

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: ) In Proceedings  
) Under Chapter 7  
HERMAN E. AHLFIELD, )  
) No. BK 87-40714  
Debtor(s). )  
  
CITIZENS NATIONAL BANK )  
OF ALBION, )  
)  
Plaintiff(s), )  
)  
v. ) ADVERSARY NO.  
) 88-0037  
HERMAN E. AHLFIELD, )  
)  
Defendant(s). )

O R D E R

This matter is before the Court on debtor/defendant's Motion to Dismiss Complaint Objecting to Dischargeability. Plaintiff, Citizens National Bank of Albion ("Bank"), filed a two count complaint against debtor, objecting to the dischargeability of a certain debt under 11 U.S.C. §§523(a)(2), (4) and (6), and to the discharge of debtor under 11 U.S.C. §§727(a)(2) and (5). For the reasons stated below, the Court finds that the complaint was not timely filed and should therefore be dismissed.

Bankruptcy Rule 4004(a) provides in pertinent part:

In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under §727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of

creditors held pursuant to §341(a).

Similarly, Rule 4007(c) provides that [a complaint to determine the dischargeability of any debt pursuant to §523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors...."]

In the present case, both parties agree that the last date for filing a complaint under section 523 or 727 was February 9, 1988. The complaint was filed February 10, 1988. However, the Bank claims that the complaint was mailed on Monday, February 8, 1988 and that under the "post office box rule," the complaint was timely filed. Alternatively, the Bank requests the Court to extend the time for filing the complaint under Rule 9006(b).

The "post office box rule" essentially provides as follows:

"Where a pleading is mailed to the clerk and deposited in a post office box rented by the clerk the pleading is considered as filed for the purpose of determining the statutory period of limitation, when it is deposited in the post office box. The fact that it is not removed from the box by the clerk until two days, after the statute of limitations has run, is immaterial."

Matter of Zorie, 2 B.R. 148, 149 (Bankr. S.D. Fla. 1980) (citing Wright & Miller, Federal Practice and Procedure: Civil §1052). Although a cover letter in the court file indicates that the complaint was mailed on February 8, 1988, the Bank failed to present any proof as to when the complaint was actually deposited in the Clerk's post office box.

More importantly, however, and regardless of the "post office box rule," the language of Rules 4004(a) and 4007(c) clearly specify that the complaint must be "filed" by the date provided, "so that merely mailing it to the clerk by the deadline is not sufficient." 8 Collier on Bankruptcy, §4007.05 [1] at 4007-8. See also In re Tuzzolino, 71 B.R. 231, 232-33 (Bankr. N.D. N.Y. 1986); In re Strickland, 50 B.R. 16, 17 (Bankr. M.D. Ala. 1985) (mere mailing of section 523 complaint to Clerk's office within the filing period is insufficient). Therefore, although the complaint in this case was mailed on February 8, 1988, it clearly was not filed within the time specified by Rules 4004 and 4007.

The Bank also requests that the Court extend the time for filing the complaint pursuant to Rule 9006(b). That rule provides in pertinent part:

The court may enlarge the time for taking action under Rules...4004(a) [and] 4007(c)... only to the extent and under the conditions stated in those rules.

Bankruptcy Rule 9006(b)(3). Both Rule 4004 and 4007 expressly provide that requests for extensions of time must be made within the original time period allowed for filing the complaint. See Bankruptcy Rules 4004(b) and 4007(c). The Court has no discretion to grant a motion to extend time if such motion is not filed within that time period. 8 Collier on Bankruptcy §4007.05[3][a] at 4007-12. Since the time requirements of Rules 4004 and 4007 are mandatory and since the Bank's

request for extension of time to file the complaint was not timely made, the Bank's request must be denied.

Accordingly, debtor's Motion to Dismiss Complaint is GRANTED. IT IS ORDERED that the complaint in this proceeding be DISMISSED.

          /s/ Kenneth J. Meyers            
U.S. BANKRUPTCY JUDGE

ENTERED: July 7, 1988