



IT IS ORDERED as set forth below:

Date: November 19, 2015

W. Homer Drake
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBERS
	:	
BRENDA KAY JORDAN,	:	BANKRUPTCY CASE
Debtor.	:	NO. 15-11285-WHD
_____	:	
	:	
LYNN OTWELL, BOBBY JO	:	ADVERSARY PROCEEDING
OTWELL,	:	No. 15-1053-WHD
Plaintiffs,	:	
	:	
v.	:	
	:	IN PROCEEDINGS UNDER
BRENDA KAY JORDAN,	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion to Dismiss Adversary filed by Brenda Kay Jordan (hereinafter, the “Debtor”) in the above-captioned adversary proceeding.

This matter arises in connection with the complaint of Lynn and Bobby Jo Otwell (hereinafter, the “Plaintiffs”) objecting to the dischargeability of a debt pursuant to section 523(a)(6) of the Bankruptcy Code. This constitutes a core proceeding over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(I), 1334.

Discussion

In her Motion to Dismiss, the Debtor argues that the Plaintiffs’ complaint is time barred by § 523(c) and Federal Rule of Bankruptcy Procedure 4007(c). For the reasons set forth *infra*, the Court agrees.¹

The Debtor filed a voluntary petition on June 17, 2015, under Chapter 7 of the Bankruptcy Code. The next day, the Court issued notice to all creditors, including the Plaintiffs, of the meeting of creditors under 11 U.S.C. § 341 (hereinafter, the “341 meeting”), which was scheduled for July 24, 2015. On September 24, 2015, the Plaintiffs filed their complaint initiating this adversary proceeding. The Plaintiffs allege that the debt owed to them by the Debtor should not be discharged

¹ The Debtor also contends that the complaint is barred by the equitable doctrine of laches and that the Plaintiffs failed to serve the Debtor with a complaint and summons in accordance with Rule 7004. As the Court finds sufficient reason to dismiss the case pursuant to Rule 4007(c), there is no need to address these alternatives.

pursuant to § 523(a)(6), which excepts from discharge debts owed for “willful and malicious injury.” On September 29, 2015, the Debtor received her discharge and the bankruptcy case was closed.

Because the Plaintiffs object to the dischargeability of a debt under § 523(a)(6), this proceeding implicates the provisions of § 523(c). Section 523(c) provides:

[T]he debtor shall be discharged from a debt of the kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

11 U.S.C. § 523(a)(1). The procedure for actions brought under § 523(c) in a Chapter 7 case is governed by Rule 4007(c), which requires that “a complaint to determine dischargeability of a debt under § 523(c)...be filed no later than 60 days after the first date set for the [341 meeting]” FED. R. BANKR. P. 4007(c). Should a creditor need more time, Rule 4007(c) allows a court, for cause, to extend the time to file a complaint on motion of a party in interest, but only if that motion was filed before the initial sixty-day period had expired. *Id.* So long as the plaintiff-creditor had notice of the bankruptcy case, a court may not allow a complaint filed outside of the sixty-day

window. See *In re Tucker*, 263 B.R. 632, 635-36 (Bankr. M.D. Fla. 2001); accord FED. R. BANKR. P. 9006(b)(3) (allowing enlargement of time for bringing an action under Rule 4007(c) “only to the extent and under the conditions stated in [that] rule[]”); see also *Stuart v. Mendenhall (In re Mendenhall)*, 572 F. App’x 858, 862 (11th Cir. 2014) (stating that the court may only extend the time to file a complaint if the motion is filed before time expires); *Byrd v. Alton (In re Alton)*, 837 F.2d 457, 459 (11th Cir. 1988) (“There is ‘almost universal agreement that the provisions of [Rule] 4007(c) are mandatory and do not allow the Court any discretion to grant a *late filed* motion to extend time to file a dischargeability complaint.” (quoting *In re Maher*, 51 B.R. 848, 852 (Bankr. N.D. Iowa 1985))). Strict application of this limitation ensures protection of a debtor’s “fresh start.” See *Ichinose v. Homer Nat’l Bank (In re Ichinose)*, 946 F.2d 1169, 1172-73 (5th Cir. 1991).

Here, the first date set for the 341 meeting was July 24, 2015. Computing the sixty-day span according to Rule 9006,² this meant the last day to file a complaint was September 22, 2015. However, the Plaintiffs filed their complaint on September 24,

² “When the period is stated in days or a longer unit of time: (A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period....” FED. R. BANKR. P. 9006(a)(1).

2015—two days after the time had run. Further, the Court finds no excuse for why the Plaintiffs missed this deadline, as they had ample notice of the bankruptcy case. *See* Certificate of Mailing of Notice of Meeting of Creditors, Case No. 15-11285-WHD, Doc. No. 9. Because the Plaintiffs had notice of the case and did not file their complaint until two days after the running of the sixty-day period prescribed by Rule 4007(c), their complaint is time barred.

Conclusion

For the reasons set forth above, it is hereby **ORDERED** that the Debtor's Motion to Dismiss Adversary is **GRANTED**, and the Plaintiffs' complaint, Adv. Proc. No. 15-1053-WHD, is **DISMISSED**.

The Clerk is **DIRECTED** to serve a copy of this Order on the Plaintiffs, the Debtor, and respective counsel.

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