

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
§
CHRIS S. MCCAIN AND § Case No. 22-41707
DENA M. MCCAIN §
§
Debtors § Chapter 7

DAVID BOTELLO, §
§
Plaintiff §
§
v. § Adversary No. 23-04019
§
CHRIS MCCAIN, §
DENA M. MCCAIN §
§
Defendants §

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS ADVERSARY PROCEEDING
AND DENYING AMENDED MOTION FOR LEAVE**

Before the Court for consideration is the “Motion to Dismiss Adversary Proceeding” (the “Motion”), filed by the Defendants, Chris and Dena McCain (the “Defendants” or “Debtors”), on April 19, 2023. Defendants seek dismissal of the “Complaint for Determination of Dischargeability and Objecting to Debtor’s Discharge Pursuant to Sections 523 and 727 of the Bankruptcy Code” (the “Complaint”), filed by the Plaintiff, David Botello (the “Plaintiff”). The Court finds the Motion was properly served with requisite negative notice language pursuant to LBR 7007, and Plaintiff timely responded to the Motion. Upon due consideration of the pleadings and the relevant legal

authorities, the Court finds the Complaint was untimely filed and must be dismissed. For the reasons stated in this order, the Motion shall be GRANTED.

In a Chapter 7 case, Fed. R. Bankr. P. 4004(a) dictates any objection to discharge under 11 U.S.C. § 727(a) must be filed no later than sixty (60) days after the first date set for the § 341 meeting of creditors. Fed. R. Bankr. P. 4007(c) similarly requires a complaint to determine dischargeability of a debt pursuant to 11 U.S.C. § 523(a) be filed within the same time frame. If a §§ 523 or 727 complaint is brought outside the sixty (60) day time frame outlined under Rules 4004(a) and 4007(c), a debtor may seek dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

The deadline for Plaintiff to file a complaint objecting to discharge and/or to determine dischargeability was March 14, 2023. Plaintiff filed a “Motion for Leave to File Complaint for the Determination of Dischargeability and Objecting to Debtors’ Discharge Pursuant to Sections 523 and 727 of the Bankruptcy Code” (the “Motion for Leave”) on March 15, 2023, alongside the Complaint.¹ Thus, when Plaintiff filed the Complaint on March 15, 2023, it was untimely.²

¹ Fed. R. Bankr. P. 9006(b) mirrors and applies the same procedures as Fed. R. Civ. P. 6(b) for a party seeking an extension. The motion seeking an extension/leave must be filed by the expiry date.

² The Court acknowledges Plaintiff’s attempt at 11:54pm on March 14, 2023 to file the Complaint using the Electronic Document Submission (“EDS”) system located on this Court’s website. Submitting a document via EDS is not the same as filing it with the Clerk. A document submitted by EDS must still be reviewed by the Clerk and file stamped, all of which occurred with respect to the Complaint on March 15, 2023. Any person submitting a filing using the EDS system agrees to the following:

Generally, these deadlines are strictly applied, but a court may grant a motion extending the deadline *before* it expires. Fed. R. Bankr. P. 9006(b)(1). The “underlying purpose” of the rule “is to provide the debtor with a definite date after which no party may object to discharge.” *In re Gallagher*, 70 B.R. 288, 290 (Bankr. S.D. Tex. 1987) (citing *United States v. Ortman (In re Ortman)*, 51 B.R. 7, 9 (Bankr. S.D. Indiana 1984)). A court may grant an extension under Fed. R. Bankr. P. 4004(a) or 4007(c) “only to the extent and conditions stated” in that rule. *See* Fed. R. Bankr. P. 9006(b)(3); *see also Bywaters v. Alhuneidi (In re Alhuneidi)*, 632 B.R. 737, 741 (Bankr. E.D. Tex. 2021).

