

Code, meeting of creditors, and fixing of dates in which July 7, 1996 was set as the last date by which a party in interest could file a complaint objecting to discharge or to determine dischargeability of certain types of debts.

On June 17, 1996 the United States Trustee filed a motion seeking "an Order extending the time in which any party can file a complaint objecting to the Debtor's discharge until 5:00 p.m. on November 1, 1996, and, for such other and further relief as the court deems just and proper." In the body of the motion, the United States Trustee explained she needed more time to gather information about the debtor's alleged ownership interests in certain corporations that were not disclosed in his schedules. The United States Trustee also filed a bar date notice that set July 8, 1996 as the last day on which a party in interest could object to the motion.

On July 7, 1996 the debtor objected to the motion insofar as it would extend the deadline for any entity other than the United States Trustee. The debtor maintained any party that wanted an extension could file its own motion and establish cause.

On July 17, 1996 the Bank filed its resistance to the debtor's objection. The Bank contended it had not filed its own motion for extension because its counsel had reviewed the United States Trustee's motion on July 1, 1996 and noted the relief sought therein extended to any party in the case.

At the time of the hearing, the undersigned judge indicated she had seen similar motions over the past few years and had signed

orders granting extensions to all parties based on the scope specifically requested in those motions. Mr. Snyder commented that the inconsistency between the motion's prayer for all and the allegations specific to the United States Trustee's need for more time was an oversight. He indicated the United States Trustee's future motions and proposed orders would specify the extension requested and granted applied only to the United States Trustee. Mr. Hassel did not recall if he ever had seen similar motions in his other cases. If he had, Mr. Hassel assumed he simply overlooked the extent of the prayer. Mr. Fletcher reiterated his reliance upon a plain reading of the motion.

APPLICABLE STATUTE AND RULE

11 U.S.C. section 727(c)(1) provides:

The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

. . . .

Federal Rule of Bankruptcy Procedure 4004 states in part:

(a) TIME FOR FILING COMPLAINT OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). . . .

(b) EXTENSION OF TIME. On motion of any party in interest, after hearing on notice, the court may extend for cause the time for filing a complaint objecting to discharge. The motion shall be made before such time has expired.

. . . .

DISCUSSION

Neither 11 U.S.C. section 727(c)(1) nor Federal Rule of

Bankruptcy Procedure 4004(b) suggests one party's motion for extension of the deadline to object to discharge will apply automatically to all parties in interest. However, neither the statute nor the rule suggests that the United States Trustee can not file a motion seeking an extension for all parties in interest or that the court can not grant such a motion if it is contested. Indeed, the 1983 Advisory Committee Note for Rule 4004 states at paragraph 4: "An extension granted on a motion pursuant to subdivision (b) of the rule would ordinarily benefit only the movant, but its scope and effect would depend on the terms of the extension."

Cases holding that a Rule 4004(b) extension benefits only the movant typically involve motions and orders that did not specify the extra time applied to any entity other than the moving party. See In re McCord, 184 B.R. 522 (Bankr. E.D. Mich 1995); In re Gallagher, 70 B.R. 288 (Bankr. S.D. Tex 1987); and In re Floyd, 37 B.R. 890 (Bankr. N.D. Tex. 1984). See also In re Ortman, 51 B.R. 7 (Bankr. S.D. Ind. 1984)(order granting original extension was specifically limited to the trustee but order granting additional extension was not so explicit). Cf. In re Parker, 186 B.R. 208 (Bankr. E.D. Va. 1995)(United States Trustee permitted to benefit from extension specifically requested by and granted to the chapter 7 trustee only because of the oversight role and duties of that office).

The scope of the motion presented by the United States Trustee in this case is not unique. In Matter of Farmer, 786 F.2d 618,

(4th Cir. 1986), the chapter 7 trustee twice moved for and was granted extensions of the deadline as to both objections to discharge and complaints to determine dischargeability. On appeal from the second extension, the debtors only challenged the ability of the trustee to request extra time for creditors to bring actions pursuant to 11 U.S.C. 523(c)(1) and Federal Rule of Bankruptcy Procedure 4007(c).¹ The Fourth Circuit Court of Appeals ruled that the chapter 7 trustee was not a party in interest for purposes of Rule 4007(c) because section 523(c)(1) applied only to creditors. Id. at 620.

