

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
DONALD KYLE CAVIN,)	CASE NO. 12-60927 - MHM
TONIA R. MANN CAVIN,)	
)	
Debtors.)	

G. SCOTT FREEMAN,)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
DONALD KYLE CAVIN,)	
TONIA R. MANN CAVIN,)	
)	
Respondents.)	

ORDER DENYING MOTION TO COMPEL

Debtors filed their Chapter 7 petition April 29, 2012. Debtors failed to appear at for the first scheduled §341(a) meeting of creditors June 1, 2012; the meeting was rescheduled to June 21, 2012, at which Debtors appeared and the meeting was concluded.

The original bar date for filing objections to discharge was set for July 31, 2012 (the "Bardate"). Due to Debtors' failure to appear at original §341 meeting, and because Debtors did not file schedules until June 1, 2012, Movant filed his first motion to extend the Bardate July 20, 2012 (Doc. No. 31) (the "Extension Motion").¹ The Extension Motion did not expressly include a request to extend the Bardate as to the Chapter 7

¹ Movant filed a motion to extend the Bardate July 13, 2012 (Doc. No. 23), but because that motion was not properly served, Movant filed an amended motion July 20, 2012.

Trustee or the U.S. Trustee. An order granting the Extension Motion was entered July 30, 2012, with Debtors' consent, extending the Bardate to September 28, 2012 (the "Extension Order"). Neither the Chapter 7 Trustee nor the U.S. Trustee joined the Extension Motion; neither consented to the Extension Order; and neither has filed a motion to extend the Bardate. The decretal paragraph of the Extension Order provides that "the deadline to file complaints objecting to discharge or dischargeability is extended through and including September 28, 2012."

On September 28, 2012, Movant filed his *Second Motion to Extend Time to File Complaints Objecting to Discharge or Dischargeability* (Doc. No. 41) (the "Second Extension Motion"). On October 10, 2012, Movant filed a *Motion for Trustee and United States Trustee to Investigate Whether Grounds Exist for a Denial of Discharge* (Doc. No. 45) (the "Motion to Compel").² In the Motion to Compel, Movant sets forth the factual grounds that he contends would support an objection to discharge and asserts that he is without the financial resources to litigate a complaint objecting to Debtors' discharge. He seeks an order instructing the Chapter 7 Trustee to investigate whether grounds exist for denial of Debtors' discharge and an order referring the matter to the U.S. Trustee for possible investigation.

Hearing on the Second Extension Motion and the Motion to Compel was held November 13, 2012. Prior to the hearing, Debtors and the U.S. Trustee filed responses opposing Movant's motions (Docs. No. 43, 46 and 47). The Chapter 7 Trustee appeared at the hearing and opposed the Motion to Compel; the Chapter 7 Trustee filed a post-

² Bankruptcy Rule 4007(a) provides that only a debtor or a creditor may file a complaint to determine dischargeability.

hearing response opposing the Motion to compel. At the hearing, the undersigned ruled orally in favor of Movant on the Second Extension Motion, extending the Bardate to December 28, 2012; and took the Motion to Compel under advisement.

A threshold issue is whether the Extension Order effectively extended the Bardate for the Chapter 7 Trustee and U.S. Trustee. If it did not, then any instruction that the Chapter 7 Trustee or the U.S. Trustee investigate an objection to discharge would be an exercise in futility. The general rule is that an extension of the deadlines for filing claims under §727 or §523 inures only to the benefit of the movant. *Marshall v. Demos*, 57 F. 3d 1037 (11th Cir. 1995); *Ichinose v. Homer National Bank*, 946 F. 2d 1169 (5th Cir. 1991); *In re Pizzuti*, 2011 WL 43530 (Bankr. M.D. Fla. 2011). Movant's Extension Motion did not expressly seek to extend the Bardate for anyone other than himself. Even though the language in the Extension Order is broad enough to include an extension of the Bardate for *all* parties in interest, no facts support a conclusion that Movant sought for the extension to be so broadly applied and no fact support a conclusion that the Chapter 7 Trustee or the U.S. Trustee sought or seek application of the extension of the Bardate as to them. *See Opportunity Bank, NA v. Martinsen*, 449 B.R. 917 (Bankr. W.D. Wisc. 2011) (no evidence that creditor was aware of, or relied on fact, that the U.S. Trustee was applying for extension in failing to move for extension itself). In fact, at the hearing, the Chapter 7 Trustee affirmatively stated that he believed the Bardate as to an objection to discharge by him had expired and that he had reviewed the evidence in the record and elicited at the §341 meeting and determined not to refer this case to the U.S. Trustee to pursue an objection to discharge.

Courts have concluded that in certain limited circumstances, an extension of the bardate entered on behalf of a single movant can provide an extension to other parties in interest. In *Marshall v. Demos*, 57 F. 3d 1037 (11th Cir. 1995), the court concluded that an extension should apply to non-movants when the extension was entered using the general equitable powers of bankruptcy court upon motion of the trustee. In *Baez v. Rosado*, 2009 WL 2900298 (Bankr. D. Puerto Rico 2009), the court recognized that an exception to the general rule regarding application of an extension to the movant could be present if the court made an express finding that all creditors of the particular debtor need an extension, and that this universal extension is based on some “cause” by which all creditors in general have need of an extension of time. None of those special circumstances are present in this case. Therefore, the Extension Order was ineffective to extend the Bardate for the Chapter 7 Trustee or the U.S. Trustee.

Even if the Extension Order had extended the Bardate for all parties in interest, the U.S. Trustee correctly points out that no statutory basis exists for this court to direct the U.S. Trustee to investigate or pursue an objection to discharge. Under §727(c)(2), whether to order a Chapter 7 Trustee to investigate whether grounds exist to oppose discharge is within the court’s discretion. Militating against exercise of that discretion is the Chapter 7 Trustee’s representations that he timely investigated whether grounds exist to oppose Debtors’ discharge and decided not to proceed with referral to the U.S. Trustee of a recommendation to object to Debtors’ discharge. Neither the Chapter 7 Trustee nor the U.S. Trustee filed a motion to extend the Bardate, indicating that both believed a sufficient investigation had already been conducted. Movant presented no evidence that the Chapter 7 Trustee or the U.S. Trustee joined in or supported Movant’s Extension

Motion. Nothing in the Extension Motion suggested that Movant would be unable or unwilling to pursue an objection to discharge. Apart from his insufficient financial resources, Movant presents no factual argument to support compelling the Chapter 7 Trustee to undertake a further investigation of whether grounds exist to object to Debtors' discharge. Accordingly, it is hereby

ORDERED that Movant's Motion to Compel is *denied*.

The Clerk is directed to serve a copy of this order upon Debtors, Debtors' attorney, Movant's attorney, and the Chapter 7 Trustee

IT IS SO ORDERED, this the 19th day of November, 2012.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE