

Court pursuant to 28 U.S.C. § 157(b)(2)(G). Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

RELEVANT BACKGROUND

2. On February 19, 2012 (the “Petition Date”), at 9:31 p.m. (ET), the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code (the “Bankruptcy Case”) in the United States Bankruptcy Court for the Eastern District of Virginia (the “Bankruptcy Court” or the “Court”).

3. That same night, the Debtor filed a Suggestion of Bankruptcy in the case of *Bashe Abdi Yousuf, et al. vs. Mohamed Ali Samantar*, Civil Action No. 1:04 CV 1360 (the “Action”), currently pending before the Honorable Leonie Brinkema of the United States District Court for the Eastern District of Virginia (the “District Court”). The trial, which has been in the making for more than seven years, was scheduled to commence on Tuesday, February 21, 2012.

4. In the early hours of February 21, 2012, the Tort Claimants filed an emergency motion in the Bankruptcy Court seeking relief from the automatic stay provision of Bankruptcy Code section 362, which was subsequently granted by an order entered by the Bankruptcy Court the same day (the “Lift Stay Order”). *See Order Granting Motion for Relief from Stay*, (Feb. 12, 2012) [Docket No. 12]. Pursuant to the Lift Stay Order, the Bankruptcy Court permitted the Tort Claimants to proceed with the Action. *See Lift Stay Order* at 1. On February 23, 2012, the day the Action was set to proceed, at 6:43 a.m., Tort Claimants’ counsel was informed that Mr. Samantar would enter a default in the Action. Later that same day, Mr. Samantar, in sworn testimony to the District Court, admitted liability to the claims alleged in the Action. The District Court has taken this matter under advisement and is currently considering the damages that will be awarded in the Action against Mr. Samantar.

5. On March 23, 2012, after receiving several extensions, the Debtor filed its schedules and statements of financial affairs (the “Schedules and Statements”). The Debtor lists the Tort Claimants (by name or by reference to various “John Does”) as creditors holding unsecured claims.

6. On March 29, 2012, the chapter 7 trustee assigned to the Bankruptcy Case (the “Chapter 7 Trustee”) conducted the meeting of creditors pursuant to Bankruptcy Code section 341 (the “341 Meeting”). At that meeting, under oath, the Debtor answered questions propounded by the Chapter 7 Trustee and Tort Claimants’ counsel, in which he swore, among other things, that he owned no real property and that the Schedules and Statements were true and accurate.

7. On April 3, 2012, the Chapter 7 Trustee filed a “report of no distribution” (the “Report of No Distribution”) in which the Chapter 7 Trustee (i) stated that (a) there is no property available for distribution from the estate over and above that exempted by law and (b) the estate has been fully administered, and (ii) requested that she be discharged from any further duties as Chapter 7 Trustee. *See* Report of No Distribution [Docket No. 41]. Pursuant to Bankruptcy Rule 5009, parties-in-interest have 30-days from entry of the Report of No Distribution – here, until May 3, 2012 – to file any objections or responses to such report.

8. Shortly after the 341 Meeting, Tort Claimants’ counsel identified testimony from the deposition of Mr. Samantar that was taken in connection with the Action on July 28, 2011 (the “Deposition”) that contradicts the statements made by Mr. Samantar at the 341 Meeting and the information contained in the Schedules and Statements. Specifically, during the Deposition, Mr. Samantar testified that he continues to own property in Somalia (the “Deposition Testimony”). In particular, Mr. Samantar testified that he owned “probably two” homes in the

city of Hamar, which is also known as Mogadishu (the “Undisclosed Property”). The Deposition Testimony is entirely inconsistent with Mr. Samantar’s sworn statement at the 341 Meeting that he does not own any property beyond the limited personal property identified in the Schedules and Statements.¹

9. Tort Claimants’ counsel subsequently sent a letter to the Chapter 7 Trustee and the United States Trustee for the Eastern District of Virginia, Alexandria Division (the “U.S. Trustee”) highlighting this false statement, stating that the Tort Claimants are exploring whether this false statement constitutes sufficient grounds to object to the Debtor’s discharge under Bankruptcy Code section 727(a)(4). In addition, Tort Claimants highlighted that they are examining whether the facts and circumstances leading up to, and surrounding, the filing of the Bankruptcy Case supports the filing of a motion to dismiss the Bankruptcy Case. Until these matters are resolved, it would be wholly inappropriate for the Bankruptcy Case to be closed and for the Debtor to receive a discharge.

10. Contemporaneously herewith, the Tort Claimants are filing a motion to dismiss the Bankruptcy Case (the “Motion to Dismiss”). As outlined in detail in the Motion to Dismiss, the filing of the Bankruptcy Case was, among other things, part of a *deliberate and persistent pattern* of evading the Tort Claimants that weighs in favor of the dismissal of this Bankruptcy Case.

¹ The Tort Claimants reserve all rights with respect to the Undisclosed Property. Further, because the Undisclosed Property is not listed on the Schedules and Statements, this property is not “exempt property” under the Bankruptcy Code.

