

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

IN RE: ) In Proceedings  
) Under Chapter 12  
GLENN CATRON and )  
BETTY CATRON, ) No. BK 87-40794  
)  
Debtor(s). )

MEMORANDUM AND ORDER

This matter is before the Court on oral motion of First Bank & Trust Co. ("movant") to reconsider this Court's order of April 8, 1988, denying as untimely a request for extension of time to file a complaint to determine dischargeability of a debt under 11 U.S.C. §523(c). The last date for filing a complaint under §523(c) was April 5, 1988. Movant's motion for extension of time was mailed on April 4, 1988, but was not received and filed by this Court until April 6, 1988. The only issues before the Court are whether the provisions for extending the time for filing such a motion under Rule 4007(c) are discretionary or mandatory and whether date of mailing constitutes date of filing for purposes of Rule 4007(c).

Rule 4007(c) provides in pertinent part:

A complaint to determine the dischargeability of any debt pursuant to section 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to section 341(a) . . . . On motion of any party in interest, . . . the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired. (Emphasis added.)

Rule 9006(b)(3), relating to the enlargement of time periods under specified rules, provides in pertinent part:

The court may enlarge the time for taking action under [Rule]...4007(c)...only to the extent and under the conditions stated in [that rule].

Rule 4007(c) by its terms sets a fixed deadline for filing a complaint regarding dischargeability and additionally requires that a motion to extend such deadline be made within the original time period allowed for such complaint. It has been held that the court has no discretion to grant a motion to extend time if it is not filed within that time period. 8 Collier on Bankruptcy, §4007.05[3][a], at 4007-12; see In re Rhodes, 61 B.R. 626 (Bankr. 9th Cir. 1986); In re Barr, 47 B.R. 334 (Bankr. E.D. N.Y. 1985). Moreover, Rule 9006(b)(3) makes clear that the normal rule allowing an extension of time by motion filed after a time period has expired does not apply to the deadline set by Rule 4007(c). 8 Collier on Bankruptcy, §4007.05[3][a], at 4007-12 to 13. Thus, it appears that the time requirements of Rule 4007(c) are mandatory and that this Court has no discretion to grant movant's motion filed after expiration of the time period of §4007(c).

Because the language of Rule 4007(c) clearly specifies that a complaint to determine dischargeability must be "filed" by the date provided, it has been held that merely mailing it to the clerk by the deadline is not sufficient. 8 Collier on Bankruptcy, 4007.05[1], at 4007-8; see In re Strickland, 50 B.R. 16 (Bankr. M.D. Ala. 1985). Since the provisions for filing a complaint apply equally to the filing of a motion for extension of time under §4007(c), such a motion must likewise be received and filed by the required date in order to be timely. Movant's motion here was not actually received and filed by

this Court until the time for filing had expired, and this Court properly denied the motion as untimely.

IT IS ORDERED that movant's motion to reconsider this Court's denial of its motion to extend time is DENIED.

/s/ Kenneth J. Meyers  
U.S. Bankruptcy Judge

ENTERED: April 19, 1988