

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

In re:	:	Case No. 02-2720-CH
MARVIN R. MITCHELL and	:	
MARLENE M. MITCHELL,	:	
	:	Chapter 7
Debtors.	:	
	:	

**ORDER—TRUSTEE’S MOTION FOR EXTENSION OF TIME TO FILE
OBJECTIONS TO EXEMPTIONS AND COMPLAINT OBJECTING TO
DEBTORS’ DISCHARGE AND OBJECTION THERETO**

The court conducted a telephonic hearing on the above matters on September 20, 2002. Jerrold Wanek appeared for the debtors Marvin and Marlene Mitchell. Charles Smith appeared in his capacity as the chapter 7 trustee. The court received Trustee’s Exhibits A – V without objection by Debtors. At the close of the hearing, the court took the matter under advisement. The court considers the matter fully submitted.

The court has jurisdiction of these matters pursuant to 28 U.S.C. § 1334 and order of the District Court of this district. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(A), (B), and (J). The court, upon review of the memorandum, pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed. R. Bankr. P. 9014 and 7052.

FINDINGS OF FACT

1. Marvin R. Mitchell and Marlene M. Mitchell (hereinafter Debtors) filed their voluntary chapter 7 petition in the United States Bankruptcy Court in the Western District of Louisiana on March 5, 2002. Debtors filed the petition pro se.

2. On March 22, 2002, the Louisiana court issued a Notice of Commencement of Case, number 02-30402. The notice indicated that a meeting of creditors was scheduled on April 29, 2002, in Monroe, Louisiana. It identified E. Eugene Hastings as the interim trustee.

3. The notice provided in relevant part: “Unless extended, objection to debtors claim of exempt property must be filed within 30 days after the meeting of creditors.”

4. The notice further provided: “The deadline for complaints on discharge of the debtor or dischargeability of a debt is 60 days following the first date set for the meeting of creditors as set forth in Bankruptcy Rule 4004 and 4007.” Accordingly, the final date for filing complaints objecting to the discharge of the debtor or to the dischargeability of a debt was June 28, 2002.

5. On March 21, 2002, a creditor, Agriliance, LLC (hereinafter Agriliance) filed a motion for an expedited hearing on a motion to transfer the case to the United States Bankruptcy Court for the Southern District of Iowa. The motion to transfer the case bears a file stamp of March 25, 2002. The Louisiana court granted the hearing motion and set the matter down for April 3, 2002.

6. Debtors retained counsel, who requested a continuance of the transfer hearing due to a scheduling conflict. The Louisiana court granted the motion and rescheduled the hearing for May 8, 2002. The rescheduling resulted in the hearing on the motion to transfer case being moved from a date before the first meeting of creditors to a date subsequent to the meeting.

7. On April 25, 2002, Agriliance filed a motion for Rule 2004 examination of the Debtors. The motion indicated that Debtor's counsel consented to an examination to be held immediately following the creditor meeting scheduled for April 29, 2002. The Louisiana court granted the motion.

8. The first meeting of creditors took place on April 29, 2002, in Monroe, Louisiana. Marvin and Marlene Mitchell appeared at the meeting along with counsel. Creditors Joe and Lila Knosby, Maurice Mitchell, and Agriliance by counsel, also appeared. Trustee Hastings filed a report of the meeting on May 6, 2002. The report indicated that possible assets existed and that administrative matters might arise in the case.

9. On May 16, 2002, the Louisiana court entered an order granting Agriliance's motion to transfer the case to the Southern District of Iowa.

10. On May 21, 2002, the Iowa bankruptcy clerk of court served notice of the transfer and the new docket number, 02-2720, on all parties in interest.

11. Upon receiving notice of the transfer of a bankruptcy case, the procedure of this district is for the clerk to assign a new number to the case. The clerk then serves notice of the transfer and new case number on all interested parties. At this point, the case follows essentially the same procedure that a newly opened case follows. A notice of the bankruptcy case, meeting of the creditors, and deadlines is generated. The automated case management system assigns the case to the next available trustee and sets the date for the meeting of creditors. It also establishes various pertinent deadlines. Of these deadlines, only the final date for objections to discharge or for determination of the

dischargeability of certain debts is printed. At the behest of the United States Trustee a meeting of creditors is always set in a transferred case.

