



**IT IS ORDERED as set forth below:**

**Date: May 14, 2013**

*Mary Grace Diehl*

Mary Grace Diehl  
U.S. Bankruptcy Court Judge

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

IN RE:	:	:
	:	BANKRUPTCY CASE NUMBER
<b>JAKE T. CONVINGTON,</b>	:	
	:	<b>12-71862-MGD</b>
	:	
Debtor.	:	
	:	
	:	ADVERSARY CASE NUMBER
<b>STEVEN C. BELL,</b>	:	<b>12-5628-MGD</b>
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
<b>JAKE T. CONVINGTON,</b>	:	
	:	
Defendant.	:	

**ORDER DISMISSING ADVERSARY PROCEEDING**

This matter is before the Court on Defendant's Motion to Dismiss (Docket No. 4). Defendant moves to dismiss the above-styled adversary proceeding on the basis that *pro se* Plaintiff

had failed to abide by this Court's December 20, 2012 Order and prosecute this action. After Defendant's motion was filed, Plaintiff paid the adversary proceeding filing fee, filed an amended complaint, obtained a summons, and served Defendant with process.

To assess Defendant's motion in light of Plaintiff's subsequent action, the Court looks to Rule 4(m) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7004 of the Federal Rules of Bankruptcy Procedure. Rule 4(m) provides a time limit for service and states that:

(m) Time Limit for Service. If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).

FED. R. CIV. P. 4(m). The time limit for service expired prior to Plaintiff's actions on April 29, 2013.

No extension of time is warranted in this case. The Court gave Plaintiff great latitude with his initial pleading. *Estelle v. Gamble*, 429 U.S. 97, 104–105, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (a document filed pro se is "to be liberally construed"). Plaintiff filed an objection on November 26, 2012 that the Court construed as an objection to discharge. The deadline for filing objections to discharge was November 27, 2012. Based on the allegation in the objection and the proximity to the objection to discharge deadline, the Court directed the Clerk's office to use Plaintiff's objection as a complaint to open an adversary proceeding against Debtor. The Court then entered an Order on December 20, 2012 that guided Debtor to comply with the Federal Rules of Bankruptcy Procedure. That order also warned that a failure to serve a summons and complaint, or otherwise comply with

the Federal Rules of Bankruptcy Procedure, could result in dismissal without further notice. Although Plaintiff has recently taken action in this proceeding, Defendant has filed a motion to dismiss and Plaintiff's actions are insufficient to overcome Defendant's motion given the posture of this case.

Although Plaintiff has not sought an extension of time for service, given the discharge and dischargeability deadlines and that Plaintiff is unrepresented, a consideration of an extension under Rule 4(m) is taken up on the Court's own initiative. The determination whether to extend time involves a two-step inquiry. *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1305 (3d Cir. 1995). The court should assess whether a plaintiff has established good cause for the failure and whether the court, in its discretion, should extend the time. *Lepone-Dempsey v. Carroll County Comm'rs*, 476 F.3d 1277, 1282 (11th Cir. 2007); *Boley v. Kaymark*, 123 F.3d 756, 758 (3d Cir. 1997). Plaintiff does not provide any justification for the delay.

Here, dismissal of this action is also appropriate given the substance of the amended complaint. Despite Plaintiff's lengthy delay in taking any action to prosecute this proceeding, Plaintiff's amended complaint fails to state a claim for which relief could be granted, even under the most liberal interpretation of the complaint.<sup>1</sup> Sufficient facts have not been alleged to make out the required factual basis to support a plausible claim. *Bell Atlantic v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1969 (2007).

---

<sup>1</sup> Debtor filed an amended Schedule A on December 5, 2012 adding the property referred to in Plaintiff's original complaint. Plaintiff fails to plead any facts in support of Debtor's intention with respect to the alleged false statements.

The Court is also instructed to consider whether dismissal of Plaintiff's action is impacted by the statute of limitations. *Lepone-Dempsey v. Carroll County Comm'rs*, 476 F.3d at 1282. The time period for an objection to Debtor's discharge and certain dischargeability actions has run in this case. FED. R. BANKR. P. 4004 & 4007; *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S. Ct. 1644, 118 L. Ed. 2d 280,(1992); *Alabama Dep't of Econ. & Cmty. Affairs v. Lett*, 368 F. App'x 975, 978 (11th Cir. 2010). The Court weighs the statute of limitations factor with Debtor's interest in a prompt adjudication of discharge issues. Debtors have a strong interest in the prompt resolution of all discharge issues. *See In re Schultz*, 134 B.R. 604, 605 (Bankr. E.D. Mich. 1991). The policy of providing a prompt resolution with finality is evidenced by the Federal Rules of Bankruptcy Procedure. *See* 11 U.S.C. § 727 (prescribing that "[t]he court shall grant the debtor a discharge unless" and providing time limitations on objections to discharge and revocation of discharge). The deadlines provided for in the Rules "are to be interpreted strictly, and in a manner consistent with the Code's policies . . . favoring the fresh start for the debtor, and [the] prompt administration of the case." *In re Woods*, 260 B.R. 41, 43 (Bankr. N.D. Fla. 2001) (quoting *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992)).

Under the facts and circumstances of this case, an extension to serve process is not warranted and there is a sufficient basis to grant Defendant's motion to dismiss. Under Rule 7041 of the Federal Rules of Bankruptcy Procedure, a complaint objecting to a debtor's discharge under § 727 cannot be dismissed without notice to the trustee, the United States trustee, and other persons as the court may direct. This Order shall, therefore, serve as notice under FED. R. BANKR. P. 7041 that the § 727(a) claim objecting to Debtor's discharge is dismissed. Accordingly, it is

**ORDERED** that Defendant's Motion to Dismiss is **GRANTED**.

It is **ORDERED** and **NOTICE IS HEREBY GIVEN** that any creditor or party in interest who wishes to be substituted for the Plaintiff in this proceeding to object to Debtor's discharge **shall file**, within twenty-one (21) days after the date of service, a motion for substitution with the Clerk, U.S. Bankruptcy Court, 1340 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303-3367.

The Clerk shall serve a copy of this Order on the parties listed below and all parties in interest in Debtor's chapter 7 bankruptcy case.

**END OF DOCUMENT**

Distribution List

Steven C Bell  
2797 Valley Ridge Dr  
Decatur, GA 30032

Karen King  
King & King, P. C.  
215 Pryor Street  
Atlanta, GA 30303

Jake T Covington  
3190 Toney Drive  
Decatur, GA 30032

Marty Ochs  
Office of the United States Trustee  
362 Richard Russell Building  
75 Spring Street, SW  
Atlanta, GA 30303

Tamara Miles Ogier  
Ogier, Rothschild & Rosenfeld PC

170 Mitchell St. S.W.  
Atlanta, GA 30303