



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

**Date: July 28, 2015**

*Wendy L. Hagenau*

Wendy L. Hagenau  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CASE NO. 15-54523-WLH
	)	
HEADLEY LEOPOLD SCOTT,	)	CHAPTER 7
	)	
Debtor.	)	JUDGE WENDY L. HAGENAU
_____	)	
	)	
EARL RANDALL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADV. PROC. NO. 15-5262
	)	
HEADLEY LEOPOLD SCOTT,	)	
	)	
Defendant.	)	
_____	)	

**ORDER DENYING MOTION TO DISMISS**

The Debtor contends the dischargeability complaint must be dismissed because the full filing fee did not accompany it. The Court disagrees, and therefore DENIES the Motion to Dismiss. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157(a). This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

Plaintiff delivered the complaint objecting to the dischargeability of debt (“Complaint”) to the Court on June 15, 2015. The filing fee which accompanied the Complaint was \$295, even though the required fee for filing a complaint to determine dischargeability is \$350. The Clerk sent a notice of deficiency on June 18, 2015, notifying counsel of the remaining filing fee due. The balance of the filing fee was paid on June 30, 2015. In the meantime, Defendant filed the Motion to Dismiss the Adversary Proceeding as Untimely (“Motion to Dismiss”), contending that Northern District of Georgia Bankruptcy Local Rule 1006-1 required the case to be dismissed as untimely.

Under Fed. R. Bankr. P. 4004, complaints to determine the dischargeability of a debt in a Chapter 7 case must be filed within 60 days after the first date set for the meeting of creditors under 11 U.S.C. § 341(a). The delivery of Plaintiff’s Complaint on June 15 fell within that time period. Northern District Georgia Bankruptcy Local Rule 1006-1 states, “Pleadings received by the Bankruptcy Clerk for filing with the full filing fee not attached shall be marked ‘received’, but they shall not be filed.” Based upon this Local Rule, Defendant contends the Complaint was not actually filed on June 15, but instead on June 30 when the full fee was paid, and therefore the filing of the Complaint was not timely. The Court disagrees. The reason the clerk is required to mark the date on which the filing papers were received is so that when the papers are later appropriate for filing, the received date becomes the filing date. This construction is consistent with Fed. R. Bankr. P. 7005 and Fed. R. Civ. P. 5(d)(2), which provides that, “A paper is filed by delivering it: (A) to the clerk.” Moreover, Fed. R. Civ. P. 5(d)(4) provides that, “The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice”.

The issue of whether an incomplete filing fee negates the timely delivery of a dischargeability complaint was addressed by the bankruptcy court in In re Emory, 219 B.R. 703

(Bankr. D. S.C. 1998). There, along similar lines to those articulated herein, the court held that the complaint was constructively filed on the day it was received by the clerk of court and became deemed filed once the filing fee was paid in full. This Court agrees with the Emory decision.

Therefore, the Complaint was timely filed because it was received by the Clerk within the time period specified in Fed. R. Bankr. P. 4004(a) and, once the filing fee was paid in full, the Complaint was deemed filed on the date on which it was received by the Clerk of Court. The Motion to Dismiss is DENIED.

**### END OF ORDER ###**

**DISTRIBUTION LIST**

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