

In the United States Bankruptcy Court

for the Northern District of Iowa

TROY JAMES MEINDERS
Debtor(s).

Bankruptcy No. 99-01226-C
Chapter 7

RICHARD NISSEN
Plaintiff(s)

Adversary No. 99-9140-C

vs.

TROY JAMES MEINDERS
Defendant(s)

ORDER RE MOTION TO DISMISS

This matter came before the undersigned on October 8, 1999 on Debtor's Motion to Dismiss. Plaintiff Richard Nissen appeared by attorney Richard Zimmerman. Debtor/Defendant Troy Meinders appeared by attorney Steven Klesner. After oral argument, the Court took the matter under advisement. The time for filing briefs has now passed and this matter is ready for resolution. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(I).

STATEMENT OF THE CASE

Plaintiff filed an adversary complaint asserting Debtor induced him to cosign a loan by making fraudulent misrepresentations. Debtor moves to dismiss asserting that Plaintiff's Complaint was not timely filed.

FINDINGS OF FACT

Debtor filed his Chapter 7 Petition on May 13, 1999. His original schedules include Plaintiff's claim and correct mailing address. The first meeting of creditors in Debtor's case was scheduled for and held on June 14, 1999. Creditors, including Plaintiff, received more than 30 days notice that the deadline for filing dischargeability complaints was August 13, 1999. On August 19, 1999, Debtor received his Chapter 7 discharge.

Plaintiff filed his adversary complaint on August 20, 1999. The complaint does not set out a Bankruptcy Code section under which Plaintiff seeks recovery. Plaintiff asserts Debtor obtained his co-signature on a loan through fraud and artifice and requests that the loan be excepted from discharge. The Court construes the complaint as requesting relief under §523(a)(2)(A).

Debtor seeks dismissal based on the untimely filing of the complaint. Plaintiff responds that recent hospitalizations slowed his attempts to obtain the underlying contract and other necessary

information. He requests an extension of deadlines to allow the filing of his complaint. Plaintiff was hospitalized for surgery from March 18 to 25, and returned to work full-time on May 15. He was again hospitalized for surgery from July 25 to August 2, 1999 and returned to half-time work September 7, 1999.

CONCLUSIONS OF LAW

Debt of the kind specified in § 523(a)(2), (4), (6) or (15) is discharged unless a creditor brings an adversary action to determine such debt is excepted from discharge. 11 U.S.C. §523(c)(1). The adversary complaint must be filed not later than 60 days following the first date set for the § 341 meeting of creditors. Fed. R. Bankr. P. 4007(c). Rule 4007(c) requires any motion for enlargement of time to be filed before the deadline has expired. Rule 4007(c) is analogous to a statute of limitations and strictly construed. In re Marino, 37 F.3d 1354, 1358 (9th Cir. 1994); In re Bozeman, 226 B.R. 627, 630 (B.A.P. 8th Cir. 1998). The principle is well established that the bankruptcy court has no discretion under Rule 4007(c) to enlarge the time for filing a dischargeability complaint if the request is made after the deadline for filing the complaint. In re Hunt, 209 B.R. 127, 128 (Bankr. W.D. Ark. 1997); In re Maher, 51 B.R. 848, 852 (Bankr. N.D. Iowa 1985).

Plaintiff argues excusable neglect based upon illness. Even if relevant, the timing of Plaintiff's hospitalizations and recuperation undermines his argument that he was unable to obtain information necessary for a timely-filed complaint. Plaintiff apparently was able to work full-time between May 15 and July 25, 1999, which constitutes the majority of the period between the Clerk's May 13, 1999 notice of deadlines and the August 13, 1999 deadline. Plaintiff has not shown he was under such disability that he could not meet the Rule 4007(c) deadline. Even if the Court were to conclude that excusable neglect exists, which it does not, Rule 9006(b)(3) explicitly excepts Rule 4007(c) from the "excusable neglect" standard under Rule 9006(b)(1), permitting enlargement of time "only to the extent and under the conditions" stated in Rule 4007. In re Gordon, 988 F.2d 1000, 1001 n.1 (9th Cir. 1993). "[I]f equitable powers to extend the time for filing under [Rule] 4007(c) exist at all, they are limited to 'situations where a court explicitly misleads a party.'" Marino, 37 F.3d at 1358.

There is no question that Plaintiff had actual notice of the filing deadline. The notice from the Clerk's office was not erroneous or misleading. The Court has no discretion to accept a late-filed complaint based on Plaintiff's excuse that health problems prohibited timely filing.

WHEREFORE, Debtor's Motion to Dismiss is GRANTED.

FURTHER, because Plaintiff's Complaint was not filed on or before August 13, 1999, the deadline for filing a complaint to determine dischargeability a debt under §523(a)(2), this action is DISMISSED.

SO ORDERED, this 21st day of October, 1999.

Paul J. Kilburg
Chief Bankruptcy Judge