

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:) CHAPTER 7
)
BOB SAFADI)
MONA SAFADI) CASE NO. 99-60481-MHM
)
Debtors)

HEATHER J. THOMPSON)
GLENVILLE HALDI)
)
Plaintiffs)
v.) **ADVERSARY PROCEEDING**
) **NO. 01-6096**
BOB SAFADI)
MONA SAFADI)
) **O R D E R**
Defendants)

By order entered September 18, 2003, the pleading filed by Debtors August 13, 2003 was construed as a motion to dismiss Plaintiffs' amended complaint and Plaintiffs were allowed ten (10) days within which to file a response. The order cautioned Plaintiffs that the failure to file a response within the time allowed could result in entry of an order granting Debtors' motion to dismiss. On November 6, 2003, Plaintiffs filed a one-sentence request for extension of time to file a response to Debtors' motion to dismiss. Plaintiffs' request was not accompanied by a memorandum of law required by BLR 7007-1(a)(1). Additionally, Plaintiffs' request set forth no reason for Plaintiffs' failure to timely file their response. Debtors filed a timely response opposing Plaintiffs' request for an extension of time, citing *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 113 S. Ct. 1489 (1993) and its discussion of excusable neglect.

Bankruptcy Rule 9006(b)(1) provides that a motion for extension of time filed after the expiration of the specified period must show the failure to act was the result of excusable neglect. "Excusable neglect" is a concept used in more than one of the provisions of the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure. The concept of excusable neglect is not, however, defined in either body of rules. Prior to March, 1993, Eleventh Circuit precedent established that a party may claim excusable neglect only if its "failure to timely perform a duty was due to circumstances which were beyond [its] reasonable control." *In re South Atlanta Financial Corp.*, 767 F.2d 814, 817 (11th Cir. 1986).

The Supreme Court, however, addressed the concept in *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 113 S. Ct. 1489 (1993), and rejected the stringent standard of the Eleventh Circuit. The Supreme Court recognized that a broad range of explanations may be given for a party's failure to act, extending from forces beyond the party's control--such as acts of God and unforeseeable human intervention--to the party's choice to "flout" a deadline. In between those two extremes lie cases in which a party may choose to miss a deadline, "although for a very good reason, such as to render first aid to an accident victim discovered on the way to the courthouse," and cases in which the party misses a deadline due to inadvertence, mistake or neglect. *Id.* at 1494.

In its decision concerning the point in this range of explanations where excusable neglect falls, the Court held that "neglect" should be accorded its ordinary meaning which encompasses "both simple, faultless omissions to act and, more commonly, omissions caused by carelessness." *Id.* at 1494-95. The Court then explained that in determining whether a party's neglect is excusable, a court must take into account "all relevant circumstances surrounding the party's omission." *Id.* at 1498. The

factors to be considered include the danger of prejudice to the opposing party, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith. *Id.*

In delineating the factors to be considered in determining whether the neglect is excusable, the Supreme Court expressly excluded consideration of whether the defaulting party should be penalized for the omissions of the party's attorney. "[C]lients must be held accountable for the acts and omissions of their attorneys." *Id.* at 1499. The Court quoted itself as explanation: "Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent." *Id.*, quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962).

As Plaintiffs have failed to offer *any* explanation for their failure to file a timely response to Debtors' motion to dismiss, Plaintiffs have failed to show excusable neglect. Therefore, Plaintiffs' motion for extension of time cannot be granted. As Debtors' motion to dismiss is thus unopposed, granting Debtors' motion is appropriate. Accordingly, it is hereby

ORDERED that Plaintiffs' Request for Extension of Time is denied. It is further

ORDERED that Defendants' motion to dismiss is **granted**.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Debtors and upon Plaintiffs' attorney.

IT IS SO ORDERED, this the ____ day of March, 2004.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE