

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

IN RE:	:	Case No. 98-5503-CH
TAMI JO RAMEY,	:	
Debtor.	:	
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SNAP-ON CREDIT CORPORATION,	:	Adv. No. 99-99034
Plaintiff,	:	
vs.	:	
TAMI JO RAMEY,	:	
Defendant.	:	
IN RE:	:	Case No. 99-255-CH
LOREN DAVID ALEXANDER	:	
a/k/a Dave Alexander; Alexander Motor	:	
Sports, LLC, Big Boy Motor Sports East,	:	
Inc., Alexander Service Center,	:	
Debtor.	:	
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SNAP-ON CREDIT CORPORATION,	:	Adv. No. 99-99054
Plaintiff,	:	
vs.	:	
LOREN DAVID ALEXANDER, et al,	:	
Defendant.	:	
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ORDER—MOTION TO CONTINUE TRIAL DATE

These proceedings pend upon Plaintiff's Motion to Continue Trial Date. This motion was filed on August 18, 2000, and counsel for the parties were advised orally on August 23, 2000, that this motion would be denied.

This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A) and (I).

The court finds as follows:

(1) Tami Jo Ramey filed a voluntary Chapter 7 Petition on December 23, 1998. The projected date of discharge was March 28, 1999.

(2) Counsel for Snap-On Credit Corporation entered an appearance in the Ramey case on April 29, 1999.

(3) Loren David Alexander filed a voluntary Chapter 7 Petition on January 25, 1999. The projected date of discharge was May 12, 1999.

(4) Counsel for Snap-on Credit Corporation entered an appearance in the Alexander case on April 29, 1999.

(5) Plaintiff, Snap-On Credit Corporation, filed the Complaint in the Case of Snap-On Credit Corporation, Plaintiff, vs. Tami Jo Ramey, Defendant, on March 12, 1999. The answer in that adversary proceeding was filed on April 12, 1999.

(6) Plaintiff, Snap-On Credit Corporation, filed its Complaint in the Alexander adversary on April 16, 1999. The answer in that adversary proceeding was filed on May 14, 1999.

(7) The stipulated scheduling orders in the Ramey adversary provided that discovery would be closed on October 31, 1999. The stipulated scheduling order in the Alexander adversary provided that discovery would be closed on December 1, 1999. Plaintiff has never prayed that these dates be extended.

(8) Plaintiff, Snap-On Credit Corporation, filed its Motion to Consolidate the two adversary proceedings for trial on August 11, 1999. Neither Defendant resisted this motion, and the order consolidating the two adversary proceedings for trial was entered on September 7, 1999.

(9) The stipulated final pretrial order was filed on February 17, 2000. Plaintiff identified the exhibits which it intended to offer at trial. Plaintiff also identified eleven (11) witnesses which it intended to call as witnesses at the time of trial. The estimated length of trial was set at four (4) days.

(10) On February 22, 2000, the consolidated trials were set for trial on July 11, 2000, at 9:00 a.m. Four days were reserved for the trial.

(11) On May 5, 2000, the consolidated trial dates were continued to August 28, 2000, at 9:00 a.m. The court continued to reserve four (4) days for the trial.

(12) Defendants have filed their witness list and have advised the court and Plaintiff that they do not plan on introducing any exhibits at the trial except those exhibits necessary to refute testimony or evidence offered by Plaintiff.

DISCUSSION

Plaintiff has its Motion to Continue the Trial Date on the basis that counsel for Plaintiff has other trials which are scheduled near the trial date; Plaintiff has not received documentary evidence which it believes is critical; and, Plaintiff has had difficulty in locating and communicating with witnesses. Plaintiff also advises the court that this is the first request for a continuance.

“The trial court has broad discretion on the issue of continuances.” Hopper v. Hopper (In re Hopper), 228 B.R. 216, 217 (BAP 8th Cir. 1999). The Bankruptcy Appellate Panel for the Eighth Circuit recognizes the following standard in the Eighth Circuit:

It is within the sound discretion of the trial court to manage its docket, and the court must do so consistent with the court’s “authority to ... offer prompt and efficient administration of justice.” *United States v. Holden*, 963 F.2d 1114, 1115 (8TH Cir. 1992).

