



IT IS ORDERED as set forth below:

Date: October 27, 2015

**Barbara Ellis-Monro
U.S. Bankruptcy Court Judge**

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

IN RE:

WILLIAM CHRISTOPHER WEISKOPF,

Debtor.

ANNE B. JARVIS and M. TODD JARVIS, on
their own behalves and as custodians for their
children,

Movants,

v.

WILLIAM CHRISTOPHER WEISKOPF,

Respondent.

CASE NO. 15-57581-BEM

CHAPTER 7

Contested Matter

ORDER

Movants' Motion to Extend Time To Object to Discharge and Dischargeability of Debts (the "Motion" or the "Motion to Extend") [Doc. 17], Debtor's Response [Doc. 18], and Movants' Reply [Doc. 19] came before the Court for hearing on October 21, 2015. Charles C. Murphy, Jr. appeared on behalf of Movants. Quynh-Huong Nguyen Davis appeared on behalf of

Debtor. Having considered the pleadings, the statements and arguments of counsel, and relevant legal authorities, the Court will deny the Motion.

I. Facts

Although the pleadings revealed some dispute of facts, to the extent Debtor failed to press those disputes at the hearing, the Court will consider the facts in the light most favorable to Movants. According to Movants' counsel, Movants were customers of Debtor when he worked at two different financial institutions. At the end of 2013, Movants became aware of problems with the opening account documents when they requested the documents from their file. Movants then filed a claim with the Financial Industry Regulatory Authority ("FINRA") against Debtor and his prior employer, now known as Wells Fargo Advisors, LLC, on June 30, 2014 (the "Wells Fargo case") [Doc. 19]. Movants filed a claim with FINRA against Debtor and his prior employer, now known as Raymond James, on December 26, 2014 (the "RJ case"). [Doc. 19.] According to Movants' counsel, both claims alleged forgery of the account-opening documents and other fraud-based claims, including unauthorized trading in the account.

Debtor filed a Chapter 7 petition on April 24, 2015 [Doc. 1], which resulted in a stay of the FINRA claims. Debtor's counsel notified FINRA of the bankruptcy case by letter sent on April 27, 2015 [Doc. 18, Ex. A]. FINRA notified Movants' counsel of the bankruptcy case by letter dated May 8, 2015 [Doc. 18, Ex. B]. The RJ case was settled as to the parties other than Debtor on May 19, 2015 [Doc. 19]. On May 26, 2015, Debtor filed an amended Schedule F to add Anne B. Jarvis and Raymond James Financial, Inc. as creditors [Doc. 10, 18]. The meeting of creditors was held on May 27, 2015 [Doc. 7]. Counsel for Movants attended the meeting but did not ask any questions [Doc. 19]. The Well Fargo case was settled as to Wells Fargo only in July 2015 [Doc. 19]. Complaints objecting to discharge or for determination of dischargeability

of a debt in Debtor's bankruptcy case were due by July 27, 2015 [Doc. 7]. Movants filed their Motion to Extend on July 27, 2015.

At the hearing on the Motion, Counsel for Movants stated that he received 1,450 documents from Wells Fargo in the FINRA proceedings; he received some of the documents in January 2015 and the remaining documents in April and May 2015. Counsel stated he made a cursory review of the documents but required additional time after the July 27, 2015 deadline to read them more closely and make sure they contained no surprises and no information that undercut his legal theory. By the date of the hearing, counsel had fully reviewed the documents and needed no more than 30 days to file a complaint. The Motion indicated Movants' intent to seek a Rule 2004 examination of Debtor. However, at the hearing, Movants' counsel stated he had not previously sought a 2004 examination because he did not believe it was a good use of time due to his satisfaction with the information he already had.

II. Legal Analysis

Movants seek an extension of the time to file a complaint objecting to discharge under 11 U.S.C. § 727 and a complaint to determine dischargeability of a debt under § 523(a). Debtor contends the Motion should be denied because Movants have failed to show due diligence in investigating their potential discharge and dischargeability claims.

Complaints to determine dischargeability of a debt "other than under § 523(c) may be filed *at any time*." Fed. R. Bankr. P. 4007(b) (emphasis added). Section 523(c) refers to actions under § 523(a)(2), (4), and (6). Thus, to the extent Movants seek to file a complaint under some other subsection of § 523(a), such as (a)(19), no extension is required.

By contrast, complaints under § 727 or under § 523(a)(2), (4), or (6) must be filed "no later than 60 days after the first date set for the meeting of creditors" Fed. R. Bankr. P.

4004(a), 4007(c). The Court may extend that deadline “for cause” if the motion to extend is filed prior to expiration of the original deadline. *Id.* 4004(b)(1); 4007(c). Whether to allow the extension is within the discretion of the bankruptcy court. *In re Miles*, 453 B.R. 449, 451 (Bankr. N.D. Ga. 2011) (Murphy, J.) (citing *In re James*, 187 B.R. 395, 397 (Bankr. N.D. Ga. 1995) (Drake, J.)). However, the deadlines in the Bankruptcy Rules are generally strictly construed consistent with the policies favoring a fresh start for the debtor, and prompt administration of the case. *In re Woods*, 260 B.R. 41, 43 (Bankr. N.D. Fla. 2001) (citing *Taylor v. Freeland & Kronz*, 503 U.S. 638, 644, 112 S. Ct. 1644, 1648 (1992)).

In this case, the Motion to Extend was timely filed. Therefore, the only question is whether Movants have shown cause for an extension. The Bankruptcy Code does not define “cause.” However, it requires a showing of more than “‘just because I ask.’ The ‘cause’ must be compelling and the creditor must show the reasons it was unable to accomplish its investigation within the time allowed by the Bankruptcy Rules.” *Miles*, 453 B.R. at 451 (quoting *In re Garner*, 339 B.R. 610, 611 (Bankr. W.D. Tex. 2006) (internal citation omitted). Bankruptcy courts have identified a number of factors relevant to the “for cause” analysis, including:

- (1) whether the debtor refused in bad faith to cooperate with the creditor;
- (2) whether the creditor had sufficient notice of the deadline and the information to file an objection;
- (3) the possibility that the proceedings pending in another forum will result in collateral estoppel on the relevant issues;
- (4) whether the creditor exercised diligence; and
- (5) the complexity of the case.

In re Ballas, 342 B.R. 853, 856 (Bankr. M.D. Fla. 2005), *aff'd*, 212 Fed. Appx. 867 (11th Cir. 2006). The Court should also consider any other relevant circumstances. *In re Duncan*, No. 09-01255, 2009 Bankr. LEXIS 2657, *18 (Bankr. N.D. Ala. Aug. 31, 2009).

When applied to this case, the factors weigh against allowing the extension. As to the first factor, there is no issue as to Debtor’s cooperation. Movants have not requested any

information from Debtor in the context of the bankruptcy case, and counsel for Movants stated that he did not believe a 2004 exam of Debtor was a good use of time. As to the second factor, it appears Movants had adequate notice of the bankruptcy case to conduct due diligence. Movants were not initially listed on Debtor's schedules. However, FINRA sent Movant's attorney notification of the bankruptcy filing in early May. Even if counsel did not receive that notice, his attendance at the 341 meeting indicates actual notice no later than May 27, 2015, or 61 days prior to the deadline for filing complaints. Such time is sufficient notice, especially since Movants had already filed fraud-based claims against Debtor in a different forum. This is also relevant to the third factor respecting the existence of non-bankruptcy proceedings that could give rise to collateral estoppel and the fourth factor regarding due diligence. Movants failed to adequately explain why they had sufficient information to file the FINRA claims but not their related discharge claims. Counsel stated that he received 1,450 documents from Wells Fargo in January, April, and May and wanted time to review them closely to ensure they contained no surprises that would affect Movants' claims. However, counsel had some of those documents prior to Debtor filing his bankruptcy petition and others at least two months prior to requesting the extension. If two months was insufficient time for Movants' counsel to review the documents, it is unclear why a motion to extend was not filed sooner, especially as counsel did not believe he needed any information from Debtor so that his diligence would be limited to those documents already in his possession. Finally, the complexity of the discharge issues is uncertain, as they appear to include a mix of fraud-based claims including common-law fraud and securities fraud.

These facts are similar to those in *In re Denike*, 322 B.R. 452 (Bankr. M.D. Fla. 2005). The creditor had a lawsuit pending against Debtor in state court six years prior to the

petition date, and the creditor's counsel came into the bankruptcy case 48 days prior to the deadline for discharge complaints. *Id.* at 455. The court found that because the creditor was "intimately familiar with the facts of the case [she] did not need to conduct any further discovery" to determine whether to file a complaint. *Id.* Even if the creditor needed more information, she had adequate time and opportunity to acquire it. *Id.* Her attorney attended a 2004 examination of the debtor by the trustee, but asked no questions and made no attempt to obtain an expedited transcript. *Id.* The only action taken by the creditor was filing a motion to extend time to file the complaint, three days before expiration of the original deadline. *Id.* at 455-56. The court concluded the creditor "did not exercise an appropriate level of diligence with respect to her investigation of Debtor" and that the lack of diligence "can be fatal to a creditor's request at the eleventh hour to obtain an extension of the time period to file an objection to discharge and/or dischargeability." *Id.* at 456. *See also Woods*, 260 B.R. at 44-45.

Similarly, in this case Movants filed fraud claims against Debtor prepetition, and their potential discharge claims are related to the fraud claims. Despite attending the 341 meeting, counsel for Movants asked no questions and requested no information from Debtor during the course of the bankruptcy case, instead relying on documents obtained in the FINRA proceedings. Movants had possession of those documents two to six months prior to the deadline for filing a complaint, yet the only action they took in the course of the bankruptcy proceeding was to file their Motion to Extend on the last day to do so. These facts fail to show sufficient diligence as to the potential discharge claim to establish cause for an extension. Accordingly, it is

ORDERED that the Motion to Extend is DENIED.

END OF ORDER

Distribution List

Quynh-Huong Nguyen Davis
Law Offices of Betty Nguyen Davis LLC
5447 Roswell Road, NE
Atlanta, GA 30342

William Christopher Weiskopf
1766 Georgian Terrace
Atlanta, GA 30341

Barbara B. Stalzer
Barbara Bell Stalzer, PC
60 Lenox Pointe, NE
Atlanta, GA 30324-3170

Charles C. Murphy, Jr.
Vaughan & Murphy
Suite 1600
260 Peachtree Street, NW
Atlanta, GA 30303-1237