

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE: *
* CASE NUMBER 04-41352
RANDALL JOSEPH HAKE and *
MARY ANN HAKE, * CHAPTER 11
*
Debtors. * HONORABLE KAY WOODS
*

ORDER GRANTING MOTION TO DISMISS OBJECTION OF BUCKEYE RETIREMENT
CO., L.L.C. TO CLAIM AND VACATING ORDER GRANTING LIMITED
TRIAL DEPOSITION OF CHRISTOPHER R. HAKE

On March 25, 2004, Debtors Randall J. Hake and Mary Ann Hake ("Debtors") filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code. After failing to obtain sufficient affirmative votes to confirm Debtors' proposed plan of reorganization, the confirmation hearing scheduled for April 25, 2006 was rescheduled so that it was a hearing on the motion of the United States Trustee ("UST") to convert or dismiss the case. A hearing on the UST's motion was held on April 25, 2006, at which time the Court granted the motion and authorized the case to be converted to a Chapter 7 case. Order Converting Case (Doc. # 443) (the "Conversion Order") to Chapter 7 was entered on April 26, 2006, which Order provided that Debtors had thirty days to file all applicable statements, schedules and reports required by FED. R. BANKR. P. 1019.

Prior to conversion of the case, on March 24, 2006, Buckeye Retirement Company, Inc., L.L.C., Ltd. ("Buckeye"), the largest creditor in Debtors' case, filed Objection to Claim of Christopher R. Hake and Alternatively, Motion for Reclassification of Claim of Christopher R. Hake, Notice, Notice of Hearing and Request for Evidentiary Hearing (Doc. # 387) ("Objection"). Buckeye originally

failed to provide adequate notice of the hearing on the Objection, but that was corrected and hearing on the Objection was scheduled for May 3, 2006. Pursuant to a telephonic status conference on May 1, 2006, the hearing on the Objection was rescheduled to June 28, 2006.

Also prior to conversion of the case to Chapter 7, on April 6, 2006, Buckeye filed Motion and Memorandum for Leave to Take the Trial Deposition of Christopher R. Hake and Notice (Doc. # 406). On April 13, 2006, Christopher R. Hake ("Hake") filed Objection of Christopher R. Hake to Motion of Buckeye Retirement Co., L.L.C. for Leave to Take Trial Deposition of Christopher R. Hake (Doc. # 419). On April 17, 2006, this Court entered Order Granting Limited Trial Deposition of Christopher R. Hake (Doc. # 426) ("April 17, 2006 Order"), which found that Buckeye had no entitlement to take Hake's deposition, but permitted Buckeye leave to take a limited one hour deposition under certain specified conditions. Specifically, the April 17, 2006 Order limited Buckeye to inquiring only about (i) the claim asserted by or on behalf of Hake that was the subject of Buckeye's pending objection and/or (ii) Buckeye's objections to confirmation as they specifically related to Hake. (April 17, 2006 Order at p. 7.)

On May 30, 2006, Hake filed Motion of Christopher R. Hake to Dismiss Objection of Buckeye Retirement Co., L.L.C. to Claim and to Vacate Order Granting Limited Trial Deposition of Christopher R. Hake (Doc. # 470) ("Motion to Dismiss"). On June 7, 2006, Buckeye filed Response of Buckeye Retirement Co., L.L.C., Ltd. to Motion of Christopher R. Hake to Dismiss Objection of Buckeye Retirement Co., L.L.C., Ltd. to Claim and to Vacate Order Granting Limited Trial

Deposition of Christopher R. Hake (Doc. #475) ("Buckeye Response"). The Buckeye Response concedes that Hake has not filed a claim in this case, but argues that the Motion to Dismiss is premature because the bar date for filing proofs of claim is July 31, 2006. Buckeye argues that if Hake does not file a claim by July 31, 2006, "then this Court may properly consider his Motion." (Buckeye Response at p. 1.) Buckeye argues that the Court cannot consider the Motion to Dismiss until the bar date has passed. In addition, Buckeye argues that it is premature for this Court to consider vacating the April 17, 2006 Order because such order permitted Buckeye to inquire about "the claim asserted by or on behalf of Chris Hake that is the subject of Buckeye's pending objection." (Buckeye Response at p. 2.)