“Continuances are not favored and should be granted only when a compelling reason has been shown.” *Weisman*, 858 F.2d at 391 (*citing Morris*, 461 U.S. at 11-12, 103 S.Ct. 1610). The Eighth Circuit has articulated five factors to be examined by trial courts when exercising discretion concerning continuances. Those factors include:

- 1) the nature of the case and whether the parties have been allowed adequate time for trial preparation;
- 2) the diligence of the moving party;
- 3) the conduct of the opposing party and whether a lack of corporation has contributed to the need for continuance;

- 4) the effect of the continuance and whether delay will seriously disadvantage either party; and
 - 5) the asserted reasons for the continuance.
- United States v. Larson*, 760 F.2d 852, 856-57 (8th Cir. 1985) (quoting *United States v. Bernhardt*, 642 F.2d 251, 252 (8th Cir. 1981)). See *United States v. Ware*, 890 F.2d 1008, 1010 (8th Cir. 1989). *Id.* at 218-219.

In considering the Larson factors, the record reflects that the issues have been framed in both of these adversary proceedings since May 14, 1999. Witnesses have been identified in both proceedings since June 1999 and discovery was to be completed in both proceedings by December 1, 1999. The parties have known of the trial date since May 2000.

The issues in both proceedings involve the dischargeability of debt pursuant to 11 U.S.C. §§ 523(a)(2)(A) and (B). The parties have identified the factual issues as being as follows: whether Ramey and Alexander obtained an equipment lease and leased equipment and tools by fraud; and, whether Ramey and Alexander wrongfully converted insurance proceeds for the equipment and tools after they were purportedly stolen.

This appears to be a straight forward fraud case, and Plaintiff has not identified any legal or factual issues which are particularly difficult. The parties have been allowed adequate time for trial preparation.

Plaintiff has never revealed any problems in the discovery process and has never alleged that Defendants have failed to cooperate in this process. Plaintiff has not identified any documents which it believes is critical to its case, the effort Plaintiff has used to obtain these documents, and the reasons why these documents are unavailable to Plaintiff. Plaintiff has not identified any witness with which it has had problems in locating or communicating. Plaintiff has not revealed what steps it has taken in securing the identity of or the testimony of that witness. Plaintiff has identified essential witnesses as early as May 1999. The stipulated final pretrial order

was filed on February 17, 2000 and specifically lists the witnesses Plaintiff intended on calling at trial.

Plaintiff has known of the trial date since May 2000, but waited until ten (10) days before the trial date to file a motion to continue. Plaintiff has not identified any actual trial conflicts and how it has attempted to avoid these conflicts. Defendants are ready for trial and there is nothing to indicate that they have done anything to form the basis for a continuance.

The court has reserved four days for this trial. A continuance at this time prevents the court from allowing other litigants to utilize this time to have their matters heard. The trial docket is crowded and the only way to secure the prompt resolution of disputes is to proceed in an orderly and prompt setting of trials. Debtors have the right to have the issues surrounding the discharge of their debts resolved in a timely matter and are prejudiced by further delay.

Counsel for Plaintiff has had adequate time to prepare for other trials, secure the needed documentation, and procure the attendance of needed witnesses. Plaintiff has failed to show that it has been diligent in the preparation for this trial.

Plaintiff alludes to the proposition that it should be given one continuance as a matter of right. The court knows of no authority for this proposition and knows of no practice permitting such a procedure.

The court concludes that Plaintiff has failed to show good cause for the continuance of the trial date and the motion to continue should be denied.

IT IS ACCORDINGLY ORDERED that Plaintiff's Motion to Continue Trial Date is denied and these proceedings shall proceed to trial on August 28, 2000, at 9:00 a.m. as scheduled.

Dated this _____ day of August, 2000.

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