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BANKRUPTCY: DUE SCHEDULING — SUFFICIENCY OF SCHEDULING CREDITOR'S NAME AND ADDRESS IN A BANKRUPTCY PROCEEDING — NOTICE TO THE CREDITOR.

Section 17(a)(3) of the Bankruptcy Act[1] provides that "A discharge in bankruptcy shall release a bankrupt from all of his provable debts . . . except such as . . . have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings." Section 7(a)(8) of the Act[2] further provides that "The bankrupt shall prepare . . . a list of all his creditors, . . . showing their residences or places of business, if known, or if unknown that fact to be stated. . . ."

Under the former bankruptcy act, a debt, inadvertently omitted from the schedule, with no fraudulent intention on the part of the bankrupt, was barred by a discharge, although the creditor received no notice of the proceedings.[3]

In determining whether any of the defects of the former act were intended to be remedied by Congress in enacting the present act, the court in *Tyrrel v. Hammerstein* found:

> The change most clearly indicated is that, where the creditor has neither knowledge nor notice of the bankruptcy proceedings, his debt, if not duly scheduled, with his name, if known to the bankrupt, is not to be discharged, whether the omission is fraudulent or otherwise. This would seem to be the application by Congress to bankruptcy proceedings of the familiar constitutional principle that the "due process of law" intended to deprive one of property contemplates notice of some kind to the party whose property is to be taken that he may have his day in court.[4]

Hence, if the indebtedness is duly scheduled, the failure of the creditor to be served with notice of the bankruptcy proceedings does not affect the discharge of the bankrupt from the debt,[5] and where such provable debt is not duly scheduled, it is not discharged, despite the fact that the debt is unknown to the bankrupt.[6]

The apparent weight of authority finds that a due scheduling of a provable debt includes (1) the correct name of the creditor, if known, and

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[1] 11 U.S.C. § 35(a)(3).
[2] 11 U.S.C. § 25(a)(8).
[3] Lamb v. Brown, 14 Fed. Cas. 988 (No. 8,011) (D. C. Ind. 1875).
[4] 33 Misc. 505, 507, 67 N. Y. Supp. 717, 719 (1900).
[5] Sline v. Layden, 91 S.W.2d 983 (Tex. Civ. App. 1936); Hanover National Bank v. Moyses, 186 U.S. 181 (1901).
[6] Santa Rosa Bank v. White, 139 Cal. 703, 73 Pac. 577 (1903).

(2) the residence or place of business of the creditor, if known, and if not known, a statement to that effect.[7] In ascertaining to what extent, in general, the aforementioned elements must be met by the bankrupt in order that a debt be duly scheduled, the court in *King v. Harry* reasoned as follows:

> A discharge in bankruptcy is a privilege. It is not a one-way street. The bankrupt has certain obligations to fulfill and his creditors, already losers, are at least entitled to notice before their property is taken, in the absence of some good and sufficient explanation to the contrary. For this reason, and for the reason that the sections of the Act requiring correct scheduling are for the benefit of the creditors and not the debtor, a bankrupt must exercise great care to schedule his assets and names and addresses of his creditors properly.
>
> At the same time the thrust of the Act is to aid one who has fallen upon hard time so that small technicalities and mere irregularities in the schedules should not be determinative in barring a discharge. It is too much to ask that the bankrupt be held to insure the absolute accuracy of the schedule. A schedule which lists a creditor's address, even though incorrectly stated, is prima facie sufficient for the purpose of a discharge and the creditor has the burden to show that his particular debt should not be discharged, although the very presence of factual error is enough to put the bankrupt to his defense to show to the court what efforts he made to assure its accuracy.
>
> Satisfactory performance must depend upon the particular facts of each case. No fixed rule of law can be laid down as the unyielding standard of adequate compliance.[8]

Specifically, where a bankrupt schedules the wrong name when he knows or should know the proper name, the debt will not be duly scheduled.[9] Yet without resorting to extrinsic circumstances, the courts are generally unable to determine the question of whether a name is duly scheduled. In *Sline v. Hayden*,[10] it was suggested that all the bankrupt has to do is to give all the information in his possession as to the name of the creditor and the debt, and if the information describes the debt so that the creditor could recognize it, the debt would be duly scheduled. In *Broderick v. Adamson*,[11] it was held that the Bankruptcy Act does not require the impossible, but provides for the listing of the names of creditors "if known to the bankrupt" and not otherwise; therefore, the failure to state names of unknown creditors does not impair the efficacy of the discharge. Similarly, the court in *Morency v. Landry*[12] found that the provision requiring the scheduling of the names

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[7] McGhee v. Brookins, 140 S.W.2d 963 (Tex. Civ. App. 1940).

[8] 131 F. Supp. 252, 254 (D.C.D.C. 1955).

[9] Columbia Bank v. Birkett, 174 N.Y. 112, 66 N.E. 652, *aff'd*, 195 U.S. 345 (1903); Hill v. Smith, 260 U.S. 592 (1922); *In re* Skrentny, 199 F.2d 488 (C.A. Ill. 1952).

[10] *Supra*, n. 5.

[11] 240 App. Div. 229, 268 N.Y. Supp. 766 (1934).

[12] 79 N.H. 305, 108 Atl. 855 (1919).

of creditors "if known," plainly implies that one who becomes a creditor without the knowledge of the bankrupt cannot complain because the claim is not scheduled as owing to him. The foregoing cases involved the proper scheduling of the name of the original creditor and the failure to schedule the name of the assignee of that creditor due to the fact that the bankrupt had no notice of the assignment.[13]

In other cases which have upheld the irregular scheduling of the name of a creditor, the name as scheduled is generally sufficient to designate the person to whom the debt is owed. The scheduling of the name, "Fred Schill & Co.," for a creditor properly named, Frederick Schill & Co., was deemed to be "an unimportant and insignificant deviation from the precise corporate name," and the scheduling was sufficient.[14] In holding that "C. Ferger" was proper scheduling of the name of the creditor, Charles Ferger, the United States Supreme Court stated as follows:

> The difficulty grows out of the impossibility of applying a general and uniform rule where there are so many varying methods by which men's names and residences are designated. Some men have a well-known and constantly used Christian name; others by initials for the Christian name; others are known by nickname. . . .
>
> The Bankruptcy Act fails to prescribe which form of designation shall be used in listing creditors in the schedule. . . . In many instances, the only knowledge the debtor has as to the name of his creditor is derived from signatures, letterheads, drafts, and like instruments in which the name of the creditor may be designated by initials, or by abbreviation, or by full Christian name. To say that the use of an initial in listing a creditor was improper when the creditor himself has constantly received letters addressed to him in that manner, would not only ignore a common business practice, but would, in many instances, work a great hardship.[15]

The scheduling of the creditor with the name by which he is commonly known was sufficient.[16] The omission of the word "trustee" does not render the discharge ineffective, since it is not a part of the name of the creditor, but merely is *descriptio personae.*[17] Therefore, when an irregular scheduling of a creditor's name is upheld, it must be of such a nature as not to connote a different name from that of the creditor.

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[13] Morency v. Landry, *supra*, n. 12; Broderick v. Adamson, 240 App. Div. 229, 268 N.Y. Supp. 766 (1934); Union Trust Co. v. Rosenstein, 51 N.Y.S.2d 396 (City Ct. N.Y. 1944).

[14] Frederick Schill & Co. v. Larsen, 135 N.J.L. 335, 50 A.2d 850; *aff'd*, 136 N.J.L. 197, 54 A.2d 732 (1947).

[15] Kreitlein v. Ferger, 238 U.S. 21, 28, 29 (1915); see also, Claflin v. Wolff, 8 N.J.L. 308, 96 Atl. 73 (1915).

[16] Sline v. Layden, 91 S.W.2d 983 (Tex. Civ. App. 1936); *contra*, Cohen v. Pinkus, 126 App. Div. 792, 111 N.Y. Supp. 82 (1908).

[17] Levine v. Katz, 293 Mich. 493, 292 N.W. 466 (1940).

Great care should be exercised when scheduling the name of the creditor, since a minor error could change a name as to make it a different name, and if that did occur, the scheduling would be inadequate. Illustrative examples of improper scheduling are as follows: A. Custard scheduled as A. Castard;[18] George Liesum scheduled as George Liesman;[19] Jacob Ringle & Son scheduled as Jacob Ringler & Son;[20] W. G. Ingram scheduled as L. E. Ingram;[21] Wright-Dalton-Bell-Anchor Store Company scheduled as Dalton & Bell Co.;[22] and Swen Morrine scheduled as Swan Morrise.[23] Where there is a considerable error in the scheduling of the name of the creditor, the fact that the name or the identity of the creditor could be reasonably deduced from all of the information scheduled would not constitute adequate scheduling.[24]

When it is shown that the bankrupt knew or should have known a more complete name than the abbreviated form scheduled by him, the debt will not be duly scheduled.[25]

Unlike the scheduling of the creditor's name, the Bankruptcy Act does provide that the address of the creditor – residence or place of business – can be scheduled as unknown if it is unknown.[26] A bankrupt cannot schedule that a creditor's address is unknown if it is known to him, and he must also make a reasonable effort to ascertain the address, if such address is unknown. If after making a reasonable effort, the address is still unknown, the address of the creditor may be properly scheduled as "unknown,"[27] but where the address should have been known or could have been ascertained, the address cannot be duly scheduled as "unknown."[28]

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[18] Custard v. Wigderson, 130 Wisc. 412, 110 N.W. 263 (1907).