Buckeye's Objection to Claim

Section 348(a) of the Bankruptcy Code provides that conversion "does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief." 11 U.S.C. § 348(a). Pursuant to Rule 1019, "[w]hen a chapter 11 . . . case has been converted . . . to a chapter 7 case . . . [l]ists, inventories, schedules, and statements of financial affairs theretofore filed shall be deemed to be filed in the chapter 7 case[.]" (FED. R. BANKR. P. 1019(1).) Although Rule 1019 calls for a new time period for filing claims, all claims actually filed by a creditor before conversion of the case are deemed filed in the chapter 7 case. (FED. R. BANKR. P. 1019(2) and (3).) In the instant case, the Chapter 7 Trustee filed Notice of Need to File Proof of Claim Due to Recovery of Assets (Doc. # 463), which sets July 31, 2006 (the "Bar Date") as the last date to timely file proofs of claim in this

case. To date, Hake has not filed a proof of claim in the Debtors' bankruptcy case - either before or after conversion. The Debtors originally listed Hake as a creditor in Schedule F as an unsecured creditor in the amount of \$12,415.00 (Doc. # 1). On February 15, 2005, Debtors filed certain amendments, including an Amended Schedule F, which listed Hake as an unsecured creditor in the amount of \$62,415.00 (Doc. # 142). It is this scheduled claim to which Buckeye objected in Objection. See *generally* Objection and Memorandum in support thereof.

Subsequent to conversion of the case and in accordance with Rule 1019 and the Conversion Order, on May 24, 2006, Debtors filed certain amended schedules, including Amended Schedule F, which did not include any claim in favor of Hake.

As a consequence, at the present time, as both parties concede, Hake does not have any claim against Debtors' bankruptcy estate. Because there is no claim pending, the Objection is now moot. Buckeye argues that the Motion to Dismiss is premature because the Bar Date has not passed and Hake has the ability to file a timely proof of claim. Buckeye's argument misses the mark. The claim to which Buckeye objected no longer exists. Buckeye is not entitled to keep its Objection on the docket as a "place holder" for any claim that Hake might assert in the future. Hake could timely file a proof of claim that deals with an entirely different set of facts. The Objection does not stand alone, but exists only in response to the claim previously scheduled by the Debtors on behalf of Hake. Since the schedules have been amended to delete any claim on behalf of Hake, the Objection must, of necessity, fail because there is no longer any claim to which it can relate. Since Buckeye has not

withdrawn the Objection, it is appropriate for this Court to dismiss the Objection on the basis that it is moot. Accordingly, the Motion to Dismiss is granted with respect to Buckeye's Objection.

To the extent Hake may file a proof of claim in this case, Buckeye is not precluded from objecting thereto. However, until such claim exists, the Objection cannot continue to remain on the docket. The absurdity of Buckeye's arguments becomes clear in light of the fact that the hearing on the Objection is scheduled for June 28, 2006; Buckeye did not ask for the hearing to be continued until such time as Hake **might** file a claim. There is currently no basis on which the Court may hold a hearing, which underscores the fact that the Motion to Dismiss is not premature. If anything, the Objection is not only procedurally defective, it is premature because there is no claim to which it can relate.¹

Order Permitting Limited Trial Deposition

As set forth above, the April 17, 2006 Order permitted Buckeye to conduct a one hour limited deposition of Hake. Buckeye was expressly limited to questioning Hake about two subjects: (i) the claim that was the subject of Buckeye's Objection, and (ii) Buckeye's objections to confirmation as they specifically related to Hake. Given the current posture of this case, there is no basis upon which Buckeye can depose Hake. To permit Buckeye to take the deposition of Hake at this juncture would be pointless since the two limited purposes for which the deposition was to be allowed no longer exist. Buckeye's Objection has been dismissed as moot and, since the case has been converted from Chapter 11 to

¹Because the Objection relates to a specific claim as previously scheduled but now withdrawn by Debtors, this Court questions whether Buckeye, pursuant to FED. R. BANKR. P. 9011, has a good faith basis to support the Buckeye Response.

Chapter 7, the issue of confirmation has no relevance. As a consequence, the April 17, 2006 Order is hereby vacated. Hake is not required to make himself available for any deposition by Buckeye.

Summary

In summary, this Court grants the Motion to Dismiss in its entirety. Buckeye's Objection is dismissed as moot since Hake does not have a claim pending against the Debtors' estate. The April 17, 2006 Order granting the limited trial deposition of Hake is hereby vacated on the grounds that the limited purposes for which the deposition was to be allowed are no longer relevant or applicable to the current posture of this case.

IT IS SO ORDERED.

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE**