

KLAAS v. DONOVAN (In re: DONOVAN)

CASE NO: 08-01350-PGH

David J. Donovan (the “Defendant”) was a member of Medium21, LLC. The Defendant and Medium21 filed for Chapter 7 bankruptcy protection on February 22, 2008. Movant, the trustee for Medium21's bankruptcy case, missed the deadline to file a complaint objecting to discharge or to determine certain debt nondischargeable in the Defendant's bankruptcy case. Movant sought permissive intervention as a plaintiff in the above-referenced adversary proceeding against the Defendant to assert § 523 and § 727 claims. Movant argued, *inter alia*, that the § 523 claims were timely based upon § 523(a)(3)(B) and Bankruptcy Rule 4007(c). The Court found movant’s claims to be untimely. The Court determined that movant could not pursue the § 523 claims under § 523(a)(3)(B) because Medium21 had notice and received actual knowledge of the Defendant’s bankruptcy case approximately three months prior to the deadline. Specifically, the Court concluded that the notice and actual knowledge received by the trustee for Medium21's bankruptcy case was imputed to Medium21. The Court also determined that movant was not entitled to thirty days notice under Bankruptcy Rule 4007(c) because Medium21 had notice and received actual knowledge of the Defendant’s bankruptcy case thirty days prior to the deadline. The Court denied the motion to intervene, concluding that movant could not circumvent the deadline by intervening in the adversary proceeding and that intervention was unwarranted under the Eleventh Circuit’s multi-factor timeliness test for permissive intervention. The Court also denied the movant’s request for substitution as premature.