



IT IS ORDERED as set forth below:

Date: November 29, 2011

**W. Homer Drake
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBER
	:	
JOHN SCOTT STALLINGS	:	BANKRUPTCY CASE
	:	NO. 09-14535-WHD
	:	
Debtor.	:	
	:	
	:	
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Extend Time to File Objection to Debtor's Discharge filed by the Estate of Tracy P. Stallings (hereinafter the "Creditor"). In the Motion, the Creditor seeks to extend the time to file an objection to Debtor's discharge to July 15, 2011 or, as requested by the Creditor at oral argument, to such date as the Court deems necessary. John Scott Stallings (hereinafter the "Debtor") objected to the Motion,

arguing that it was untimely filed under Rule 4004(b). Accordingly, this Court must determine whether the Creditor's Motion was filed in a timely manner.

BACKGROUND AND PROCEDURAL HISTORY

Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on December 22, 2009. The section 341(a) hearing was first set for February 11, 2010, but was continued on two occasions and concluded on April 16, 2010.

In March 2010, the Chapter 7 Trustee filed a motion to extend the time to file complaints under sections 727 and 523. On April 12, 2010, the United States Trustee (hereinafter the "U.S. Trustee") and Regions Bank also filed separate motions to extend the time to file a complaint.¹ The Creditor filed its first motion to extend time for filing a complaint under section 727 (hereinafter the "First Motion") on April 15, 2010. Shortly thereafter, the Court granted the Chapter 7 Trustee's March 9th Motion, extending the deadline for the U.S. Trustee and the Chapter 7 Trustee to October 12, 2010. The Court also extended the deadline for Regions Bank and the Creditor to August 12, 2010.²

In early April 2010, the U.S. Trustee filed a motion for a Rule 2004 examination of the Debtor. The Rule 2004 examination was held in July 2010, but was continued on

¹ The two motions differed in that Regions Bank sought to extend the time to file a complaint under section 523, while the U.S. Trustee sought to extend the time to file a complaint under section 727.

² Despite the fact that the Creditor filed its Motion three days late, the Court mistakenly entered a consent order on April 21, 2010. However, the April 21st Consent Order was not appealed and, thus, is a valid, standing Order.

multiple occasions. Apparently, the Debtor and the other parties in attendance at the examination agreed to extend the deadline for filing complaints each time the Rule 2004 examination was continued.³

On August 3, 2010, the Court granted the timely filed motion of the U.S. Trustee, extending the deadline to file objections to December 1, 2010, for the U.S. Trustee, the Chapter 7 Trustee, and Regions Bank. This order does not include an extension of the Creditor's deadline. On September 13, 2010, however, the Creditor filed its second Motion to Extend Time for Filing Complaint (hereinafter the "Second Motion"), seeking an extension from August 12, 2010 to December 1, 2010. The Second Motion was never set for a hearing, the Creditor never pursued prosecution of the Second Motion, and no order was entered on the Second Motion.

On December 1, 2010, the U.S. Trustee filed a motion to extend time to file a complaint on behalf of himself, the Chapter 7 Trustee, and Regions Bank. This motion was also granted by the entry of a consent order, extending the deadline to March 31, 2011, for the U.S. Trustee, the Chapter 7 Trustee, and Regions Bank. Again, the consent order did not include an extension of the Creditor's deadline, and the Creditor did not file a motion to extend the December 1, 2010 deadline.

On March 31, 2011, the U.S. Trustee filed a third motion to extend the time to file a complaint on behalf of himself, the Chapter 7 Trustee, and Regions Bank. Shortly

³ The U.S. Trustee filed a Notice of Continued Rule 2004 examination on January 19, 2011. In each of the parties' motions to extend time to file a complaint, the parties stated the continued Rule 2004 examination as the reason.

thereafter, the Court entered another consent order, extending the deadline to file a complaint to July 15, 2011, for the U.S. Trustee, the Chapter 7 Trustee, and Regions Bank. As was the case with the first two consent orders, this consent order did not include the Creditor.