RESPONSE AND OBJECTION

11. The Tort Claimants do not object, *per se*, to the Report of No Distribution or the discharge of the Chapter 7 Trustee; *provided, however*, that these actions do not result in the closing of the Bankruptcy Case. However, because the closing of a bankruptcy case generally is triggered by the filing of a trustee's final report and the chapter 7 trustee's discharge, the Tort Claimants are filing this Response and Objection out of an abundance of caution to ensure that the Bankruptcy Case is not closed prematurely, and that the Debtor is not granted a discharge based on inaccurate facts.

12. Pursuant to Bankruptcy Rule 5009, after a chapter 7 trustee files a final report certifying that the estate has been fully administered and requesting to be discharged, if no objection is filed to the report within 30 days, there will be a presumption that the estate has been fully administered. *See* Bankruptcy Rule 5009(a). After an estate is fully administered and the court has discharged the trustee, the bankruptcy case typically will be closed. *See* 11 U.S.C. 350(a). Notably, however, neither Bankruptcy Code section 350 nor Bankruptcy Rule 5009 provides or otherwise requires a specific time frame upon which a case must be closed after the filing of a final report and the discharge of the chapter 7 trustee.

13. Further, as outlined above, this Bankruptcy Case is far from typical – filed contemporaneously with this Response and Objection is the Motion to Dismiss in which the Tort Claimants seek the dismissal of this Bankruptcy Case. As described in more detail in the Motion to Dismiss, a sufficient basis exists for the Bankruptcy Case to be *dismissed* rather than *closed*. If the Bankruptcy Case is closed before the Motion to Dismiss is adjudicated, the request sought in the Motion to Dismiss would effectively be rendered moot. Accordingly, until this Court rules on the Motion to Dismiss, it would be improper for the Bankruptcy Case to be closed.

14. Accordingly, to the extent that the filing of the Report of No Distribution and/or discharge of the Chapter 7 Trustee would result in the closing of the Bankruptcy Case, the Tort Claimants request that the Court strike the Report of No Distribution and/or deny the Chapter 7 Trustee's request to be discharged. Further, the Tort Claimants object to the closing of the Bankruptcy Case until the Court is able to hear, and decide, the Motion to Dismiss and all other actions that are, or will be, pending in this Bankruptcy Case.

15. If the Court does not grant the Motion to Dismiss, the Tort Claimants intend to file a complaint objecting to (i) the Debtor's discharge under Bankruptcy Code section 727 and (ii) the discharge of the debt incurred from the Action pursuant to Bankruptcy Code section 523 (the "Dischargeability Complaint"). Pursuant to the Dischargeability Complaint, the Tort Claimants intend to allege, *inter alia*, that the Debtor is not entitled to a discharge because the Debtor's testimony at the Deposition contradicts both the statements made by the Debtor at the 341 Meeting and the information contained in the Schedules and Statements. The Tort Claimants also intend to allege that the Debtor is not entitled to a discharge of the Tort Claimants' claims because such claims arise from a willful and malicious injury by the Debtor to the Tort Claimants. Under the current statutory deadline, the Tort Claimants have until May 29, 2012 to file a Dischargeability Complaint (the "Statutory Deadline"). *See* Notice of 341 Meeting; Bankruptcy Rule 4007. Counsel for the Tort Claimants has requested that the Debtor agree to an extension of the Statutory Deadline until 30 days after an order is entered on the Motion to Dismiss. If the Debtor does not agree to an extension of the Statutory Deadline, the Tort Claimants intend to file, as soon as practicable, a motion seeking to extend the Statutory

Deadline and will request that this Court hear such a motion before the expiration of the Statutory Deadline.²

RESERVATION OF RIGHTS

16. The Tort Claimants expressly reserve any and all of their rights in connection with the Action and the Undisclosed Property. Nothing contained herein shall operate as a waiver of any of the Tort Claimants' claims, rights or remedies. The Tort Claimants further reserve the right to supplement this Response and Objection to reply to any reply filed by the Debtor, the Chapter 7 Trustee or any other party in interest to this Response and Objection.

NOTICE

17. Notice of this Response and Objection will be given to (i) counsel to the Debtor, (ii) the Office of the United States Trustee for the Eastern District of Virginia, Alexandria Division, (iii) the Chapter 7 Trustee and (iv) all other parties who have requested notice. The Tort Claimants submit that no other or further notice of this Response and Objection is required.

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² The Court's next regularly scheduled "motions" day for chapter 7 cases prior to the expiration of the Statutory Deadline is May 15, 2012. Accordingly, if the Debtor does not agree to a consensual extension of the Statutory Deadline, the Tort Claimants will file a motion to extend the Statutory Deadline to be heard on an expedited basis on May 15, 2012.

CONCLUSION

WHEREFORE, the Tort Claimants request that, (a) to the extent that the Report of No Distribution and discharge of the Chapter 7 Trustee would result in the closure of the Chapter 7 Case, that the Bankruptcy Court strike the Report of No Distribution and/or the Chapter 7 Trustee's request to be discharged, (b) that the Bankruptcy Court remain open until an adjudication of all issues currently pending or that may be pending in the future, including the Motion to Dismiss and (c) grant such other and further relief as the Bankruptcy Court deems appropriate.

Dated: April 30, 2012

Respectfully submitted,

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