

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE

In re

JAMES LEWIS BURNS, JR.  
a/k/a JIM BURNS, JR.,

Debtor.

No. 99-22674  
Chapter 7

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SHERWOOD CHEVROLET-NISSAN INC.,

Plaintiff,

vs.

JAMES LEWIS BURNS, JR.  
a/k/a JIM BURNS, JR.,

Defendant.

Adv. Pro. No. 00-2002

M E M O R A N D U M

APPEARANCES :

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MARCIA PHILLIPS PARSONS  
UNITED STATES BANKRUPTCY JUDGE

Before the court is the debtor's motion to dismiss the complaint filed by Sherwood Chevrolet-Nissan Inc. ("Sherwood") seeking under 11 U.S.C. § 523(a)(2)(A) a determination of nondischargeability of a state court judgment. Because the complaint was not filed within the time provided by Fed. R. Bankr. P. 4007(c), the motion must be granted. This is a core proceeding. See 28 U.S.C. § 157(b)(2)(I).

The petition commencing the underlying chapter 7 bankruptcy case was filed by the debtor on October 25, 1999. The "Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines" issued by the clerk on October 26, 1999, was sent to Sherwood in care of its attorney on October 28, 1999. That notice, *inter alia*, scheduled the 11 U.S.C. § 341(a) meeting for November 24, 1999, and pursuant to Fed. R. Bankr. P. 4007(c) set a deadline of January 24, 2000, for filing complaints objecting to dischargeability of certain debts.

The complaint initiating this adversary proceeding was filed by Sherwood on January 27, 2000. In response to the complaint, the debtor filed the pending motion to dismiss asserting that the "Complaint was not timely filed under 11 U.S.C. §523(c)(1) and Bankruptcy Rule 4007(b)[sic]." Sherwood argues in response to the motion that because the complaint was mailed to the clerk on January 21, 2000, the time for filing the complaint should

"be extended due to the failure of the US Mail to timely deliver the complaint." Accordingly, the issues presented include whether mailing of the complaint before the bar date was sufficient to constitute a timely filing or if "excusable neglect" is applicable to extend the time.

11 U.S.C. § 523(c)(1) provides that debts of a kind specified in paragraphs (2),(4),(6), and (15) of § 523(a) are discharged "unless on request of the creditor to whom such a debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2),(4),(6), or (15)...." Fed. R. Bankr. P. 4007(c) then requires that:

A complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided by Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

As aptly noted by the bankruptcy court in *Eubank v. Strickland (In re Strickland)*, 50 B.R. 16 (Bankr. M.D. Ala. 1985), "[t]he plain language of Rule ... 4007(c) states that complaints to determine dischargeability of a debt must be filed. Sending or mailing by the United States Postal Service is not the equivalent of filing. Such an act is merely one mode

of transporting the necessary papers to the Clerk's Office where the papers are to be filed by the Clerk." *Id.* at 17. See also *Norwest Financial, Texas, Inc. v. Curtis (In re Curtis)*, 148 B.R. 465, 467 (Bankr. N.D. Tex. 1992) ("The complaint must be filed with the clerk by the bar date; mailing it to the clerk is not tantamount to filing."). Apparently recognizing that mailing the complaint may have been insufficient to toll the bar date, Sherwood asks that the deadline be extended due to what it claims was a failure by the U.S. Postal Service "to timely deliver said complaint." Rule 4007(c), however, also requires that any motion to extend the time "be filed before the time has expired." "The Court may only extend the 60-day time period upon motion of a party in interest made before the time has expired." *Agway Ins. Co. v. Grant (In re Grant)*, 45 B.R. 265, 266 (Bankr. D. Me. 1984). "Once the period for filing of a complaint to determine dischargeability has expired without the filing of a motion to extend, the Court is powerless to extend the deadline based upon a tardy motion." *In re Jeffrey*, 169 B.R. 25, 27 (Bankr. D. Md. 1994).

Even assuming that Sherwood could make an argument for excusable neglect in choosing to mail the complaint and then failing to call the clerk by the bar date to verify timely receipt of the same, Fed. R. Bankr. P. 9006(b)(3) expressly

limits the ability of a court to enlarge the time for taking action under Rule 4007(c). See Fed. R. Bankr. P. 9006(b)(3) ("The court may enlarge the time for taking action under Rule[] ... 4007(c) ... only to the extent and under the conditions stated in those rules."). "Taken together, these bankruptcy rules 'prohibit a court from *sua sponte* extending the time in which to file dischargeability complaints.'" *Nicholson v. Isaacman*, 26 F.3d 629, 631-32 (6th Cir. 1994). In short, Rule 9006 prohibits a court from extending such a deadline for "excusable neglect" when the request is made outside the required filing period stated in Rule 4007(c). *In re Jeffrey*, 169 B.R. at 27. Accordingly, the court has no discretion to extend the bar date in this case so that the complaint may be deemed timely filed.

Based on the foregoing, an order will be entered contemporaneously with the filing of this memorandum opinion granting the debtor's motion to dismiss.

ENTER: February 29, 2000

BY THE COURT

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MARCIA PHILLIPS PARSONS  
UNITED STATES BANKRUPTCY JUDGE