

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re

JAMES C. & CHRISTINA M. STRANEY

Case No. 98-12222

Chapter 13

Debtors  
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APPEARANCES:

JAMES C. and CHRISTINA M. STRANEY

Debtors Pro Se

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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

**MEMORANDUM-DECISION AND ORDER**

The current matter before the court is the debtors' objection to the claim of Marie N. Hurley ("Creditor"). The court has jurisdiction via 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2) and 1334.

**FACTS**

Based on the pleadings submitted, the court finds the following:

1. The Debtors filed a Chapter 13 petition on February 2, 1992 which was dismissed on March 5, 1998.
2. The Debtors filed a second Chapter 13 petition on April 1, 1998.

3. The plan was confirmed by order dated September 1, 1998, providing for a 100% distribution to unsecured creditors.
4. The Creditor filed an unsecured claim for \$200,000 on June 16, 1998.
5. The claim was scheduled as "Tort: Malpractice" and was listed as being incurred in August of 1995.
6. The Creditor filed a summons with notice in NYS Supreme Court on April 14, 1995, followed by a complaint dated August 23, 1995.
7. The Creditor alleges that Debtor James Straney was retained in 1980 to institute certain actions involving real property in Saratoga Springs, New York.
8. The Creditor further alleges that Debtor James Straney failed to properly file and timely prosecute those actions.
9. The statute of limitations relevant to the Saratoga real property actions expired in 1988 ("SOL 1").<sup>1</sup>
10. The Debtor James Straney answered the complaint on or about October 2, 1995, denying everything other than he was an attorney with offices in Latham, New York.
11. In addition, the answer contains certain affirmative defenses, including the statute of limitations ("SOL 2").
12. On June 18, 1999, the debtors filed a notice of motion objecting to the Creditor's claim with a hearing date of August 3, 1999.
13. The basis for the objection was that no debtor/creditor relationship existed and, as such, the claim should be expunged.
14. An affidavit in opposition was filed by the Creditor on July 29, 1999.
15. After numerous extensions granted to the Debtors to submit legal argument, the matter was fully before the court on September 30, 2001.

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<sup>1</sup>The 1988 date is contained in the creditor's affidavit in opposition to the underlying claim objection. The debtors have not disputed the accuracy of this date, thus the court accepts it as true.

## ARGUMENTS

The arguments advanced by both parties are difficult to discern because the briefs submitted were of little assistance. The Creditor's submission provides some procedural information on the 1995 state court action but ignores the fact that the action was commenced in violation of 11 U.S.C. § 362(a)(1). In short, that action was a nullity.

The Debtors responded by submitting a brief that reiterated that Debtor James Straney's State Court answer denied everything and that the action was a violation of § 362 and beyond the applicable statute of limitations. However, it is unclear if he is literally claiming that he never had an attorney-client relationship with the Creditor or SOL 2 has simply negated any claim arising from that relationship.

## DISCUSSION

A properly executed and filed proof of claim constitutes prima facie evidence of the validity of the claim. Fed. R. Bankr. P. 3001(f). To overcome this, the objecting party must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim. *In re Allegheny Int'l, Inc.*, 954 F.2d 167 (3d Cir. 1992); *See In re Giordano*, 234 B.R. 645, 650 (Bankr. E.D. Penn. 1999).

For the Creditor to have a valid claim in this court, there must be a viable malpractice action, sounding in breach of contract, under state law. Neither party addresses 11 U.S.C. § 108 which is entitled "Extension of time" and provides, in relevant part:

- (c) ... (i) if applicable nonbankruptcy law, ... fixes a period for commencing ... a civil action in a court other than a bankruptcy court on a claim against the debtor ... and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of -
  - (1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay ... with respect to such claim.

N.Y. Civ. Prac. L.R. § 204 is entitled “Stay of commencement of action; demand for arbitration” and states, in part:

(a) Stay. Where the commencement of an action has been stayed by a court or by statutory prohibition, the duration of the stay is not a part of the time within which the action must be commenced.

If SOL 1 expired in 1988, then any suit based on a three year statute of limitations would have expired in 1991. Thus, a viable cause of action for negligence would not have existed when the underlying state court action was commenced in 1995. However, the statute of limitations on a breach of contract action would not have expired until 1994. Thus, the interplay between § 108 and § 204(a) in the instant case would mean that any potential malpractice action alive when the first chapter 13 petition was filed in 1992 would remain viable until the later of: (1) the termination of the appropriate statute of limitations under state law, including the suspension provided for in § 204(a); or (2) 30 days from the termination of the stay.

Under scenario 1, the balance of any six year breach of contract statute of limitations was suspended on February 2, 1992 when the first Chapter 13 was filed, and the tolling continued until March 5, 1988 when that case was dismissed.<sup>2</sup> An additional twenty six days of the six

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<sup>2</sup>On September 4, 1996 the statute of limitations on malpractice claims was standardized at three years regardless of a basis in contract or tort. The N.Y.S. Court of Appeals upheld the application of the 1996 amendment to previously accrued claims by affording litigants a “reasonable opportunity” after the amendment’s effective date to commence an otherwise time-barred action for those cases not immediately time-barred as of the 1996 amendment’s effective date; litigants would have “no less than one year from the amendment’s effective date to bring suit.” *Brothers v. Florence* 95 N.Y.2d 290, 306 (2000). Further, where nonmedical malpractice plaintiffs would have more than one year left to commence an action under the newly amended statute of limitations, those plaintiffs were entitled to the full time remaining under the three-year limitations period. *Id.* The amendment to the statute and the courts’ interpretations of it do not

year statute expired between the dismissal of the first Chapter 13 and the filing of the second Chapter 13 on April 1, 1998. Upon the second filing, the balance of the six year statute was suspended again and continues to this day. Under scenario 2, before § 108(c)(2)'s 30 day safe harbor provision expired, the Debtors' second filing reinvoked the basic stay of time provided under

§ 108 and/or § 204. Thus, there is still a potentially viable breach of contract action based on the supposed attorney-client relationship in the 1980's.<sup>3</sup>

Having determined that a viable contract cause of action sounding in contract is theoretically possible, obvious issues of fact exist. In his state court answer, the Debtor denies that an attorney-client relationship even existed while the creditor maintains that not only did it exist but the debtor breached it. To resolve the questions of fact, the court will schedule an evidentiary hearing to determine: (1) whether a contractual relationship existed; (2) if it did, whether the Debtor breached it; and (3) if a breach occurred, what damages exist.

A separate scheduling order regarding the hearing will be issued.

It is so ORDERED.

Dated: April 26, 2002

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Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Judge

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change this court's conclusion that there still exists a potential malpractice cause of action sounding in contract.

<sup>3</sup>During oral argument, the creditor's attorney mentioned a supposed 1991 contractual relationship with the debtor. However, as the creditor's affidavit refers only to the 1982 retainer and related problems and makes no mention of any 1991 relationship, the court is analyzing the creditor's claim as only involving the 1982 retainer.