

Appeal History:

aff'd, No. [C90-3072](#) (N.D. Iowa, May 29, 1991)(Hansen, J.)

In the United States Bankruptcy Court

for the Northern District of Iowa

CRAIG CARSON
Debtor(s).

Bankruptcy No. X90-01026M
Chapter 7

ORDER RE: MOTION FOR EXTENSION OF TIME TO FILE COMPLAINTS UNDER 11 U.S.C. §§ 523 AND 727

Manufacturers Bank & Trust Co., Forest City, Iowa (BANK) seeks an extension of the deadline to file complaints under 11 U.S.C. §§ 523 and 727. Debtor resists. Hearing on the motion was held telephonically on October 23, 1990. The court now issues its findings of fact and conclusions of law as required by Bankr. R. 7052.

FINDINGS OF FACT

Craig Carson (CARSON) filed his voluntary chapter 7 petition on June 6, 1990. The Clerk of Bankruptcy Court issued the "Order for Meeting of Creditors" which established September 14, 1990 as the filing deadline for § 523(c) and § 727 complaints. The order was served on Bank by mail on June 7, 1990.

Bank, by its attorney, examined debtor on August 27, 1990 pursuant to Bankr. R. 2004. The examination was attended by the Bank's attorney, an associate of the attorney and by a Bank officer. At the close of the examination, Bank's attorney requested that the reporter provide a transcript as quickly as possible. The examination took approximately one hour and 23 minutes including a short recess.

Bank's examination of the debtor was for the purpose of investigating whether debtor had defrauded the Bank or converted Bank's collateral. Bank examined debtor in contemplation of filing a complaint objecting to his discharge and/or seeking a determination of whether his debt to the Bank was dischargeable. on the day of the deadline for filing such complaints, Bank filed a motion for an extension so Bank counsel would have the opportunity to read the transcript of the examination "in order to determine the grounds for objecting to the discharge of the debtor and for filing a complaint to determine the dischargeability of the debt to Manufacturers Bank & Trust Co." Motion, paragraph 4.

Shortly thereafter, just prior to September 18, 1990, a transcript became available; on September 18 it was read and signed by the debtor. A certified transcript was provided to the !I Bank on or about September 26, 1990. Bank counsel has now drafted a complaint under S 523 which he is ready to file.

DISCUSSION

Bank contends it should be granted the extension because the transcript was necessary to specifically frame the issues of the complaint. Counsel for Bank hoped to avoid the "shotgun" pleading which might have resulted from the lack of the transcript while preparing the complaint. Debtor resists the motion for extension on the ground that receipt of the transcript was not necessary for the filing of the complaint. If the motion for extension is denied, a complaint cannot be timely filed.

The order for meeting of creditors established September 14 as the deadline for filing complaints under §§ 727 and 523. This deadline was in conformance with Bankr. R. 4004(a) regarding discharge and Bankr. R. 4007(c) regarding dischargeability. An extension of the time for filing a complaint objecting to discharge may be sought pursuant to Bankr. R. 4004(b). The court may extend the time "for cause." Extensions of the deadline for seeking determinations of dischargeability may be sought under Bankr. R. 4007(c). Movant must show "cause." Motions in either case must be made before the expiration of the original deadline. Bank's motion was timely under each Rule.

Granting such motions for extensions is within the discretion of the bankruptcy court. Carlson v. Boucher (In the Matter of Boucher), 728 F.2d 1152, 1156 (8th Cir. 1984) reh'g. en banc denied (1984). It has been said that requests for extension should be considered with liberality so that the issues may be decided on their merits. Household Finance Corp. v. Abrams (In re Abrams), 35 B.R. 485, 486 (Bankr. N.D. Ohio 1983). However, a creditor's rights to a determination under § 727 or § 523 must be balanced with the debtor's need to know the extent of his fresh start at the earliest reasonable date. Each case for extension must be decided on its own merits.

Having considered the circumstances in this case, the court determines that Bank has failed to show cause for obtaining the extensions. Two Bank attorneys and a bank officer attended the examination of the debtor on August 27, 1990. The examination lasted barely more than an hour and 20 minutes. There is no evidence that the examination was insufficient to satisfy requirements for a reasonable inquiry under Bankr. R. 9011(a). There is no evidence that further investigation was necessary after the examination or that debtor's actions delayed the investigation or the filing of the complaint. Bank merely wanted the transcript to frame the issues in a more specific fashion. Bank has failed to show, however, that a reading of the transcript by Bank counsel or personnel was reasonably necessary to the filing of the intended complaint. Absent a showing of such necessity, the failure of the court reporter to provide the transcript more quickly is not material.

The court's determination not to grant the extension may seem harsh. However, Bank could have filed a protective complaint. Carlson v. Boucher (In the Matter of Boucher), 728 F.2d 1152, 1156 n.7 (8th Cir. 1984) reh'g. en banc denied (1984).

CONCLUSIONS OF LAW

Bank has failed to show cause warranting the granting of extensions under Bankr. Rules 4004(b) and 4007(c).

ORDER

The motion of Manufacturers Bank & Trust Co. is denied.

SO ORDERED ON THIS 1st DAY OF NOVEMBER, 1990.

William L. Edmonds
Chief Bankruptcy Judge

In the United States District Court
for the Northern District of Iowa
Central Division

CRAIG CARSON
Debtor.

NO. C 90-3072
Chapter 7

ORDER

This matter is before the court an appellant Manufacturers Bank and Trust Company's resisted appeal from an order and judgment of the bankruptcy court, [\(1\)](#) entered November 1, 1990, which denied appellant's motion for extension of time to file complaints under 11 U.S.C. §§ 523 and 727.

Ruling on a motion for extension of time to file a complaint is within the discretion of the bankruptcy court. See Matter of Boucher, 728 F.2d 1152, 1156 (8th Cir. 1984). This court's review is an abuse of discretion standard. *id.*

Debtor filed a Chapter 7 bankruptcy petition on June 6, 1990. The bankruptcy court established September 14, 1990, as the deadline for filing dischargeability complaints under SS 523 and 727. An examination of the debtor pursuant to Bankruptcy Rule 2004 was conducted on August 27, 1990. On

September 14, 1990, appellant moved for an extension of time to file its dischargeability complaints on the grounds that it needed a copy of the transcript of the debtor's examination in order to determine the specific grounds for its objections. The bankruptcy court ruled that appellant, had not shown cause for an extension within the meaning of Bankruptcy Rule 4007(c), because counsel for appellant and a bank representative were present at the debtor's examination, the examination lasted approximately one hour and twenty minutes, and there was no suggestion that further investigation was necessary or that debtor took any action to delay the investigation or the filing of the dischargeability complaint. The bankruptcy court concluded that appellant had not shown that receipt of the transcript was reasonably necessary to prepare appellant's dischargeability complaint. The court further noted that appellant could have filed a protective complaint. See Boucher, 728 F.2d at 1156 n.7.

After having reviewed this matter, the court finds that the bankruptcy court did not abuse its discretion.

ORDER

Accordingly, It Is Ordered:

The order and judgment of the bankruptcy court, entered November 1, 1990, are affirmed.

Done and Ordered this 29th day of May, 1991.

David R. Hansen, Judge
United States District Court

1. The Honorable William L. Edmonds, United States Bankruptcy Judge.

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