

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET
NOV 3 2005

IN RE:	:	CASE NO. A05-63964-REB
	:	
DAVID DWYNNE HILTON,	:	CHAPTER 7
	:	
Debtor.	:	JUDGE BRIZENDINE

**ORDER DENYING MOTION OF MIRA PILAC AND ZARKO PILAC TO EXTEND
TIME FOR FILING COMPLAINT OBJECTING TO DISCHARGEABILITY**

This matter is before the Court on the motion of Mira Pilac and Zarko Pilac ("Movants"), filed on July 26, 2005, to extend time for filing a complaint objecting to the dischargeability of a certain obligation owed by Debtor under 11 U.S.C. § 523. Federal Rule of Bankruptcy Procedure 4007(c) provides that such complaints "shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)." In this case, the period for filing such complaints expired on June 6, 2005. According to the motion and brief, although the Movants herein were not listed in the Debtor's bankruptcy schedules, they received actual notice of the filing of this bankruptcy case on or about May 25, 2005. Upon review of the motion, brief, and argument of counsel as presented at a hearing held on August 16, 2005, the Court concludes that the relief requested should be denied.

As held by the Eleventh Circuit in the case of *Byrd v. Alton (In re Alton)*, 837 F.2d 457, 459 (11th Cir. 1988), courts do not possess the discretionary authority to alter the mandatory sixty-day time period fixed in F.R.B.P. 4007(c) for filing dischargeability complaints by granting a late filed motion to extend such period. As noted by Movants in their brief, however, the U.S. Supreme Court recently concluded that F.R.B.P. 4004(a) & (b), which governs the time for filing complaints objecting to discharge and is similar to F.R.B.P. 4007, are not jurisdictional in nature

for purposes of determining the subject matter jurisdiction of the court. *Kontrick v. Ryan*, 540 U.S. 443, 124 S.Ct. 906, 915-16, 157 L.Ed.2d 867 (2004).¹ Instead, the rule serves as a “claims-processing rule” that can be forfeited if not timely asserted by a party. In that case, however, the Supreme Court did not address whether F.R.B.P. 4004 allows equitable exceptions. This Court has also reviewed *In re Phillips*, 288 B.R. 585 (Bankr. M.D.Ga. 2002), which does use the reasoning in *Kontrick* as support for limiting the Eleventh Circuit’s holding in *Alton* and allows the time period under F.R.B.P. 4007(c) to be expanded on equitable grounds. *See also DeAngelis v. Rychalsky (In re Rychalsky)*, 318 B.R. 61 (Bankr. D.Del. 2004) (construing F.R.B.P. 4004). Movants herein argue that such remedy should be available in this case and that sufficient equitable grounds exist to support the granting of their request for relief and allow the filing of a complaint after the passage of the bar date.

No doubt, the rationale set forth in *Phillips* is compelling and *Kontrick* may herald a time when the time periods in F.R.B.P. 4004 and 4007 lose their legal effect as strict rules of jurisdictional import, but given the facts presented herein, this Court is not persuaded at this time that the law as construed by the Eleventh Circuit does not apply. At the hearing, counsel for Movants stated that, although he consulted with Movants prior to the bar date of June 6, 2005, he was not retained until after the relevant time period had expired. But, Movants then chose to wait until July 26, 2005, nearly fifty days after the passage of the bar date before filing their motion to extend time. The facts presented by Movants do not provide a satisfactory reason for their failure to move in a more timely manner to protect their rights herein. The Court is mindful

1 In that case, the Supreme Court also addressed F.R.B.P. 9006(b)(3), which references F.R.B.P. 4004(a) and 4007(c) as time periods that can be enlarged only as provided in the rules themselves.

of the hardship strict enforcement of such rules can impose, but under the law as it currently exists in this circuit, the Court finds no basis for allowing the alteration of the time period set forth in F.R.B.P. 4007(c).

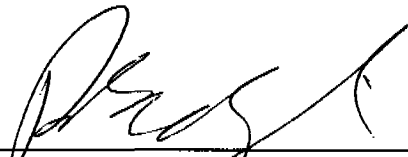
Accordingly, based upon the above reasoning, it is

ORDERED that the motion of Mira Pilac and Zarko Pilac to extend time for filing complaint objecting to dischargeability be, and hereby is, **denied**.

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

IT IS SO ORDERED.

At Atlanta, Georgia this 31st day of October, 2005.



ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE