
*In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division*

In the matter of:)	
)	Chapter 7 Case
HUEY LEROY DEPEW)	
JENNIFER REBECCA DEPEW)	
)	Number <u>95-20051</u>
<i>Debtors</i>)	

**ORDER ON MOTION TO ENLARGE TIME WITHIN WHICH
TO FILE OBJECTION TO DISCHARGE**

This matter comes before the Court on Movant/Creditor's, Russell's Paint and Body Shop's, Motion to enlarge the time within which to file an objection to discharge. The material facts are not in dispute.

Debtors filed for Chapter 13 protection on January 7, 1995. On August 9, 1995, Debtors converted their bankruptcy case to Chapter 7. Movant held a priority claim in the Chapter 13 for automobile repairs performed for Debtors in November of 1993. Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4004(a), all objections to discharge were required to be filed by November 13, 1995. Movant mailed his objection on November 14 and it was received and filed the following day.

The parties have stipulated that "excusable neglect" caused the delay.¹ The sole issue is whether the Court has the authority to grant an extension under the Code and the applicable

¹ Movant's counsel had been preoccupied with the illness of his spouse.

rules.

With respect to complaints objecting to discharge, in pertinent part, FRBP 4004(a) and (b) state as follows:

(a) In a Chapter 7 liquidation case a complaint objecting to discharge shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to [11 U.S.C.] § 341(a)...

(b) 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.*

(emphasis supplied). Fed.R.Bankr.P. 4004(a) and (b). The bankruptcy court may enlarge the time for filing complaints under FRBP 4004(a) "only to the extent and under the conditions stated in those rules." Fed.R.Bankr.P. 9006(b). The plain language of these rules establishes that a complaint objecting to discharge or motion for an extension of time must be filed within the prescribed period.

The Eleventh Circuit case law supports this interpretation. See In re Alton, 837 F.2d 457 (11th Cir.1988). When addressing the finality of FRBP 4007(c), the Eleventh Circuit clearly articulated its position by stating that "any motion to extend the time period must be made before the running of that period." Id. at 459.² The Court further emphasized that the rules are mandatory and do not permit the Court "any discretion to grant a late filed motion to extend time to file a dischargeability complaint." Id. at 459. *quoting In re Maher*,

² For purposes of this motion, the language between rules 4004(b) and 4007(c) are virtually identical and may be considered the same.

In the present case, it is undisputed that Movant mailed its motion, which constitutes the date of filing under FRBP 9006(e), after the deadline, albeit by only one day.⁴ Pursuant to FRBP 4004(b), this Court is unable to grant an extension regardless of whether "excusable neglect" exists.

Movant also argues that FRBP 9006(f) permits three additional days for filing complaints because the Court mailed notice of the bar date to each creditor. FRBP 9006(f) provides as follows:

When there is a right or requirement to do some act or undertake some proceeding within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail, three days shall be added to the prescribed period.

Fed.R.Bankr.P. 9006(f). The purpose of FRBP 9006(f) modeled after F.R.Civ.P. 6(e) is to guarantee that parties personally served have no advantage over those served by mail. *See*

³ Courts are split as to whether FRBP 4004 and FRBP 4007 create jurisdictional bars. *See In re Ginn*, 179 B.R. 349 (Bankr.S.D.Ga. 1995) (supporting absolute jurisdictional bar); *In re Santos*, 112 B.R. 1001 (9th Cir.BAP1990) (rules are only equivalent of a statute of limitations). The issue although interesting need not be decided in this proceeding because under either approach this Movant's relief must be denied. *See Id.* (holding that even when rules do not create a jurisdictional bar, there is no discretion to enlarge the time period for "excusable neglect" if the request is made after the time period has expired).

⁴ "We agree that this is a hard case, but we cannot agree that it should be allowed to make bad law." *FCC v. Woko, Inc.*, 329 U.S. 223, 229, 67 S.Ct. 213, 216, 91 L.Ed. 204 (1946) (Jackson, J.).

Matter of Robintech, Inc., 863 F.2d 393, 395 (5th Cir.1989). The rule only applies when the prescribed period is fixed by mail. Although FRBP 4004(a) requires the court to give notice, the bar date is established by the first meeting of creditors and not the mailing of the notice. Therefore, because FRBP 4004(a) requires that the objection to discharge be filed within a prescribed period of time after the § 341(a) meeting of creditors and not after service of notice or other paper, FRBP 9006(f) does not permit three additional days to file objections. *See In re Santos*, 112 B.R. at 1009; *In re Duncan*, 86 B.R. 288, 289 (Bankr.M.D.Fla. 1988); *In re Williams*, 75 B.R. 887, 889 (Bankr.D.Or. 1987). Thus, Movant is not entitled to an extension within which to object to discharge pursuant to FRBP 4004(a).

IT IS THE ORDER OF THIS COURT that Movant's motion to enlarge time within which to file an objection is hereby DENIED.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of January, 1996.