on September 23, 2002, and are therefore void as in violation of the automatic stay. Nevertheless, Plaintiff may be a creditor on account of the claims asserted in the litigation that gave rise to those judgments.

Based on the undisputed facts, the Court finds and concludes that Plaintiff did not receive adequate notice of either the pendency of the bankruptcy case or the time within which to

1 file a complaint objecting to discharge. Consequently although the deadline to object has
2 technically expired, due process requires that the Plaintiff be given an opportunity to object to the
3 Debtor's discharge or the discharge of the Debtor's debt allegedly owed to Plaintiff.

4 IT IS THEREFORE ORDERED granting Plaintiff until October 31, 2005 to amend
5 her existing complaint to allege what debts she claims to be owed (other than the California
6 judgments), and to allege grounds why those debts should be excepted from the discharge pursuant
7 to 11 U.S.C. § 523, or why the Debtor should be denied a discharge pursuant to 11 U.S.C. § 727.

8 DATED AND SIGNED ABOVE

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10 Copy of the foregoing mailed this
29th day of September, 2005, to:

11 Ms. Kerstin A. Montierth
12 6040 East Main Street, # 188
Mesa, Arizona 85205

13 Mr. Michael J. Welsh
14 16202 West Banff Lane
Surprise, AZ 85379
Debtor Pro Se

15 Mr. Lothar Goernitz
16 P. O. Box 32961
17 Phoenix, AZ 85064-2961
Chapter 7 Trustee

18 /s/ Pat Denk
19 Judicial Assistant

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