



IT IS ORDERED as set forth below:

Date: February 09, 2009

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

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

In re:	:	
	:	
MARK ALLEN BARR and	:	BANKRUPTCY CASE NUMBER
SABRINA RANEE BARR,	:	08-60510-MGD
	:	
Debtors.	:	
	:	
WADE B. STRICKLAND and	:	ADVERSARY CASE NUMBER
SANDRA C. STRICKLAND,	:	08-09017-MGD
	:	
Plaintiffs,	:	
v.	:	CHAPTER 7
	:	
SANDRA RANEE BARR,	:	
	:	
Defendant.	:	

ORDER DENYING MOTION TO DISMISS

The above-styled adversary proceeding is before the Court on Defendant Sandra Ranee Barr's ("Defendant") Motion and Memorandum of Law to Dismiss Plaintiffs' Complaint as One Untimely Filed. (Docket No. 5). Plaintiffs Wade B. Strickland and Sandra C. Strickland

(“Plaintiffs”) have filed an Objection to Defendant’s Motion. (Docket No. 6). The issue before the Court is whether Federal Rule of Bankruptcy Procedure 4007(c) bars Plaintiffs from filing their proof of claim and objection to discharge after the bar date when Plaintiffs received no notice of Defendant’s bankruptcy case until, at the earliest, six days before claims were due. Six days’ notice, or less, is insufficient notice to satisfy the requirements of due process and Plaintiffs’ claim and objection to discharge therefore are not barred by Bankruptcy Rule 4007(c) .

I. FACTS

Defendant and her husband filed their chapter 7 case on January 10, 2008. (Case No. 08-60510-MGD). Defendant did not include any debt to Plaintiffs in her schedules and did not include Plaintiffs on her list of creditors. (Case No. 08-60510-MGD, Docket No. 1). Plaintiffs were not given notice of Defendant’s bankruptcy when Defendant and her husband filed their petition. The § 341 meeting of Defendant’s creditors was scheduled for February 13, 2008. (Case No. 08-60510-MGD, Docket No. 4). Accordingly, the bar date for objections to discharge was April 13, 2008, which was sixty days after the meeting of creditors. As April 13, 2008, was a Sunday, creditors would have had until April 14, 2008, to file their objections to discharge. On February 1, 2008, while unaware of Defendant’s pending bankruptcy case, Plaintiffs filed their complaint against Defendant in the Superior Court of Paulding County. (Docket No. 1). On March 19, 2008, Plaintiffs’ counsel filed a Notice of Leave of Absence in Paulding County, in which Plaintiffs’ counsel reported that he would absent from March 20, 2008, through April 15, 2008. (Docket No. 6, Exh. B). On April 8, 2008, Defendant filed her Suggestion of Bankruptcy in the Superior Court of Paulding County. (Docket No. 6, Exh. A).

Neither party suggests that Plaintiffs learned of Defendant’s chapter 7 case prior to April

8, 2008. At the earliest, therefore, Plaintiffs learned of Defendant's chapter 7 case a mere six days before the April 14, 2008, deadline for objections to discharge. Plaintiffs allege that, due to their counsel's absence through April 15, 2008, Plaintiffs actually learned of Defendant's bankruptcy case on April 16, 2008, when their counsel returned to the office. Plaintiffs filed a proof of claim in Defendant's bankruptcy case on April 28, 2008, and contemporaneously filed their complaint in the present adversary proceeding, in which they object to dischargeability of their debt pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(6). Plaintiffs' proof of claim and dischargeability objection, therefore, were both filed fourteen days after the April 14, 2008, deadline.

II. DETERMINING DISCHARGABILITY OF DEBTS

A discharge in a chapter 7 bankruptcy does not discharge debts that were obtained by fraud or by false pretenses, or that result from "willful and malicious injury by the debtor." 11 U.S.C. § 523(a)(2)(A), 523(a)(6). Such debts are dischargeable, however, until the creditor requests the court to determine the dischargeability of that debt and the court determines that the debt should be excepted from discharge. 11 U.S.C. § 523(c)(1). The procedures for filing dischargeability objections in chapter 7 cases are governed by Bankruptcy Rule 4007(c), which states that "a complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)." The rule further provides that "[t]he court shall give all creditors no less than 30 days' notice of the time fixed in the manner provided in Rule 2002." Bankr. R. 4007(c).

While the plain language of Rule 4007(c) suggests that creditors must receive official notice of the bar date from the court, courts generally agree that the bar date applies to a

creditor's claim if the creditor had actual notice of the debtor's bankruptcy more than thirty days before the deadline. *E.g., In re Alton*, 837 F.2d 457, 460–461 (11th Cir. 1988) (holding that a creditor's actual notice of debtor's bankruptcy was sufficient to apply bar date to creditor's claim when creditor knew of the bankruptcy seventy-seven days before the bar date); *and In re Gordon*, 988 F.2d 1000, 1001 (9th Cir. 1993) (holding that the creditor's actual notice of debtor's bankruptcy was sufficient for application of the bar date to creditor's claim when creditor had notice fifty-seven days prior to the bar date). While some courts have held that Rule 4007(c) requires a minimum of thirty days' notice, other courts have held that notice of fewer than thirty days could be sufficient to satisfy due process requirements. *In re Bateman*, 254 B.R. 866, 872 (Bankr. D. Md. 2000). Where, as here, the creditor receives fewer than ten days' notice, however, then the creditor has not received notice early enough to satisfy the requirements of due process and the bar date cannot be applied to that creditor's claim. *In re Dewalt*, 961 F.2d 848, 851 (9th Cir. 1992); *In re Linzer*, 264 B.R. 243, 250 (Bankr. E.D.N.Y. 2001) (holding that nine days' notice is inadequate). In *Dewalt*, the Ninth Circuit held that seven days' notice was insufficient to satisfy due process requirements when applying the Rule 4007(c) deadline, even for a creditor represented by counsel. 961 F.2d at 851. In the present case, Plaintiffs had, at best, only six days' notice of Defendant's bankruptcy case. By Plaintiffs' representation, Plaintiffs learned of Defendant's bankruptcy two days after the bar date. Under either time line, Plaintiffs were not notified of Defendant's bankruptcy case in time for Plaintiffs to investigate and preserve their rights prior to the 4007(c) bar date. Accordingly, it is

ORDERED that Defendant's Motion to Dismiss Plaintiffs' Complaint as One Untimely Filed is hereby **DENIED**.

The Clerk shall serve a copy of this Order upon the Plaintiffs, counsel for Plaintiffs, Defendant, and counsel for Defendant.

END OF DOCUMENT