12. The notice of the case was filed on May 21, 2002. The notice named Anita Shodeen as chapter 7 trustee. It indicated that the meeting of creditors was scheduled for June 24, 2002, the deadline to object to exemptions was 30 days following the conclusion of the meeting of creditors, and the deadline to file a complaint objecting to discharge of debtor or to determine dischargeability of certain debts was August 23, 2002.

13. On May 30, 2002, Anita Shodeen rejected appointment as trustee in this case.

14. The clerk sent a second notice of the case, meeting of creditors and deadlines on June 3, 2002. The notice named Donald Neiman as trustee and rescheduled the meeting of creditors to July 12, 2002. The deadlines remained unchanged from the previous notice.

15. On June 5, 2002, Donald Neiman rejected appointment as trustee.

16. The clerk sent a third notice on June 6, 2002. The notice named Thomas Flynn as trustee and rescheduled the meeting of creditors to June 18, 2002. The deadlines remained unchanged.

17. Thomas Flynn rejected appointment on June 10, 2002.

18. The current trustee in this case, Charles Smith, was named on the fourth notice sent out on June 10, 2002.

19. Trustee held the meeting of the creditors scheduled on June 18, 2002, at 11:00 a.m. Neither Debtor appeared at the meeting. Trustee continued the meeting, and on July 3, 2002, the clerk filed notice that the meeting was continued to July 22, 2002.

20. Marlene Mitchell did not appear at the July 22, 2002, meeting of creditors. Trustee was presented with a letter purportedly from her doctor. The letter indicates that Marlene is pregnant with a due date near the end of August. It further requests that she be relieved from participating in legal matters and hearings until six months after her delivery in order to minimize her stress and that of the expected child.

21. Marvin Mitchell appeared at the meeting of creditors, but left prior to its conclusion for “medical reasons.” Trustee continued the meeting, and on August 2, 2002, the clerk filed notice that the meeting was continued until August 12, 2002.

22. On July 29, 2002, Trustee filed a Motion for Extension of Time to File Objection to Exemptions and Complaint Objecting to Debtors’ Discharge and Notice asking the court to extend those periods by ninety days until November 21, 2002.

23. On August 13, 2002, Debtors’ filed an objection to Trustee’s Motion for Extension of Time to File Objection to Exemptions and Complaint Objecting to Debtors’ Discharge.

24. Debtors’ meeting of creditors was continued twice more to September 9, 2002, and September 20, 2002.

DISCUSSION

Trustee requests an extension of time to file objection to exemptions and a complaint objecting to Debtors' discharge. He contends that he did not receive the required 25-day minimum notice of the first deadline set by the bankruptcy court in Louisiana pursuant to Federal Rule of Bankruptcy Procedure 4004(a). Further, he states that he reasonably relied on the deadline provided by the clerk in the Amended Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors and Deadlines. Trustee argues that ample cause exists for the court to extend the pertinent periods based on Debtors' bad faith and lack of candor concerning assets and business dealings. Trustee asks the court to exercise its equitable powers pursuant to 11 U.S.C. § 105(a).

Debtors respond that Trustee's motion is untimely because the applicable deadlines expired almost two months prior to its filing. The pertinent deadlines were set in the original notice of the commencement of the case provided by in Louisiana. They argue the deadline appearing on the amended notice is invalid because the court may not sua sponte extend the time period; it may act only on timely motion of a party. Further, there is no allegation in the motion that any party relied on the clerk's amended notice.

Extension of Time to Object to Discharge

Section 727 of title 11 provides that the court will grant a debtor with a discharge. However, the trustee, United States Trustee, or a creditor can object to the granting of the discharge. 11 U.S.C. § 727(c)(1). The Bankruptcy Rules set the time for filing such a motion. Rule 4004 provides in relevant 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 no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 reorganization case, the complaint shall be filed no later than the first date set for the hearing on confirmation. At least 25 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k), and to the trustee and the trustee's attorney.

Fed. R. Bankr. P. 4004(a). On motion of a party in interest, and after notice and an opportunity for hearing, for cause shown, the court may extend the time for filing a complaint objecting to discharge. Fed. R. Bankr. P. 4004(b); see also 11 U.S.C. § 102(1).

Rule 4004(b) does not identify what constitutes sufficient cause. The determination is left to the sound discretion of the court. In re Nevius, 269 B.R. 209, 211 (Bankr. N.D. Ind. 2001). Courts generally require the moving party to show that it is exercising due diligence in investigating its claim, and requires additional time to adequately complete the process. In re Desiderio, 209 B.R. 342, 345 (Bankr. E.D. Pa. 1997); see also, In re Davis, 195 B.R. 422, 424 (Bankr. W.D. Mo. 1996)(requiring “some minimum degree of due diligence” before creditor moves for an extension).

The Rule further requires that the motion to extend time “shall be made before such time expires.” Fed. R. Bankr. P. 4004(b). Rule 9006, which sets forth general parameters for the enlargement of time, provides that the time provided under 4004(a) may be enlarged “only to the extent and under the conditions stated....” Fed. R. Bankr. P. 9006(b)(3).

Generally, deadlines contained in the Bankruptcy Rules are to be strictly construed. In re Grillo, 212 B.R. 744, 746 (Bankr. E.D.N.Y. 1997). The deadlines

prompt parties to act and produce finality in the resolution of cases. See Taylor v. Freeland & Kronz, 503 U.S. 638, 643 (1992) (strictly construing Fed. R. Bankr. P. 4003(b) to prevent trustee from objecting to a debtor's claim of objection outside the time limits provided by the rule).

Trustee acknowledges the general rule; however, he contends that the facts in the present case present unique and exceptional circumstances calling for deviation from the rule. In particular, he argues that he was misled by the deadline printed in the notice served by the clerk of the Iowa bankruptcy court, and he reasonably relied on the deadline. Further, Trustee points out that he was the fourth Iowa trustee appointed in this case, and he was not appointed until June 10. Consequently he did not receive twenty-five days notice of the original deadline. Trustee argues that the court should invoke its equitable powers pursuant to 11 U.S.C. § 105 to consider his motion as timely filed. Trustee relies primarily on Nicholson v. Isaacman (In re Isaacman), 26 F.3d 629 (6th Cir. 1994) in support of his position.

In In re Isaacman, the Sixth Circuit Court of Appeals approved of the use of § 105 in a matter factually similar to the matter before this court. There, the debtor filed a chapter 7 bankruptcy petition in the Northern District of Georgia on March 19, 1992. Id. at 630. A Notice of Commencement of Case Under Chapter 7 of the Bankruptcy Code provided that a meeting of creditors was scheduled for April 28, 1992, and that the deadline to file a dischargeability complaint was June 29, 1992. Id. The meeting of creditors was held, and the creditor appeared. Id. The United States Trustee subsequently filed a motion to transfer venue to the Western District of Tennessee, and

the Georgia court granted the motion. Id. Upon receiving the entire case file, the clerk's office for the Western District of Tennessee issued a notice providing for a meeting of creditors on July 22, 1992, and that the deadline to file a dischargeability complaint was September 21, 1992. Id. at 630-31. The notice was mailed to creditor on June 25, 1992; only four days before the deadline set by the court in Georgia expired. Id. at 631. The attorney for the plaintiff telephoned the clerk's office and inquired if a new deadline for objecting to the dischargeability of certain debts had been set. Relying on the affirmative response from the clerk's office, the plaintiff filed a complaint in the Tennessee court on September 21, 1992. Id. The debtor/defendant filed a motion to dismiss the proceeding, contending the complaint was untimely. Id.

The Tennessee bankruptcy court granted the motion to dismiss. It agreed with the defendant that the deadline noticed by the Georgia court was the appropriate deadline for filing complaints determining the dischargeability of debts. The bankruptcy court recognized that in certain instances, it could exercise its equitable powers and accept an untimely complaint. Id. It declined to do so because it considered the plaintiff's reliance on the September 21, 1992, deadline unreasonable. Id. The district court affirmed the bankruptcy court's decision.

On appeal, the Sixth Circuit addressed the issue of whether a bankruptcy court can exercise its equitable powers and permit a nondischargeability complaint to proceed if a creditor reasonably relies on the court's erroneous statement of a second deadline. Id. at 630. The Circuit Court first analyzed the statutory provisions and the bankruptcy rules, and determined that a court was prevented from sua sponte extending the time to file

dischargeability complaints. Id. at 631-32. Upon review of the record, it found that no motion was filed requesting the deadline set by the Georgia court be extended. Id. at 632. Accordingly, the Tennessee bankruptcy court lacked the authority under the bankruptcy rules to extend the deadline. Id.

The Sixth Circuit then turned to the equitable powers provided by 11 U.S.C. § 105. The section authorizes the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The circuit court determined that the inability of the bankruptcy court to extend the deadline sua sponte did not prevent it from exercising its § 105 powers to accept a late filed complaint. Id. It agreed with the Ninth Circuit that the equitable powers provided by § 105 “would be meaningless if courts were unable to correct their own mistakes.” Id. quoting Anwiler v. Patchett (In re Anwiler), 958 F.2d 925, 929 (9th Cir. 1992) cert. denied, 506 U.S. 882 (1992). The Sixth Circuit followed the Ninth and Tenth Circuits in determining that when a bankruptcy court erroneously sets a second deadline for the filing of complaints to determine the dischargeability of a debt before the first deadline has expired and a creditor, reasonably relying on that second deadline, files a complaint before the expiration of the second deadline, the bankruptcy court abuses its discretion if it fails to exercise its equitable powers and permit the complaint to proceed. Id. at 636; see also In re Anwiler, 958 F.2d 925 (9th Cir.1992) and In re Themy , 6 F.3d 688 (10th Cir. 1993).

This court notes that the Eighth Circuit Court of Appeals has cited In re Isaacman with approval. In Moss v. Block (In re Moss), 289 F.3d 540, 542 (8th Cir. 2002), the

circuit court affirmed and held that a bankruptcy court had the authority under § 105(a) to accept a untimely filed complaint when the court's own error was the cause for the late filing. In that case, without notice, a hearing, or motion by a party in interest, the bankruptcy court entered an order sua sponte extending indefinitely the deadline for objecting to discharge. Block v. Moss (In re Moss), 258 B.R. 391, 396 (W.D. Mo. 2001). It later set aside the order as being in direct contravention of the Bankruptcy Rules and established precedent. Id. Relying in part on In re Isaacman, the bankruptcy court then exercised its § 105 equitable powers, and permitted the late filed adversary proceeding to continue in order to avoid a "grave miscarriage of justice." Id. at 401. The bankruptcy court finally noted that "although the generally strict deadline for filing objections to the debtor's discharge requires due deference, it too must yield when an error of the court, if left uncorrected, would cause a grave miscarriage of justice." Id.

The Bankruptcy Appellate Panel of the Eight Circuit has also approved of In re Isaacman. In Landmark Community Bank, N.A. v. Perkins (In re Perkins), 271 B.R. 607, 611 (B.A.P. 8th Cir. 2002), the BAP considered a matter factually similar to the Sixth Circuit case in that a creditor relied on a court website posting and an oral representation from the clerk's office that a new deadline for objecting to dischargeability had been set. Relying on In re Isaacman, the BAP held that time to file a complaint may be extended based on equitable grounds. Id. at 612. The court reasoned that to hold otherwise would create an unjust result because the parties are entitled to rely on information issued by the bankruptcy courts. Id. at 613.

This court acknowledges its agreement with the cited authority that parties must be able to rely on court documents. To hold otherwise, would be to work a grave injustice and undermine the credibility of the court. It is also notes that generally, the burden is on the debtor to bring to the court's attention any mistakes in the notices or filings in the proceeding. In re Chang Bum Park, 154 B.R. 741, 742 (W.D. Mo.1993) (stating that debtor's counsel pointed out that a new 11 U.S.C. § 341 meeting should have been scheduled or a new deadline established for 11 U.S.C. § 523 or § 727 actions and the original deadline was reestablished); In re Isaacman, 26 F.3d at 635; citing In re Anwiler, 958 F.2d at 929; In re Sibley, 71 B.R. 147, 149 (Bankr. D. Mass. 1987) (burden to correct an erroneous date is on debtor because debtor has a greater motivation to correct notice). Absent any notice to the court of an error, a party may rely on court documents. In re Perkins, 271 B.R. at 615-16 (Schermer, dissenting).