[19] Liesum v. Kraus, 35 Misc. 376, 71 N.Y. Supp. 1022 (1901), improper scheduling allegedly caused by clerical error.

[20] Grosso v. Marx, 45 Misc. 50, 92 N.Y. Supp. 773 (1904).

[21] Ingram v. Carruthers, 194 Tenn. 290, 250 S.W.2d 537 (1952).

[22] Wright-Dalton-Bell-Anchor Store Co. v. Sanders, 142 Mo.App. 50, 125 S.W. 517 (1910).

[23] Armstrong v. Sweeney, 73 Neb. 775, 103 N.W. 436 (1905).

[24] Tyler v. Jones County Bank, 78 Ga.App. 741, 52 S.E.2d 547 (1949), wherein the Jones County Bank which was the only bank in Haddock, Georgia, was scheduled as Haddock Bank, Haddock, Georgia.

[25] Hunter v. Hall, 60 Ga.App. 69, 4 S.E.2d 69 (1939), wherein "et al." was used to identify other joint creditors in executing and recording the judgment, but when used to schedule the names of the other joint creditors, the debt was not duly scheduled since the bankrupt should have known their names. Bartlett v. Taylor, 209 Mo.App. 612, 238 S.W. 141 (1922), wherein, the bankrupt failed to schedule the creditor's middle initial when it was shown that the bankrupt should have known it.

[26] *Supra*, notes 1 and 2.

[27] Lutz v. Kalmus, 115 N.Y. Supp. 230 (Sup.App.T. 1909); *In re* Mollner, 75 App. Div. 441, 78 N.Y. Supp. 281 (1902).

[28] Miller v. Guasti, 226 U.S. 170 (1912); Union Trust Co. v. Rosenstein, 51 N.Y.S.2d 396 (City Ct. N.Y. 1944); Marlenee v. Warkentin, 71 Cal.App.2d 177, 162 P.2d 321 (1945).

It is well settled that a debt is not duly scheduled if the bankrupt has listed the creditor's address incorrectly.[29] Due scheduling has been denied where the exact street address but the wrong city and state were listed,[30] and where the correct city and state were listed but the wrong local address was given.[31]

The omission of the local street address where the correct city and state are scheduled has been held not to vitiate due scheduling.[32] The United States Supreme Court has reasoned:

> As to . . . omissions of street address the Act must be given a general construction and in the light of the fact that letters directed to persons . . . are constantly, properly, and promptly delivered in the greatest cities of the country even when the street number is not given. When it is considered that the schedule must not only include claims of recent origin but debts which have accrued many years before and where the creditor may have changed his residence, it becomes evident that to lay down the general rule that the schedule must give the name of the creditor and the city and street number of the residence of those living in the largest cities would, in the mulitude of cases destroy the beneficent effect of the Bankruptcy Act.[33]

The bankrupt must show that he exercised diligence in attempting to ascertain the information which was omitted from the scheduling of the address, or the debt will not be considered to be duly scheduled. When a bankrupt omits only the street number of the address, but he could have easily obtained such information either by consulting the local telephone directory or inquiring of the creditor's attorney, the scheduling of the address without the street number will not be proper.[34] The fact that the bankrupt and the creditor corresponded with each other and had mutual acquaintances, the bankrupt could not validly schedule the address of the creditor by merely listing the city and state, but must also list the street address.[35]

In the case of a judgment creditor, the scheduling of the address of the attorney who represented the creditor is not sufficient to meet the require-

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[29] Van Denburgh v. Goodfellow, 19 Cal.2d 217, 120 P.2d 20 (1941); Solomon v. Sarno, 365 App. Div. 114, 37 N.Y.S.2d 870 (1942). See Annotations, Sufficiency of scheduling of creditor's residence or address in bankruptcy proceeding, and presumptions and burden of proof in connection therewith, 68 A.L.R.2d 955 (1959).

[30] Westheimer v. Howard, 47 Misc. 145, 93 N.Y. Supp. 518 (1905).

[31] Van Denburgh v. Goodfellow, 19 Cal.2d 217, 120 P.2d 20 (1941).

