

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of	:	
KENNETH LEON ETTER,	:	Case No. 94-02009-W J
PENNY DEE ETTER,	:	Chapter 7
Debtors.		

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ORDER ON MOTION FOR EXTENSION OF TIME

On August 11, 1994 the above-named debtors filed a petition for relief under Chapter 7. On the same day the Clerk of the Bankruptcy Court entered the standard notice of commencement of case which alerted parties in interest that November 29, 1994 was the deadline to file an objection under 11 U.S.C. section 727 or a complaint pursuant to 11 U.S.C. section 523(c).

On November 25, 1994 counsel for Chrysler Credit Corporation (Chrysler), one of debtors' creditors, submitted a motion for extension of time for filing a reaffirmation agreement. On November 28, 1994 the court entered an order returning the motion based on the representation of the Clerk that Chrysler had failed to submit a proposed order with the motion. The undersigned added a notation directing Chrysler's attention to the last sentence of Federal Rule of Bankruptcy Procedure 4004(c). The order also included the standard notice that the returned document would be filed as of the date it was originally tendered if a motion to that effect was filed within eight days of the date of the order and if substantial cause was established.

On November 30, 1994 the court entered the discharge of debtor order. On December 2, 1994 Chrysler resubmitted the motion for

extension of time, along with a proposed order. Chrysler did not specifically reference the deadline regarding discharge and dischargeability actions in the motion but asked that the deadline for filing the reaffirmation agreement be extended to a date certain -- January 10, 1994. Chrysler did not file a motion requesting the motion be filed as of November 25, 1994. Accordingly, the Clerk filed the motion as of December 2, 1994.

Since the motion for extension was not on file when the November 29, 1994 deadline passed, the Clerk's office processed the discharge order on November 30, 1994. By operation of 11 U.S.C. section 524(c), the motion is now moot.

Moreover, Federal Rule of Bankruptcy Procedure 4004(c) provides:

(c) GRANT OF DISCHARGE. In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case pursuant to Rule 1017(e), the court shall forthwith grant the discharge unless (1) the debtor is not an individual, (2) a complaint objecting to the discharge has been filed, (3) the debtor has filed a waiver under § 727(a)(10), or (4) a motion to dismiss the case under Rule 1017(e) is pending. **Notwithstanding the foregoing, on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within such period, the court may defer entry of the order to a date certain.**

The common interpretation of the last sentence of the Rule is that only the debtor, not the creditor, may move to extend the discharge deadline for the purpose of negotiating a reaffirmation agreement.

On a debtor's first motion, the court may extend the time for thirty days. On a subsequent motion by the debtor filed within those thirty days, the court may extend the time to a specific

date. 9 William L. Norton, Bankruptcy Law and Practice 2d 289 (1994); 8 Collier on Bankruptcy ¶ 4004.05, at 4004-19 to -20 (15th ed. 1994).

Accordingly, even if Chrysler had filed a motion asking the court to file its motion to extend on November 25, 1994 and the court granted that motion, the court would not have granted the motion to extend because the debtor did not file the request. Additionally, the requested extension exceeded the 30 day limit.

THEREFORE, Chrysler's motion to extend is denied.

Signed and filed this 9th of December, 1994.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE