

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

In re

Case No. 01-32079

JEFFREY NEIL CALDWELL
f/d/b/a LENOIR CITY MOTORWERKS

Debtor

J. THOMAS BADGETT

Plaintiff

v.

Adv. Proc. No. 01-3167

JEFFREY NEIL CALDWELL
f/d/b/a LENOIR CITY MOTORWERKS

Defendant

**MEMORANDUM ON
DEFENDANT'S MOTION TO DISMISS**

APPEARANCES: JAMES H. PRICE, ESQ.
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Attorney for Plaintiff

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Attorneys for Defendant

**RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE**

Presently before the court is the Defendant's Motion to Dismiss filed on November 19, 2001, seeking dismissal of the Plaintiff's Complaint Objecting to Discharge (Complaint). By his motion, the Defendant argues that the Complaint was not timely filed and, in the alternative, that each prong of the Complaint fails to state a claim upon which relief can be granted. The Plaintiff has not filed a response.¹

This is a core proceeding. 28 U.S.C.A. § 157(b)(2)(J) (West 1993).

I

The Defendant/Debtor filed his Chapter 7 Petition on April 26, 2001, scheduling the Plaintiff as an unsecured judgment creditor. The May 1, 2001 Notice of Meeting of Creditors set August 6, 2001, as the bar date for complaints objecting to the Debtor's discharge.²

On August 6, 2001, pursuant to FED. R. BANKR. P. 4004(b),³ the Plaintiff filed a Motion for Extension of Time to Object to Discharge. An Order Extending Time, entered on September 6, 2001, reset the deadline to October 5, 2001.

¹ The Plaintiff's response was due on December 10, 2001. See E.D. Tenn. LBR 7007-1. "A failure to respond shall be construed by the court to mean that the respondent does not oppose the relief requested by the motion." *Id.*

² The August 6, 2001 bar date was calculated pursuant to FED. R. BANKR. P. 4004(a). That rule provides that the bar date for objections to discharge is sixty days after the first date set for the § 341 meeting of creditors. The Debtor's § 341 meeting was originally scheduled for June 5, 2001.

³ "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) (emphasis added).

Seeking further postponement, the Plaintiff tendered on October 2, 2001, an Agreed Order Setting New Examination Date and Extending Time to Object to Discharge (Agreed Order). The Agreed Order was returned to the Plaintiff unsigned by the court on October 9, 2001. The order was rejected because it was not accompanied by a motion as required by FED. R. BANKR. P. 4004(b).⁴ The Plaintiff then filed his Complaint on October 12, 2001, asking the court to deny the Debtor's discharge pursuant to 11 U.S.C.A. §§ 727(a)(2)(A), (a)(2)(B), and (a)(4)(A).

II

Rule 4004(c) of the Federal Rules of Bankruptcy Procedure provides in relevant part:

(1) In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge . . . the court shall forthwith grant the discharge unless:

. . . .

(B) a complaint objecting to the discharge has been filed,

. . . .

(E) a motion to extend the time for filing a complaint objecting to discharge is pending[.]

FED. R. BANKR. P. 4004(c)(1). The Rule 4004 bar date is strictly enforced unless an extension of time is sought by motion prior to the expiration of the deadline. *See Peoples Sav. & Loan Co. v. Legge (In re Legge)*, 138 B.R. 188, 189 (Bankr. S.D. Ohio 1991).

In the present case, the Plaintiff did not file his Complaint prior to the October 5, 2001 deadline nor did he file a motion for extension prior to that date. The Agreed Order, while

⁴ *See supra* n.3.

certainly an attempt to extend the bar date, did not satisfy the procedural requirements of Rule 4004(b). The Plaintiff's Complaint therefore was not timely filed and must be dismissed. See FED. R. BANKR. P. 4004(b); *McIntosh v. Webb (In re Webb)*, 157 B.R. 614, 617 (Bankr. N.D. Ohio 1993); *Legge*, 138 B.R. at 189-90.

Having found for the Defendant on the issue of untimeliness, the court need not address the Defendant's additional arguments for dismissal. An Order consistent with this Memorandum will be entered.

FILED: December 14, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in the Memorandum on Defendant's Motion to Dismiss filed this date, the court directs the following:

1. The Defendant's Motion to Dismiss filed November 19, 2001, is GRANTED.
2. The Complaint Objecting to Discharge filed by the Plaintiff on October 12, 2001, as amended by an Amended Complaint Objecting to Discharge filed October 19, 2001, is DISMISSED.

SO ORDERED.

ENTER: December 14, 2001

BY THE COURT

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE