

IT IS ORDERED as set forth below:



Date: October 10, 2012

**James R. Sacca
U.S. Bankruptcy Court Judge**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	}	CASE No.: 11-85623-JRS
WENDELL WRIGHT,	}	
	}	Chapter 7
Debtor.	}	

KARIM ZIYAD as assignee for AVF CONSTRUCTION, LLC,	}	ADVERSARY PROCEEDING
	}	
Plaintiff,	}	No. 12-05173-JRS
	}	
v.	}	
	}	
WENDELL WRIGHT,	}	
	}	
Defendant.	}	

ORDER

I. Background

This matter is before the Court on Plaintiff’s Motion for Leave to Amend the Complaint (the “Motion”). [Doc. 19]. Debtor filed his Chapter 7 petition in the underlying bankruptcy on

December 10, 2011. Case No. 11-85623-JRS, Doc. 1. The initial § 341 meeting of creditors was set for January 12, 2012. The meeting took place on that date, but was continued until February 14, 2012 for additional document production. The meeting was concluded that day.

Plaintiff commenced this adversary proceeding against Debtor by filing a Complaint (the “Original Complaint”) on March 12, 2012. [Doc. 1]. In the Original Complaint, Plaintiff asked the Court to hold that his claims for debts incurred for construction services are nondischargeable pursuant to 11 U.S.C. §§ 523(a)(2) and (6) because Debtor allegedly incurred these debts by fraud and by willful and malicious injury. Plaintiff alleged that Debtor “fraudulently induced” him into performing the construction work which forms the basis of his claim and that he “willfully and maliciously” mutilated a check from the construction lender to Plaintiff’s company. But in the Original Complaint, Plaintiff did not object to Debtor receiving a discharge of all of his other debts under 11 U.S.C. § 727. The deadline for filing complaints under §§ 523 and 727 was March 12, 2012—the day Plaintiff filed the Original Complaint.

About four and a half months later—on August 2, 2012—Plaintiff filed an amended Complaint (the “Amended Complaint”). [Doc. 11]. In the Amended Complaint, Plaintiff for the first time asks the Court to hold that Debtor is not entitled to a discharge at all pursuant to 11 U.S.C. § 727(a)(4) because he allegedly made false oaths or accounts in connection with his Chapter 7 petition and schedules. The alleged false oaths consist of (1) Debtor’s statement at his § 341 meeting of creditors that he did not own a certain Nissan Ultima and (2) his failure to include this vehicle on his schedules. The Court held a status hearing on August 21, 2012 and advised Plaintiff that he must get leave of court to file an amended complaint at such a late stage of these proceedings. On August 27, 2012, Plaintiff filed the Motion. [Doc. 19]. Debtor filed a timely reply. [Doc. 22].

II. Discussion

Generally, Federal Rule of Civil Procedure 15—made applicable to adversary proceedings by Bankruptcy Rule 7015—governs amendment of complaints. Rule 15 provides that after an answer is served (as it was here) and when the defendant does not consent to amendment (as is also the case), the plaintiff may amend the complaint “only by leave of court.” Fed. R. Civ. P. 15. This rule also provides that “such leave shall be freely given when justice so requires.” *Id.* However, Rule 15 is not the only rule at play here.

Bankruptcy Rule 4004(a) provides that “[i]n a chapter 7 case, a complaint . . . objecting to the debtor’s discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under 341(a).” Fed. R. Bankr. P. 4004(a). Bankruptcy courts consider this deadline akin to a statute of limitations and construe it very strictly. *Boan v. Damrill (In re Damrill)*, 232 B.R. 767, 772 (Bankr. W.D. Mo. 1999). In *Austin Farm Center, Inc. v. Harrison (In re Harrison)*, Judge Kishel summed up the rationale for this strict deadline well:

This statute of limitations is among the very shortest under federal law. It is designed to further the “fresh start” goals of bankruptcy relief; it requires creditors to promptly join their exceptions to discharge of debt and objections to discharge, so a petitioning debtor will enjoy finality and certainty in relief from financial distress as quickly as possible.

Austin Farm Center, Inc. v. Harrison (In re Harrison), 71 B.R. 457, 459 (Bankr. D. Minn. 1987). Because of the strong policy underlying the Bankruptcy Code for granting debtors a fresh start, exceptions to Rule 4004 will be rare.

Considering that the deadline for objecting to discharge has long since passed, the only way Plaintiff’s amendment objecting to discharge under § 727(a)(4) could be allowed is if it relates back to the timely filed Original Complaint. Federal Rule of Civil Procedure 15(c) governs relation back of amendments. It states in relevant part that “[a]n amendment to a

pleading relates back to the date of the original pleading when . . . the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the original pleading.” Fed. R. Civ. P. 15(c)(1)(B). As the Eleventh Circuit Court of Appeals pointed out in *Dean v. United States*, “Congress intended Rule 15(c) to be used for a relatively narrow purpose.” *Dean v. United States*, 278 F.3d 1218, 1221 (11th Cir. 2002). The court explained:

In the Advisory Committee Note to the 1991 amendments to Rule 15, the advisory committee states that “[t]he rule has been revised to prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense.” Congress did not intend Rule 15(c) to be so broad as to allow an amended pleading to add an entirely new claim based on a different set of facts. *See generally Forzley v. AVCO*, 826 F.2d 974 (11th Cir.1987). Thus, while Rule 15(c) contemplates that parties may correct technical deficiencies or expand facts alleged in the original pleading, it does not permit an entirely different transaction to be alleged by amendment.

Id.

Because of the strict application of Rule 4004 and the narrow scope of Rule 15(c), a plaintiff generally may not amend an adversary complaint to raise new objections to discharge that were not raised before the deadline. *See Employers Mutual Casualty Co. v. Lazenby (In re Lazenby)*, 253 B.R. 536, 538 (Bankr. E.D. Ark. 2000) (“Generally . . . Courts do not permit amendment of a complaint to add a new theory of objection, be it for discharge or dischargeability.”) (citation omitted). In some circumstances, a plaintiff may amend his complaint where the new objection arises out of the same facts as his prior objection. *See Disch v. Rasmussen*, 417 F.3d 769 (7th Cir. 2005) (holding that creditor could amend complaint objecting on § 523 grounds and add § 727 objection after 60-day deadline because it arose out of the same facts). However, a plaintiff cannot raise an objection that is based on completely different facts from those properly pled before the deadline. *See Boan v. Damrill (In re Damrill)*,

232 B.R. 767, 776 (Bankr. W.D. Mo. 1999) (refusing to allow plaintiffs to amend their complaint “to include new and additional factual claims for denial of discharge under § 727”). In sum, a plaintiff’s objection to discharge under § 727 after the Rule 4004 deadline may only be considered in an amended complaint filed after the deadline—if at all—when the objection stems from the conduct, transactions, or occurrences pled in the original complaint.

Here, Plaintiff filed the Original Complaint on March 12, 2012—exactly 60 days after the date set for the § 341 meeting of creditors. Thus the Original Complaint was filed before the Rule 4004 deadline, but the Amended Complaint was not filed until several months later. Therefore, Plaintiff may only amend his Complaint if his newly added objection under § 727(a)(4) relates back to the Complaint that he filed before the deadline.

Plaintiff’s new objection does not relate back to his original Complaint and thus must be barred as untimely because Plaintiff’s new allegations forming the basis of his § 727(a)(4) objection consist of entirely different conduct, transactions, and occurrences from those laid out in the Original Complaint. Plaintiff adds to his Amended Complaint a new “Count 5” alleging “False Oaths,” which alleges two falsehoods on the Debtor’s part. Plaintiff first alleges that at the meeting of creditors, Debtor “stated that he was not the owner of a Nissan Ultima and that his ex-wife was awarded [the] Ultima in prior divorce proceedings.” Plaintiff also alleges that Debtor’s failure to list this vehicle on his bankruptcy petition amounted to a false oath.

These factual allegations Plaintiff seeks to add have no relation to those pled in the Original Complaint. The alleged facts as originally pled primarily revolve around the construction contract between Plaintiff and Debtor. Plaintiff claimed Debtor made certain unspecified misrepresentations in conjunction with that contract and that he “willfully and maliciously” tore up a check. Also, he alleged in the Original Complaint that Debtor

fraudulently transferred assets by depositing his paychecks into his father's bank account, which was not identified on Debtor's schedules. But nowhere in the Original Complaint did Plaintiff mention anything about the Nissan Ultima. Considering that Debtor's representations (or lack thereof) concerning this vehicle form the sole basis for Plaintiff's § 727(a)(4) objection, those facts must have been pled in the Original Complaint filed before the Rule 4004 deadline in order for the objection by amendment to relate back and be considered timely. Because this new objection in the Amended Complaint rests upon wholly unrelated conduct, transactions, or occurrences from those set forth in the Original Complaint, it cannot relate back pursuant to the plain language of Rule 15(c). Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Leave to Amend the Complaint is DENIED.

[END OF DOCUMENT]