On May 3, 2011, the Creditor filed the instant Motion, its third Motion to Extend Time for Filing (hereinafter the "Third Motion"), seeking an extension to July 15, 2011. After the hearing on the Third Motion, the Court took the matter under advisement and requested briefs from the Debtor and the Creditor. Both briefs focus on the validity of the April 21st Consent Order, which extended the deadline for Creditor from April 12, 2010 to August 12, 2010. Neither the Creditor nor the Debtor discuss the Second Motion or the Third Motion in their briefs.

CONCLUSIONS OF LAW

The issue before the Court is whether the Creditor's Third Motion meets the requirements for a motion to extend time to file a complaint set out in Bankruptcy Rule 4004. Rule 4004(a) provides a sixty-day window from the "first date set for the meeting of creditors under section 341(a)," within which a creditor may file a complaint objecting to a debtor's discharge. FED. R. BANKR. P. 4004(a). Under 4004(b), a motion to extend the time in which to file a complaint may be filed but "shall be filed before the time has expired." FED. R. BANKR. P. 4004(b). Thus, no discretion is left to the Court in ruling on a motion to extend under Rule 4004(b). *See Coggin v. Coggin (In re Coggin)*, 30 F.3d 1443,

1451 (11th Cir. 1994); *see also In re Lee*, 238 B.R. 906, 908 (Bankr. S.D. Fla. 1999) (holding that excusable neglect is no defense to failure to timely file a motion to extend time for filing a complaint objecting to debtor's discharge). To grant the Motion under Rule 4004(b), the Court must find that the Creditor filed the Third Motion prior to the expiration of the existing deadline.

The Court finds that the Creditor filed the Third Motion after the expiration of the existing deadline. The last deadline set for the Creditor was August 12, 2010, pursuant to the April 21st Consent Order. The Second Motion was filed after August 12, 2010, which would have prevented the Court from extending the August 12th deadline. Furthermore, the Creditor failed to prosecute the Second Motion, which prevented the Court from even hearing the Second Motion. Thus, the Creditor's deadline remained August 12, 2010.

The Creditor filed the Third Motion on May 3, 2011, over nine months after August 12, 2010. The Second Motion was filed on September 13, 2010, over one month after the August 12th deadline. Thus, the Second and Third Motions were both filed after the Creditor's August 12, 2010 deadline. As both motions were untimely filed, the Court cannot extend the deadline. In fact, even if the Court had extended the Creditor's deadline to December 1, 2010 or March 31, 2011, the Third Motion would have been untimely, as it was not filed until after both deadlines had passed.

It appears the Creditor may have been operating under the mistaken impression that the previous extensions granted to the other parties by the entry of the various consent orders applied to the Creditor. The fact that this was not the case should have been discovered by

the Creditor upon receipt of the consent orders, at which time the Creditor had ample time to file its own motion before the applicable deadline expired or to seek reconsideration of the consent orders.

After the April 21st Consent Order, the Creditor is not mentioned in any order granting an extension to file objections to the Debtor's discharge. The Creditor was responsible for determining whether any order granted it a further extension, for it cannot rely on the U.S. Trustee's motion or the Debtor's alleged consent to satisfy the requirement for a timely filed motion and an order extending the deadline. The Creditor correctly asserts that the Rule 4004 deadline is not jurisdictional. *See Kontrick v. Ryan*, 540 U.S. 443, 459-60 (2004). This point is inapposite, as the issue of whether a complaint would be time-barred is not before the Court. The sole issue for the Court to determine today is whether the Court can extend the deadline. As the Third Motion was filed after the deadline expired, the Court cannot grant the requested extension.

Therefore, the Creditor's Motion to Extend Time to File Objection to Debtor's Discharge is **DENIED**.

The Clerk is directed to serve a copy of this Order upon Movant, counsel for Movant, Debtor, counsel for Debtor, the Chapter 7 Trustee, and the U.S. Trustee.

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