In this case, the Louisiana court served notice of the commencement of the bankruptcy case to all interested parties. The notice indicated that the meeting of creditors would be held on April 29, 2002. The notice also stated that the last date to object to discharge or determine the dischargeability of a debt was 60 days following the first date set for the meeting of creditors as set forth in Bankruptcy Rule 4004 and 4007, or June 28, 2002. Accordingly, the setting of the second deadline included in the Iowa notice of commencement of the case was erroneous. Therefore, Trustee's July 29, 2002, motion to extend time was not timely filed.

At the hearing, Trustee offered exhibits setting forth the procedural history and posture of the case. He also provided exhibits to support the cause requirement of his

motion to extend time. However, the record is currently devoid of any evidence as to the question of whether Trustee relied on the erroneous bar date issued by the Iowa bankruptcy clerk of court, and if he did, whether that reliance was reasonable. Trustee made a professional statement that he relied on the deadline set forth in the notice. However, the court is concerned that Trustee consulted only on the notice document, and not the Rules when he determined the deadline. It is further concerned that the transferred file with its Louisiana documents apparently did not pique his interest sufficiently to make further inquiry. Nor, evidently, did it catch the attention of the United States Trustee.

Upon question by the court, Debtors' counsel indicated that issue of reasonable reliance would be a factual determination and would necessitate an evidentiary hearing. The court notes that the Sixth Circuit considers this issue to be a question of law that an appellate court reviews de novo. See In re Isaacman, 26 F.3d at 633. This court does not agree. In this circuit, determinations of reasonable reliance or the lack thereof are questions of fact. See First Nat. Bank of Olathe, Kan. v. Pontow (In re Pontow), 111 F.3d 604, 609 (8th Cir. 1997) (considering reasonable reliance in the context of 11 U.S.C. § 523(a)(2)(B)). Consequently, the court agrees with Debtors' counsel that an evidentiary hearing is necessary. Trustee may offer testimony and any other evidence on the issue of reasonable reliance. Debtors will have the opportunity to exam the trustee and offer any rebuttal evidence that they may have.

Objections to Exemptions

Trustee also requests extension of time to file objections to exemptions as provided in Federal Bankruptcy Rule 4003. Rule 4003(b) states in part: "...may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a)..." Fed. R. Bankr. P. 4003(b). As shown in the record, Trustee is still holding section 341 meetings. The Rule clearly provides that objections to exemptions can be made thirty days after the conclusion of the meeting of creditors. The court finds that the meeting of creditors has not yet been concluded. Therefore, Trustee's motion for extension of time to file objections to exemptions is timely and may be granted for cause.

Trustee contends that Debtors' schedules are inadequately prepared and fail to provide sufficient income of their assets. Trustee points to 2004 examination testimony taken and an investigative report compiled for Agrilience as indicia of Debtors' lack of candor. Debtors' counsel agrees that the schedules must be amended.

Further, Debtors have thwarted Trustee's attempts at conducting a meaningful investigation by their lack of availability at § 341 meetings. At last count, five creditor meetings have been scheduled excluding the one conducted in Louisiana. Neither Debtor attended the June 18, 2002, meeting. Marvin attended the July 22, 2002, meeting, but left abruptly for medical reasons. Marlene has stated her own medical concerns prevent her from attending a creditor meeting for some time. As a result, Trustee's first opportunity to examine the Debtors at the July 22, 2002 meeting was terminated and continued.

It is clear from the record that Trustee has not received adequate information or opportunity to investigate matters in order for him to fulfill his duties under the Code.

Trustee exercised a sufficient degree of “due diligence” in investigating the matter and has been discouraged in completing the process. Therefore, the court finds that Trustee has established cause for extending the time object to exemptions. The court will grant Trustee’s motion in this respect.

ORDER

IT IS ACCORDINGLY ORDERED as follows:

1. Trustee Charles Smith’s Motion For Extension Of Time To File Objections To Exemptions is GRANTED.
2. The last date to file objections to claim of exemptions, unless otherwise permitted under the Federal Rules of Bankruptcy Procedure, shall be November 21, 2002.
3. The court shall conduct an evidentiary hearing on November 19, 2002, at 10:00 A.M., in Courtroom # 1 U. S. Bankruptcy Court, U.S. Courthouse Annex, 110 East Court Avenue, Des Moines, Iowa, on whether Trustee’s reliance upon the second deadline for objecting to discharge was reasonable.

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