Then in Matter of Ichinose, 946 F.2d 1169, 1175 (5th Cir. 1991), a creditor filed a complaint to determine dischargeability

¹ 11 U.S.C. section 523(c)(1) provides:

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), (6), or (15) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2),(4),(6), or (15), as the case may be, of subsection (a) of this section.

. . . .

Federal Rule of Bankruptcy Procedure 4007(c) states:

TIME FOR FILING COMPLAINT UNDER § 523(c) IN CHAPTER 7 LIQUIDATION, CHAPTER 11 REORGANIZATION, AND CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASES; NOTICE OF TIME FIXED. A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

of its debt after the original deadline but within the extension received by other creditors. The bankruptcy court denied the debtors' motion to dismiss the complaint as untimely filed because the creditor had relied on the extension orders and the court had a standing policy of granting general extensions for section 523(c) complaints when the circumstances warranted such action. The district court reversed on other grounds.

The Fifth Circuit Court of Appeals affirmed the outcome in the district court. It also discussed at length whether the creditor could rely on the Rule 4007(c) motions brought by other creditors.

The appellate court noted the early extension orders did not specifically indicate they were intended for all creditors, the later orders were movant specific, and there was no clear written statement of the standing policy mentioned by the bankruptcy court.

Id. at 1174-75. The court observed that 11 U.S.C. section 105(a) might authorize general extensions but declined to rule on that question in the pending case.² Id. at 1175-76.

In this case, the United States Trustee filed a Rule 4004(b) motion, not a Rule 4007(c) motion.³ The motion clearly requested

² 11 U.S.C. section 105(a) provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

³ No creditor filed a Federal Rule of Bankruptcy Procedure 4007(c) motion. One creditor, Alan J. Yegge, did file a timely

an extension that would apply to any party in the case. The United States Trustee mailed the motion to all parties in interest with a notice that any objection to her request had to be filed by July 8, 1996, meaning the deadline for objecting to the motion was the day after the original deadline for filing an objection to discharge.

Though a party who wished to err on the side of caution might have filed its own Rule 4004(b) motion on or before July 7, 1996, that does not mean a party who assumed the court would either grant or deny the motion as to all parties in interest did not act reasonably. Given the debtor's objection was filed on the original deadline date, it is unlikely all parties would have learned of the specific challenge to the scope in time to file their own Rule 4004(b) motions the same day. Finally, any effort to overcome a ruling limiting the extension to the United States Trustee by filing an untimely Rule 4004(b) motion would fail because Federal Rule of Bankruptcy Procedure 9006(b)(3) prohibits the court from granting any untimely motion.⁴ That is, no creditor could succeed on an argument that it relied on the plain language of the United States Trustee's motion because Rule 9006(b)(3) explicitly excepts Rule 4004 from the excusable neglect standard. In re Neeley v. Murchison, 815, F2d 345, 346 (5th Cir. 1987).

complaint to determine dischargeability of debt pursuant to 11 U.S.C. section 523(c).

⁴ Federal Rule of Bankruptcy Procedure 9006(b)(3) states in relevant part:

ENLARGEMENT LIMITED. The court may enlarge the time for taking action under Rules. . .4004(a),. . .only to the extent and under the conditions stated in those rules.

CONCLUSION

WHEREFORE, the court finds that (1) Federal Rule of Bankruptcy Procedure 4004(b) does not prevent the United States Trustee from specifically requesting an extension on behalf of all parties in interest, and (2) the facts of this case warrant granting the Rule 4004(b) motion to all parties in interest as specifically requested by the United States Trustee.

ORDER

THEREFORE, IT IS ORDERED that the debtor's objection is overruled and the United States Trustee's motion is granted. The deadline for filing a complaint objecting to the debtor's general discharge is extended to 5:00 p.m. on November 1, 1996 for all parties in interest in this chapter 7 case.

Dated this 13th day of August, 1996

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE