1. Arguments

The main arguments from the plaintiff’s side is that according to the Bankruptcy law “Individual who allegedly initiated process of receiving credit counseling on the same day that her Chapter 13 petition was filed, before petition was accepted for filing, but who did not complete process until 7:31 p.m. that day, well after clerk’s office had closed and petition had been filed, did not qualify as a debtor eligible to file for Chapter 13 relief; bankruptcy statute, in defining an eligible “debtor” as someone who “has received” credit counseling, manifested Congressional intent that the credit counseling be completed prior to filing of petition”. Therefore, since the defendant did not complete his or her counseling before filing petition, he cannot file the chapter 13 petition successfully according to the law. Even though the officer workers said that it would be ‘good enough’, the defendant should have read the instructions clearly and carefully.

The second main argument that the plaintiff has is that the defendant checked the box that says ‘Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed’ even though the instructions clearly said ‘Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file.’ The instructions clearly said 14 days before filing and yet the defendant did not follow and even waited until the last day to do his credit counseling.

As for the defendant he says that he filed the petition the same day as he went to counseling, and he stated that the credit counseling briefing began before she filed the case but he just did not complete the whole process and receive the briefing until afterwards. Also he stated that when he filed the case, the bankruptcy clerk told him that this would be ‘good enough’ and since they are professionals, he took the clerk’s word for it. Because of the two reasons above, he believed that the filing should be done. Also, because there were time difference, that caused him not be able to file the petition. Therefore, since there are too many factors that caused him to ‘miss’ the deadline and some of it is caused by the clerk, the filing should still go through

1. Court

The court’s ruling first started with ‘A]n individual may not be a debtor under this title unless such individual has, during the 180–day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in [section 111(a)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=11USCAS111&originatingDoc=Ifbd0c28bb45111e381b8b0e9e015e69e&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_8b3b0000958a4) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis. This language has produced a dispute in the published decisions over its application to an individual who files a bankruptcy petition and then, later the same day, receives a briefing on available credit counseling. The dispute raises two distinct issues. Because the defendant did not even complete his counseling 180 days before filing or within a reasonable time period, he does not even qualify as a debtor to begin with. Therefore, this case should not be brought to court.

The court also cited ‘The first issue is the meaning of the phrase “date of filing.” [Section 109(h)(1)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000546&cite=11USCAS109&originatingDoc=Ifbd0c28bb45111e381b8b0e9e015e69e&refType=RB&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)#co_pp_b4e500006fdf6) requires that a credit counseling briefing be received in the 180–day period “ending on the date of filing.” Some decisions hold that “date of filing” means the time of day when filing takes place. Under this view, the 180–day period ends when the case is filed, and a receipt of credit counseling after case filing would be outside the statutory period.’ This clearly states that the moment when the case is filed, the end of the date of filing began which means that the moment he submitted is application, that is the deadline for the counseling receipt. Therefore, this is very clear that the defendant does not qualify.

Thirdly, the court concluded from this language that to be eligible to file a bankruptcy case an individual must receive a credit counseling briefing before the time of filing. The keyword is before, the defendant was late by a total of 3 or more hours. Clearly shows that he lacked planning instead of just and unlucky incident. The court could have took the law for what it is but instead, if the defendant was late within an hour, then it would be more reasonable to pass the petition. But because it was a weekend and the office closed already, the defendant was late for more than 2 days in total. Therefore, this shows lack of planning and reckless filing.

The last point is the highlight on the ‘has received credit’ from the citation of that particular law. This has received clearly says that the action must be done before and goes back to again, the defendant clearly missed the deadline because of the present perfect tense of the law. The action of completing the credit counseling must precede the action of filing the case. Clearly because of this and the other factors that shows the defendant did not read instructions and was not clear with the law, the court decided to reject and the plaintiff won the case and stated this as the conclusion ‘concluded from this language that to be eligible to file a bankruptcy case an individual must receive a credit counseling briefing before the time of filing’. Also the court added lastly that the defendant’s persuasion did not show a clear and accurate interpretation of the law as well as the fact that the defendant did not read the definition of becoming a ‘debtor’.