

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

IN RE: Darrell Fred ROSEN, Debtor

**No. 5:14-bk-73047
Ch. 7**

**ORDER GRANTING IN PART AND DENYING IN PART
TRUSTEE'S MOTION FOR EXTENSION OF TIME**

Before the Court is the *Motion For Extension of Time Within Which to Object to Debtor's Discharge, Dischargeability, and/or Claim of Exemptions* filed by the chapter 7 trustee on November 26, 2014. The Court set the motion for hearing after notice on January 8, 2015, at which time the debtor objected to the motion in part. In her motion, the trustee requested that the Court extend the time for the trustee, all creditors, and parties in interest to object to the debtor's discharge as well as to object to the dischargeability of certain debts. The trustee also requested an extension of time to object to exemptions. The debtor did not object to the trustee's request for an extension of time for the trustee to object to the discharge of the debtor, but did object to her request to extend that time for all creditors. The debtor also objected to the trustee's motion on behalf of the trustee, all creditors, and parties in interest to extend the time for creditors to file a complaint to determine the dischargeability of a specific creditor's debts. Neither the debtor nor the trustee addressed the trustee's motion for an extension of time to object to the debtor's claim of exemptions. The debtor argues, generally, that the trustee does not have the authority to include all creditors and parties in interest in her motion for an extension of time. For the reasons stated below, the Court grants the trustee's motion in part and denies it in part.

The Court has jurisdiction over this matter under 28 U.S.C. § 1334 and 28 U.S.C. § 157, and it is a core proceeding under 28 U.S.C. § 157(b)(2)(A). This order constitutes findings of fact and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052, made applicable to this proceeding under Federal Rule of Bankruptcy Procedure 9014.

BACKGROUND

The debtor filed a skeletal chapter 7 voluntary petition on October 14, 2014. On that same date, the Clerk of the Court issued a **Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines**, which stated that the debtor's § 341 meeting of creditors was scheduled to be held on November 25, 2014, and that the deadline to object to the debtor's discharge or to challenge the dischargeability of certain debts was January 26, 2015. On October 28, 2014, the debtor filed his delinquent schedules and Statement of Financial Affairs.

On November 25, 2014, when the debtor's chapter 7 trustee called the debtor's case at the first scheduled § 341 meeting of creditors, neither the debtor nor debtor's counsel appeared; however, according to the trustee, approximately 15 creditors or parties in interest did appear. Based on the non-appearance of the debtor, the trustee continued the meeting of creditors to December 16, 2014. After the trustee continued the meeting, the debtor's creditors shared information concerning the debtor with the trustee.

The second scheduled meeting of creditors was held on December 16, 2014. The debtor, debtor's counsel, and the approximately 15 creditors or parties in interest all appeared. According to the trustee, when the debtor was questioned by some of the creditors, the debtor revealed information that was not included in the debtor's petition such as (1) a transfer of \$13,000 to his current wife, who then purchased a piece of real property; (2) the sale of approximately 70 dogs, each valued between \$750 and \$1000, within one year of filing the debtor's petition; and (3) undisclosed businesses and corporations owned by the debtor. At that time, the trustee requested additional documentation from the debtor. The debtor's counsel told the trustee that the debtor would amend his schedules. The trustee then continued the meeting of creditors to January 26, 2015, which was also the deadline to object to the debtor's discharge or to challenge the dischargeability of certain debts. As of January 8, 2015, when the Court heard the trustee's motion, the debtor had not provided the trustee with the requested documentation. As of January 26, 2015, the debtor has not amended his schedules.

The trustee testified that she brought her motion to extend the time to object to both the debtor's discharge and the dischargeability of certain debts on behalf of herself and all creditors and parties in interest so that everyone would have the opportunity to hear the debtor's answers to questions at the meeting of creditors after the debtor had amended his schedules. The debtor does not object to the trustee's request for an extension of time *for the trustee* to object to the discharge of the debtor. However, the debtor does object to the trustee's request for an extension of time extending to all creditors and parties in interest. The debtor argues that the trustee does not have the authority to include all creditors and parties in interest in her motion for an extension of time. Likewise, the debtor objects to the trustee's request for an extension of time to object to the dischargeability of certain debts on behalf of herself, all creditors, and parties in interest. The debtor argues that because the trustee does not have standing to bring a complaint under § 523—the section that determines the dischargeability of specific debts—she also does not have standing to request an extension of time on behalf of all creditors and parties in interest under that section. Under § 323, the trustee is the representative of the estate and does not represent the interest of individual creditors.¹

Simply stated, the essential issue before the Court is whether the trustee has standing to include creditors and parties in interest in her motion for an extension of time to object to the debtor's discharge under § 727 or the dischargeability of certain debts under § 523. The Court will address each section in turn.

DISCHARGE

Under § 727, the trustee gains the statutory authority to object to the granting of a debtor's discharge. 11 U.S.C. § 727(c). A complaint objecting to the debtor receiving a discharge must be filed no later than 60 days after the date first set for the meeting of

¹ An illustration of the trustee representing the entire estate but not specific creditors is provided for in § 547, which permits the trustee to file adversary proceedings against specific creditors for preferential transfers.

creditors. Fed. R. Bankr. P. 4004(a). In the present case, the first scheduled meeting of creditors was November 25, 2014; 60 days after that date is January 26, 2015. The bankruptcy rules also provide that “[o]n motion of any party in interest, after notice and a hearing, the court may for cause extend the time to object to discharge.” Fed. R. Bankr. P. 4004(b)(1). Clearly, the trustee is empowered to move for an extension of time to object to the debtor’s discharge on her own behalf and the debtor does not object to her so moving. Even without the debtor’s acquiescence, the Court finds that the trustee has established cause for the extension of time based on the debtor’s non-appearance at his first scheduled meeting of creditors and his failure to provide requested documentation at his second scheduled meeting of creditors, resulting in two continuances of the meeting of creditors, so far. Additionally, counsel for the debtor stated at the second meeting of creditors that the debtor intended to amend his schedules based on the allegations of missing information but, to date, no amendments have been filed. The more difficult question, and the one the debtor argues in the negative, is whether the trustee can also request an extension of time for all creditors and parties in interest.

Most courts recognize that a motion to extend the time to object to the debtor’s discharge ordinarily applies only to the moving party. *See, e.g., Marshall v. Demos (In re Demos)*, 57 F.3d 1037, 1039 (11th Cir. 1995); *DRMC, Inc. v. McCord (In re McCord)*, 184 B.R. 522, 524 (Bankr. E.D. Mich. 1995). This recognition appears to come from the Advisory Committee Note to the former Bankruptcy Rule 404 (now Fed. R. Bankr. P. 4004), which states that “[a]n extension granted on a motion pursuant to subdivision (b) of the rule would ordinarily benefit only the movant, but its scope and effect would depend on the terms of the extension.” 9 Collier on Bankruptcy App. 4004[1], at 4004-32 (16th ed. rev. 2013) (1983 Advisory Committee Note to Rule 4004). However, exceptions to the general rule appear. In the *McCord* case, the chapter 7 trustee applied for an extension of time under Rule 4004 so that the trustee could conduct a Rule 2004 examination of the debtor. The order allowing the extension did not specifically limit the extension to the trustee, nor did it specifically include other creditors. In ruling, the court recognized an exception to the general rule when the trustee’s motion also specifically included an

additional party to the motion. *McCord*, 184 B.R. at 524 (citing *In re Floyd*, 37 B.R. 890, 893 (Bankr. N.D. Tex 1984) (“piggyback” not allowed where application did not include names of other creditors) and *In re Overmyer*, 24 B.R. 437 (Bankr. S.D.N.Y. 1982) (additional party’s time to object extended when party was specifically mentioned in the application and order)); *see also In re Owen-Moore*, 435 B.R. 685, 687 (Bankr. S.D. Cal. 2010) (concluding at an initial hearing that chapter 7 trustee had standing to bring extension motion on behalf of all creditors). Various court’s recognition of exceptions to the general rule give substance to the Advisory Committee Note that states that the scope and effect of an extension would depend on the terms of the extension.

In this case, the trustee requested specifically an extension of time to object to the debtor’s discharge on behalf of herself, all creditors, and parties in interest. At the January 8 hearing, the trustee established sufficient cause for the requested extension based on the debtor’s previous non-appearance at his first scheduled meeting of creditors, which was attended by a number of creditors; his apparent non-disclosure of property in his petition and schedules, for which debtor’s counsel stated an amendment would be forthcoming; and for his failure to produce documents requested by the trustee. Accordingly, the Court **grants** the trustee’s motion for an extension of time to June 30, 2015, for the trustee, all creditors, and parties in interest to object to the discharge of the debtor.

DISCHARGEABILITY OF SPECIFIC DEBT

Under the bankruptcy rules, “[a] debtor or any creditor may file a complaint to obtain a determination of the dischargeability of any debt.” Fed. R. Bankr. P. 4007(a). With the exception of a complaint under § 523(c)—which includes § 523(a)(2), (a)(4), and (a)(6)—a complaint may be filed at any time. Fed. R. Bankr. P. 4007(b). A complaint to determine the dischargeability of a debt under § 523(c) must be filed no later than 60 days after the first date set for the debtor’s meeting of creditors. Fed. R. Bankr. P. 4007(c). On motion of a party in interest and after a hearing on notice, the court may for cause extend the 60 day deadline. *Id.* Under Rule 4007(a), the trustee is not a party that

can file a complaint to determine the dischargeability of a specific debt. The issue before the Court is whether the trustee is a party in interest who can file a motion to extend the time for all creditors to file a complaint under § 523(c).

Two circuit courts have weighed in on this specific issue. The Fourth Circuit held that the trustee is not a party in interest and cannot be allowed to extend the time for creditors to file complaints to determine the dischargeability of their specific debts. *In re Farmer*, 786 F.2d 618, 621 (4th Cir. 1986) (“When a trustee has neither financial interest in a matter nor duties imposed by statute, then a trustee is not a ‘party in interest.’”).

Contrarily, the Sixth Circuit recognized that the bankruptcy code does not define who a “party in interest” is for the purpose of chapter 7 and stated that “[d]epriving the trustee of standing to secure additional time for creditors to file nondischargeability complaints could undermine the efficient administration of bankruptcy proceedings.” *Brady v. McAllister (In re Brady)*, 101 F.3d 1165, 1170 (6th Cir. 1996).

More recently, the Bankruptcy Court for the Southern District of California has analyzed the *Farmer* and *Brady* decisions and published an opinion with which this Court agrees. *See In re Owen-Moore*, 435 B.R. 685 (Bankr. S.D. Cal. 2010). In *Owen-Moore*, the court concluded that “the definition of party in interest generally cannot be expanded to include a chapter 7 trustee in the context of a nondischargeability action under section 523 and the related extension of time to file such an action under rule 4007(c).” *Id.* at 691.

Section 704 of the code enumerates the many duties of a chapter 7 trustee but it does not allow the trustee to bring a nondischargeability complaint on behalf of an individual creditor. Such an action would benefit only the creditor holding the specific claim. Likewise, to allow the chapter 7 trustee to have party in interest standing to request an extension of time *for creditors* to file a nondischargeability complaint benefits only specific creditors and not the estate, for which the trustee is the representative. The Court adopts the excellent analysis contained within the *Owen-Moore* opinion and finds that the chapter 7 trustee is not a party in interest within the context of a nondischargeability action under section 523 or within the related extension of time to file such an action

under rule 4007(c).²


Accordingly, the Court **denies** the trustee's motion on behalf of the trustee, all creditors, and parties in interest to extend the time for creditors to file a complaint to determine the dischargeability of specific debts.

EXEMPTIONS

Neither the trustee nor the debtor addressed the trustee's motion to extend time within which to object to the debtor's claim of exemptions. According to the bankruptcy rules, "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341 is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." Fed. R. Bankr. P. 4003(b)(1). Because the debtor's meeting of creditors was continued to January 26, 2015, the Court finds that the meeting of creditors has not concluded and the trustee's motion for an extension of time to object to the debtor's claim of exemptions is not ripe. Therefore, the Court **denies** the trustee's motion to extend time within which to object to the debtor's claim of exemptions without prejudice to the trustee or any party in interest to file a timely motion to extend time after the conclusion of the debtor's meeting of creditors.

² In addition to the arguments contained in the well-reasoned opinion by Judge Taylor, the Court would add that providing the trustee with the right to extend § 523 actions on behalf of all creditors could potentially be a conflict to her representation of the entire estate. For example, if a creditor sues under § 523 and the trustee objects to the discharge under § 727, the debtor may have some means to settle both matters by payment of money (the trustee may be willing to accept a money settlement when the trustee believes she will have difficulty carrying her burden of proof). However, the debtor may have limited funds. In other words, the debtor may be required to divide his resources between the § 523 action and the § 727 action, thereby reducing the amount of money that would go to the bankruptcy estate. Finally, it is worth noting that the Court's ruling does not deprive the creditors of any right they have under the code but merely fails to extend the time for filing a § 523 complaint based on the trustee's motion.

IT IS SO ORDERED.


Ben Barry
United States Bankruptcy Judge
Dated: 01/26/2015

cc: Jill Jacoway, chapter 7 trustee
Bianca Rucker, attorney for the chapter 7 trustee
Stanley V. Bond, attorney for the debtor
U.S. Trustee