

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

In the Matter of	:	Case No. 97 – 5572 – CH
	:	
Louis J. Rizzuti,	:	Chapter 7
Jackie A. Rizzuti,	:	
	:	
	:	
Debtors.	:	
	:	

ORDER – MOTION FOR EXTENSION OF TIME

On December 12, 1997, Debtors, Louis J. and Jackie A. Rizzuti, filed a Voluntary Petition for Chapter 7 relief under the U.S. Bankruptcy Code. On May 21, 1998, hearing was held on a creditor's Second Motion for Extension of Time in Which To File Complaint and Debtors' Objection thereto. Debtors were represented by attorney Jeffery W. Courter; Creditor, Main Street Station, L.C., was represented by attorney William B. Serangeli. At the conclusion of the hearing, the Court took the matter under advisement. The Court now considers the matter fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I), (J). The Court, upon review of the pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. Main Street Station, L.C., had commenced an action in the Iowa District Court, Polk County, against Debtors by virtue of certain guaranties by the Debtors, guaranteeing the debt of Spar Quest, Inc., an Iowa Limited Liability Corporation, the lessor of real property in Ames, Iowa. This state court action has been pending since June 1997 and was pending at the time Debtors filed their bankruptcy petition herein.

2. Spar Quest, Inc., is the debtor-in-possession in a Chapter 11 case pending in this Court, case number 97-5362-CH.

3. On December 12, 1997, Debtors filed a Short form Chapter 7 petition.

4. Notice of Commencement of Case Under Chapter 7 was served on parties in interest and filed on December 12, 1997. The Notice stated that the Meeting of Creditors was set for January 9, 1998, and that the deadline to file a complaint objecting to discharge or to determine dischargeability of debt was March 10, 1998.

5. Main Street Station, L.C., a creditor, by and through its attorney, William B. Serangeli, Smith, Schneider, Stiles, Hudson, Serangeli, Mallaney & Shindler, P.C., entered its Appearance in the case on December 22, 1997.

6. On December 29, 1997, Debtors filed Schedules and Statements.

7. Main Street Station, L.C., c/o William B. Serangeli, Smith Law Firm, was scheduled as a creditor holding an unsecured nonpriority claim in the amount of \$88,565.00.

8. The Minutes of the § 341 Meeting of Creditors, held on January 9, 1998, show that William B. Serangeli appeared on behalf of Main Street Station.

9. The deadline to file objections to claims of exemptions was February 10, 1998.

10. On March 23, 1998, a Consent Order was approved by this Court, granting Trustee's Motion for Extension of Time in Which to Object to Exemptions. (DN 20). Trustee was granted until April 26, 1998 to complete her investigation into Debtors' homestead exemption and file an objection thereto. This order provided that the extension applied only to the Trustee and no other creditor was entitled to file an objection to Debtors' claimed exemptions.

11. In a letter dated February 10, 1998 and addressed to Anita L. Shodeen, Trustee, and Jeffrey W. Courter, counsel for Debtors, Serangeli requested a Rule 2004 examination of Debtors. Schedule A to this letter contained a list of documents to be produced at the Rule 2004 examination. "Due to the March 10, 1998, deadline in this matter" Serangeli requested an early response.

12. On February 17, 1998, Main Street Station filed a Motion for Additional Time Within Which to File Complaint to Determine Dischargeability of Debt and/or to Determine Discharge. (DN 16). Said motion prayed that said creditor have up to and including April 10, 1998 within which to file a complaint.

13. On March 13, 1998, this Court granted Main Street Station's motion and issued an order granting them up to and including April 10, 1998, in which to file a complaint.

14. In a letter dated March 6, 1998, Serangeli asked Courter for an agreement as to dates on which to take a Rule 2004 Examination.

15. On March 19, 1998, Courter sent a letter to Serangeli agreeing to voluntarily appear for a 2004 exam at Courter's office and giving some options for days of the week when such an exam would work for his clients. This letter also stated that counsel for the Trustee wanted to take a 2004 exam and Courter suggested that one exam be taken for both the Trustee and Main Street Station. Courter also objected to some of Serangeli's requests for production

because the requests were then irrelevant because Main Street Station had not objected to Debtors' claims of exemptions.

16. In Serangeli's letter to Courter on March 20, 1998, Serangeli conveyed that he was leaving on holiday and not returning to the office until March 30, 1998. Serangeli requested that the 2004 exams be conducted on Friday and Saturday, April 3 and 4.