Despite acknowledging the March 14 deadline, Plaintiff essentially seeks equitable relief from Fed. R. Bankr. P. 4004 and 4007. Plaintiff’s counsel details his attempts to timely file the Complaint, and describes his actions leading to the delayed filing as

“I understand that documents submitted through the Electronic Document Submission (EDS) system are not considered filed with the court until a deputy clerk reviews the submission(s) and enters the document(s) in the case. I also understand that EDS may only be used to submit documents and pleadings to the United States Bankruptcy Court for the Eastern District of Texas and I may only use this system if one or more of the following applies:

1. I am submitting copies of supporting documents to an eSR submission as directed by the Clerk's office pertaining to the submission of my voluntary petition
2. An emergency requires the filing of a document and the clerk's office is closed
3. The ECF system or applicable e-Service option is inoperable.”

See Electronic Document Submission System, BANKR. E.D. TEX. (July 25, 2023, 12:42 PM), <https://www.txeb.uscourts.gov/content/electronic-document-submission-system>.

Neither Plaintiff nor Plaintiff’s counsel was directed by the Clerk’s office to submit the Complaint using EDS, and there was no “emergency” at the time which required the filing of a document while the Clerk’s office was closed. An “emergency” under this Court’s Local Rules is “a matter requiring a hearing in less than seven (7) days, and which involves an irreparable injury which outweighs procedural due process concerns.” LBR 9007(b). Finally, the ECF system was not *inoperable* on March 14, 2023.

“inadvertent and not intentional.”³ Regardless of intent, it was incumbent upon Plaintiff to seek an extension of the March 14 deadline prior to the expiration of that deadline. Plaintiff failed to do so.

While the Court finds the facts as presented by Plaintiff in the Complaint to be compelling, it cannot grant the Motion for Leave or allow this adversary proceeding to move forward.⁴ In order to extend the time “for cause,” the motion to extend the time must be filed “before the time has expired.” Fed. R. Bankr. P. 9006(b)(3). Furthermore, the Fifth Circuit has repeatedly “strictly construed” Fed. R. Bankr. P. 4004 and 4007 because the procedural rules “reflect [] the overall goal of the bankruptcy process to provide individual debtors a fresh start.” *Yaquinto v. Ward (Matter of Ward)*, 978 F.3d 298, 302 (5th Cir. 2020) (quoting *Ichinose v. Homer Nat’l Bank (In re Ichinose)*, 946 F.2d 1169, 1172 (5th Cir. 1991)). Based on Plaintiff’s failure to timely file the Complaint, and the Fifth Circuit’s strict construction of Rules 4004 and 4007, the Court finds that just cause exists for the entry of the following order:

IT IS THEREFORE ORDERED that the “Motion to Dismiss Adversary Proceeding” filed by the Defendants, Chris and Dena McCain, is hereby **GRANTED** and

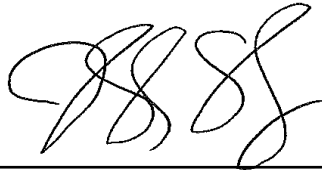
³ Pl.’s Resp. Mot., 3, ¶ 6, ECF No. 13.

⁴ The Court notes that a discharge for Debtors will not affect the potential liability of other persons for damages sustained by Plaintiff as a result of the facts alleged in the Complaint. “Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such a debt.” 11 U.S.C. § 524(e). Thus, Plaintiff may seek relief against any person other than Debtors under the facts alleged in the Complaint in accordance with applicable non-bankruptcy law.

that the Plaintiff's Complaint filed in the above-referenced adversary proceeding is hereby **DISMISSED** as untimely.

IT IS FURTHER ORDERED that the "Amended Motion for Leave to File Complaint for the Determination of Dischargability and Objecting to Debtors Discharge Pursuant to Sections 523 and 727 of the Bankruptcy Code" filed by the Plaintiff, David Botello, is hereby **DENIED**.

Signed on 07/25/2023

A handwritten signature in black ink, appearing to read 'J. Searcy', written in a cursive style.

THE HONORABLE JOSHUA P. SEARCY
UNITED STATES BANKRUPTCY JUDGE