

IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
IOWA

IN RE:)
) Chapter 7
 ROBERT J. DEROUIN,)
)
 Debtor.) Bankruptcy No. 01-03189
 ----- DAVID ORR, dba)
 TRI-STATE BASEBALL CARDS)
) Adversary No. 02-9006
 Plaintiff,)
)
 vs.)
)
 ROBERT J. DEROUIN,)
)
 Defendant.)

ORDER RE MOTION TO DISMISS

On March 8, 2002, the above-captioned matter came on for telephonic hearing on a Motion to Dismiss filed by Defendant. Plaintiff David Orr appeared personally, pro se. Defendant/Debtor appeared by Attorney James A. O'Brien. The parties argued their respective positions after which the Court took the matter under advisement. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J).

STATEMENT OF THE CASE

Robert Derouin filed a voluntary Chapter 7 petition on September 17, 2001. On the same date, the First Meeting of Creditors was scheduled for November 5, 2001. Pursuant to the Bankruptcy Code and Rules, this order provided that the last date to oppose a discharge was January 4, 2002. In a letter dated January 3, 2002, but filed with the Court January 7, 2002, David Orr objected to the discharge of Robert J. Derouin. This letter was treated as an adversary filing and a formal amended complaint was requested. An amended complaint was filed January 17, 2002. Defendant/Debtor filed this Motion to Dismiss on February 1, 2002 asserting that the deadline for filing a complaint objecting to discharge was January 4, 2002 and the deadline had passed prior to the time of any relevant filing by Mr. Orr.

ANALYSIS

In his original letter, Mr. Orr states that he does "object to the discharge of Robert J. Derouin." As reasons, he asserts that Mr. Derouin lied about assets, disposed of assets, and was dishonest in various respects as it relates to his finances. In the amended complaint, Mr. Orr again uses the same general terms asserting that Mr. Derouin lied about his assets, disposed of certain assets improperly as well as other conduct. Neither in the original letter nor in the amended filings does Mr. Orr specifically set forth whether his objection is brought under 11 U.S.C. § 727(a) or one of the grounds denying discharge of an individual debt under 11 U.S.C. § 523. However, for the purposes of this analysis, the result remains the same.

The language of the complaint most closely resembles that of an action seeking a complete denial of Debtor's discharge. The Code provides that "a debtor shall be granted a discharge unless a debtor commits specific acts as set forth in this Code section." 11 U.S.C. § 727. Included in the types of conduct which may be grounds to deny a debtor a discharge are acts similar to those alleged by Mr. Orr in his complaint. This section, in part, provides for a

denial of discharge if a debtor hinders, delays or defrauds his creditors; improperly disposes of assets of the estate; gives false oaths or accounts; or gives money or assets for a specific act or a forbearance of certain action. These are all grounds for denial of discharge and are similar to the allegations made by Mr. Orr.

If this complaint is treated as an objection to discharge under 11 U.S.C. § 727(a), the time for filing complaints objecting to discharge is controlled by Rule 4004(a) of the Federal Rules of Bankruptcy Procedure. This Rule provides in applicable 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 section 341(a).

Fed. R. Bankr. P. 4004(a).

The time for filing a complaint to object to discharge may be extended, but only if it is done in strict compliance with Rule 4004(b) of the Federal Rules of Bankruptcy Procedure. This Rule provides in relevant part:

(b) Extension of Time. On motion of any party in interest, after hearing on notice, the court may for cause extend the time to file a complaint objecting to discharge. The motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4004(b).

To summarize the foregoing, the Code and Rules provide that an objection to discharge may be lodged for reasons specified in the Code. However, this must be done no later than 60 days after the first date set for the meeting of creditors. In this case, the first meeting of creditors was scheduled for November 5, 2001 and the last date to oppose discharge was January 4, 2002. Mr. Orr did not timely seek an extension of time within which to file a complaint pursuant to Rule 4004(b). Therefore, his complaint is controlled by Rule 4004(a) which requires that the complaint be filed no later than January 4, 2002. At the time of hearing, Mr. Orr indicated that his letter was dated January 3, 2002, thereby making it timely. However, the Code, Rules and case law are all consistent and explicit that it is the filing date which governs timeliness. The first document which could be construed as a complaint was filed by Mr. Orr on January 7, 2002 and is, therefore, untimely for any objection to discharge sought under 11 U.S.C. § 727(a).

As the language of the complaint is somewhat ambiguous, it is possible to read the complaint as an objection to discharge of only the obligations owed to Mr. Orr. This type of exception to discharge is controlled by 11 U.S.C. § 523. The acts alleged by Mr. Orr all relate to various types of fraud, false representations, or dishonesty. These are generally defined by under 11 U.S.C. § 523(a)(2), (4), or (6). The time frame for filing a complaint to obtain a determination of the dischargeability of any particular debt is controlled by Rule 4007(c) and (d). To avoid unduly lengthening this opinion, the Court notes the Rules relating to this type of adversary complaint are identical to those under 11 U.S.C. § 727(a). An objector must file a complaint within 60 days after the first date set for the meeting of creditors. Any extension of time must be by motion filed before the expiration of the 60 day period. The Court may not consider any grounds by way of excusable neglect and the Court has absolutely no discretion to enlarge the time for filing complaints.

Applying these principles to the facts in this case, it is again apparent that the last date to oppose a discharge under § 523(a)(2), (4), or (6) was January 4, 2002.

In summary, Debtor/Defendant filed his petition on September 17, 2001. The

first meeting of creditors was scheduled for November 5, 2001. The last date to oppose a discharge under § 727 or the applicable portions of § 523 was January 4, 2002. Plaintiff did not timely seek an extension and, therefore, is bound by the January 4, 2002 filing deadline. Plaintiff's complaint was not filed until January 7, 2002. Plaintiff's complaint was untimely filed. The Court has no discretion to enlarge or extend the time for filing complaints. As such, Defendant's Motion to Dismiss must be granted.

WHEREFORE, for all the reasons set forth herein, the Motion to Dismiss filed by Debtor/Defendant is GRANTED and this case is DISMISSED.

SO ORDERED this 28 day of March, 2002.

PAUL J. KILBURG
CHIEF BANKRUPTCY JUDGE