17. On March 24, 1998, Courter wrote to Serangeli, confirming the 2004 exams on April 3, 1998, commencing at 9:30 a.m. Courter had reserved a conference room and Serangeli was to provide a court reporter. Courter advised Serangeli that he was available to discuss problems with document production on March 30, 1998 before 4:00 p.m., and any time on March 31, April 1, or April 2, 1998.

18. On April 2, 1998, Courter sent a letter Serangeli confirming a conversation with Jan Mohrfeld of the Smith Firm that Serangeli would not be able to conduct the 2004 exam on Friday, April 3, 1998 at 9:30 a.m. This letter also confirmed the fact that Courter's clients were unwilling to voluntarily extend the time in which to take a 2004 exam because they had already agreed to a 30-day extension.

19. On April 2, 1998, Main Street Station filed its Second Motion for Additional Time Within Which to File Complaint to Determine Dischargeability of Debt and/or to Determine Discharge. (DN 22). Said creditor requests additional time, up to and including May 8, 1998. Debtors oppose the motion.

DISCUSSION

The time frame for filing a complaint objecting to discharge of debtors is governed by Fed.R.Bankr.P. 4004. Extensions of time in which to file a complaint objecting to discharge are governed by Fed.R.Bankr.P. 4004 (b), which states:

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.

Fed.R.Bankr.P. 4004 (b).

Main Street's pleadings allude to the possibility of filing a complaint to determine the nondischargeability of debt under 11 U.S.C. § 523 (c). The time frame for filing a complaint objecting to the dischargeability of debts under § 523 (c) is governed by Fed.R.Bankr.P. 4007.

As regards extensions of time for filing such complaints, Rule 4007 reads in pertinent part:

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 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.

Fed.R.Bankr.P. 4007 (c).

On March 13, 1998, the Court extended the time for filing a complaint objecting to discharge and/or objecting to the dischargeability of debt to April 10, 1998, for cause shown in Main Street Station's first motion for an extension of time. The basis for Main Street's second motion for an extension of time can be summarized by stating that Serangeli has time commitments to other matters and clients that conflict with his ability to conduct further discovery in this case within the time previously granted.

Granting an extension of time is within the discretion of the bankruptcy judge. See Matter of Boucher, 728 F.2d 1152, 1156 (8th Cir. 1984). While recognizing the need for efficient and expeditious case management and the Code's policies in favor of providing a fresh start for

debtors, the Court is equally cognizant that counsel operate in the shadow of Rule 9011, necessitating a reasonable inquiry into the supporting facts and law prior to filing a complaint.

The standard for granting an extension of time is "cause" rather than the "excusable neglect" standard applicable in certain other situations. See Fed.R.Bank.P. 9006 (b)(1), (3). Although "cause" under Rules 4004 (b) and 4007 (c) is not defined in the Code, the majority of courts require a showing of unusual circumstances or of the movant's reasonable due diligence in pursuing discovery prior to the expiration of the deadline. See generally In re Davis, 195 B.R. 422, 424 (Bankr. W.D.Mo. 1996); In re Grillo, 212 B.R. 744, 747 (Bankr. E.D.N.Y. 1997); In re Disiderio, 209 B.R. 342, 345-346 (Bankr. E.D.Pa. 1997); Matter of James, 187 B.R. 395, 398 (Bankr. N.D.Ga. 1995).

Six months prior to the Ruzzutis' bankruptcy filing, Main Street filed an action in state court based on certain guarantees by the Debtors. After the bankruptcy was filed, Main Street was represented at the First Meeting of Creditors and was afforded an opportunity to question Debtors. Before the expiration of time in which to file a complaint, Main Street was granted an extension. Also prior to that first bar date, and after moving for the extension, Serangeli sought an agreement with Debtors' counsel as to dates on which to take Rule 2004 examinations.

After the bar date had been extended, counsel scheduled the Rule 2004 exams on dates which accommodated Serangeli's vacation schedule. On April 2, Courter was advised that Serangeli would be unable to conduct the exams as scheduled the next morning.

In examining the chain of events as a whole, the Court finds that Main Street failed to use due diligence toward deciding whether filing a complaint objecting to dischargeability and/or discharge would be justified in this case. Main Street has had ample opportunity to conduct

discovery; Debtors have made themselves available for questioning at both the § 341 Meeting and for the 2004 exams, which were scheduled at Serangeli's convenience.

Main Street does not make a showing that this case presents unusual circumstances or is extraordinarily complex so as to require additional extensions of time.

ORDER

IT IS THEREFORE ORDERED that the Second Motion for Additional Time Within Which to File Complaint to Determine Dischargeability of Debt and/or to Determine Discharge is DENIED.

Dated this _____ day of June, 1998.

RUSSELL J. HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT