

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Augusta Division

IN RE:)	Chapter 7 Case
)	Number <u>97-10365</u>
ROBERT CHARLES SIMONELLI, SR.)	
d/b/a R.C.S. ASSOCIATES, LTD.)	
)	
Debtor)	FILED
_____)	at 3 O'clock & 25 min. P.M.
)	Date: 6-26-97
INSTOCK PROGRAMS, LTD.)	
)	
Movant)	
)	
vs.)	
)	
ROBERT CHARLES SIMONELLI, SR.)	
d/b/a R.C.S. ASSOCIATES, LTD.)	
)	
Respondent)	

ORDER

By motion filed May 14, 1997 Instock Programs, Ltd.(hereinafter "Instock") sought an extension of time to file a complaint to object to the discharge of the debtor or to determine dischargeability of debt. The motion is denied. The debtor filed for relief under Chapter 7 of Title 11 United States Code on February 10, 1997. Instock Programs, Ltd. was a listed creditor and received notice of the bankruptcy filing which notice established May 19, 1997 as the deadline for filing an objection to the discharge of the debtor or a complaint objecting to the

dischargeability of a particular debt. Pursuant to notice, the §341 meeting of creditors was held March 19, 1997 and was attended by counsel representing Instock.

The grant of an extension of time to file a complaint as requested by Instock is controlled by Federal Rule of Bankruptcy Procedure (FRBP) 4004 as to an objection to discharge¹ and 4007 as to a determination of dischargeability of a particular debt². In this case counsel representing Instock filed the motion pursuant to FRBP 4004 and 4007 before the time expired. However, the granting of an extension is not automatic. The rules require that the movant

¹FRBP 4004 provides in pertinent part:

Grant or Denial of Discharge

(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. (Emphasis added).

²FRBP 4007(c) provides in pertinent part:

(c) Time for Filing Complaint Under §523(c) in a 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). . . 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.

establish a for cause basis for the extension of time. Instock received notice of the debtor's filing and had counsel appear on its behalf at the §341(a) meeting of creditors. No request was made by Instock's counsel to continue the §341 meeting nor did Instock request leave to conduct a FRBP 2004³ examination of the debtor or debtor's records. Instock did nothing until the deadline for filing of a complaint approached and authorized counsel to proceed with an investigation of the debtor. Counsel representing Instock contends

³FRBP 2004 provides in pertinent part:

a) Examination on Motion. On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of Examination. The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) Compelling Attendance and Production of Documentary Evidence. The attendance of an entity for examination and the production of documentary evidence may be compelled in the manner provided in Rule 9016 for the attendance of witnesses at a hearing or trial.

(d) Time and Place of Examination of Debtor. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

. . .

that this delay by the client coupled with his immediate vacation plans establishes a for cause basis for the extension of time. It does not. There is no evidence of any effort by the debtor to delay Instock in this case or to conceal anything.

The time limits established under the Code contemplate a prompt resolution of a debtor's case. Unwarranted extensions of the time limits established under FRBP Rule 4004 and 4007 frustrate this purpose and are not favored without a for cause showing by the movant. See, In re Desiderio, No. 97-10453, 1997 WL 332454, (Bankr. E.D. Pa. June 12, 1997) (To show cause to extend deadline, creditor must show due diligence or some unusual circumstance). No for cause basis for extension of the time limits for filing complaints to determine dischargeability of debt or discharge of the debtor having been presented by movant, the motion for extension of time is ORDERED denied.

JOHN S. DALIS
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 26th day of June, 1997.