[32] Dill v. Hamilton, 73 Cal.App.2d 881, 167 P.2d 497 (1946); Freeman v. Cooper, 126 N.J.L. 177, 17 A.2d 609 (1941); Claflin v. Wolff, 8 N.J.L. 308, 96 Atl. 73 (1915).

[33] Kreitlein v. Ferger, 238 U.S. 21 (1915).

[34] Cogliostro v. Indelli, 53 Misc. 44, 102 N.Y. Supp. 918 (1907).

[35] Bartlett v. Taylor, 209 Mo.App. 612, 238 S.W. 141 (1922).

ments of the Act.[36] But as it is in most cases after the passing of several years, the address of the attorney can be more easily ascertained than that of the creditor; the scheduling of the address of the attorney for informational purposes has been allowed where the creditor's address is stated to be unknown.[37]

The use of abbreviated forms in scheduling the address has been allowed where the abbreviation is of common usage, for example: N.J. for New Jersey,[38] and N.Y. City for New York City.[39] In regards to the use of ditto marks to indicate a creditor's address, it was remarked that the resort to ditto marks is in violation of both the letter and spirit of the Act, as well as the General Order No. 5 (89 Fed. V, 32 CCA VIII) which directs all schedules to be printed or written out plainly, without abbreviations.[40] The scheduling of an address as "135 Bway," which was intended to designate 135 Broadway, was said not to be a sufficient designation of any address and was "in plain violation" of General Order No. 5.[41]

All authorities hold that a proper scheduling is constructive notice to the creditor.[42] Where proper scheduling is lacking, there will be no discharge of the debt "unless such creditor had notice or actual knowledge of the proceedings."[43] In the expression "notice or actual knowledge," the latter term is used to explain the former; therefore, it is clear that actual knowledge is required in order to exclude the creditor.[44] In a case where the creditor obtained actual notice two months after the discharge in bankruptcy, the United States Supreme Court held that the actual knowledge of the proceedings contemplated by the section is a knowledge in time to avail a creditor of the benefits of the law – in time to give him an equal opportunity with other creditors – not a knowledge that may come so late as to deprive him of participation in the administration of the affairs of the estate or to deprive him of its dividends.[45] Actual knowledge has been held to be imputable under agency principles as in the case where an attorney attains notice who

[36] Stokes v. Elgart, 43 N.Y.S.2d 205 (City Ct. N.Y. 1943); Continental Purchasing Co. v. Norelli, 135 N.J.L. 93, 48 A.2d 816 (1946); Van Denburgh v. Goodfellow, 19 Cal.2d 217, 120 P.2d 20 (1941).

[37] Shire v. Bornstein, 4 App. Div. 2d 74, 162 N.Y.S.2d 1006 (1957); compare, Wyser v. Estrin, 285 App. Div. 827, 136 N.Y.S.2d 744 (1955).

[38] Freeman v. Cooper, 126 N.J.L. 177, 17 A.2d 609 (1941).

[39] Claflin v. Wolff, 8 N.J.L. 308, 96 Atl. 73 (1915).

[40] Haack v. Theise, 51 Misc. 3, 99 N.Y. Supp. 905 (1906).

[41] Sutherland v. Lasher, 41 Misc. 249, 84 N.Y. Supp. 56, *aff'd*, 87 App. Div. 633, 84 N.Y. Supp. 1148 (1903).

[42] Dill v. Hamilton, 73 Cal.App.2d 881, 167 P.2d 497 (1946).

[43] 11 U.S.C. § 35(a)(3).

[44] Santa Rosa Bank v. White, 139 Cal. 703, 73 Pac. 577 (1903).

[45] Columbia Bank v. Birkett, 174 N.Y. 112, 66 N.E. 652; *aff'd*, 195 U.S. 345 (1903).

has been engaged to collect the debt by the creditor.[46] The notice to a cashier of a creditor bank who had discussed the fact of the bankruptcy proceedings with others was imputed to the employer.[47] But notice to an attorney when he is not serving a judgment creditor, although the attorney may have represented the creditor in the suit in which the debt arose, is not imputed to the creditor.[48] Therefore, it appears that constructive notice of the creditor may be obtained only by due scheduling of the debt; otherwise, the creditor must have actual knowledge which may be imputed to him under certain circumstances.

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[46] American Southern Trust Co. v. Vester, 189 Ark. 9, 34 S.W.2d 747 (1931); Keefauver v. Hevenor, 163 App. Div. 531, 148 N.Y. Supp. 434 (1914).

[47] Bank of Wrightsville v. Four Seasons, 21 Ga.App. 453, 94 S.E. 649 (1917).

[48] Continental Purchasing Co. v. Norelli, 135 N.J.L. 93, 48 A.2d 816 (1946).