


ORDERED.

Dated: November 10, 2022


Tiffany P. Geyer
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
Edwin R. English, III,)	Case No. 6:22-bk-1396-TPG
)	Chapter 7
Debtor.)	
_____)	

**ORDER DENYING MOTION TO EXTEND TIME
TO OBJECT TO DISCHARGE UNDER 11 U.S.C. § 727
OR SEEK DISMISSAL UNDER 11 U.S.C. § 707(a)**

THIS CASE came on for hearing on October 11, 2022, on the motion of Creditor Truist Bank (“Truist”) seeking to extend the time to: (i) object to the Debtor’s discharge pursuant to 11 U.S.C. § 727; and (ii) request dismissal of the Debtor’s case pursuant to 11 U.S.C. § 707(a) (the “Extension Motion”). (Doc. No. 19.) Richard Hennings appeared at the hearing as counsel for the Debtor and Matthew Cerialle appeared as counsel for Truist. (Doc. No. 31.) The issue is whether the Extension Motion was timely filed, having been filed before the expiration of an extension agreed to between the Debtor and the Chapter 7 Trustee, Arvind Mahendru, and before the conclusion of the 11 U.S.C. § 341 meeting of creditors. The Court concludes that it was not. The Extension Motion is denied.

A. Background.

The Debtor filed this Chapter 7 case on April 19, 2022. (Doc. No. 1.) On April 20, 2022, the Court issued its notice of the 341 meeting (May 24, 2022) and of the deadline to object to the Debtor's discharge (July 25, 2022). (Doc. No. 5.) Counsel for Truist filed a notice of appearance and request for notice on April 21, 2022. (Doc. No. 6.) As such, Truist has been involved in the Debtor's case since the beginning and had access to all information on the docket, including the dates above.

Truist obtained a final deficiency judgment against the Debtor for \$122,783.03 on April 16, 2014 (the "Judgment"). (Claim 1-1 at 5.) Apparently Colonial Bank was the original holder of the debt underlying the Judgment.¹ On August 30, 2022, over four months after the Debtor filed this case, Truist noticed a 2004 examination of the Debtor for October 31, 2022 (Doc. No. 18) and filed the Extension Motion that same day. (Doc. No. 19).

The initial 341 meeting was held on May 24, 2022, and then continued several times to allow further examination of the Debtor, finally concluding on July 5, 2022. During this time, Mahendru requested certain documents from the Debtor which the Debtor supplied, though the Debtor did not share those documents with Truist. (Doc. No. 32 at 5.) In addition, the Debtor also agreed to extend the deadline in which Mahendru could file a complaint objecting to discharge pursuant to 11 U.S.C. § 727. (Doc. No. 15.) Prior to the expiration of the July 25th deadline for objecting to the Debtor's discharge, Mahendru timely filed an agreed motion to extend the time to September 23, 2022 (Doc. No. 14), which the Court granted (Doc. No. 15).

¹ After Colonial Bank ceased operations and was taken over by the FDIC in 2009, BB&T acquired Colonial Bank's assets, including the debt underlying the Judgment. BB&T later changed its name to Truist. (Doc. No. 19 at 1 n.1.)

B. Truist's request to extend the deadline to object to the Debtor's discharge is untimely.

Truist argues its request to extend the time to object to the Debtor's discharge was timely because it was filed on August 30, 2022, which falls within 60 days of when the § 341(a) meeting *concluded* on July 5th. But this is contrary to the plain language supplied in Federal Rule of Bankruptcy Procedure 4004(a) which provides that “[i]n a chapter 7 case, *a complaint . . . objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a).*” (Emphasis added.) Here, the § 341(a) meeting was first set for May 24, 2022. (Doc. No. 5 at 2.) Therefore, the deadline under Rule 4004(a)(1) was 60 days later, on July 25, 2022. The fact that the 341 meeting did not conclude until July 5, 2022, has no bearing on the deadline as clearly set forth in Rule 4004(a). Thus, the Extension Motion is untimely as it relates to extending the time to object to the Debtor's discharge under Rule 4004(a).²

Truist next argues that the Extension Motion is timely because the Court had already extended the time for filing complaints objecting to discharge to September 23, 2022, and that it filed the Extension Motion before that deadline expired. (Doc. No. 19 ¶ 4.) The issue is whether the extension of time requested by Mahendru and agreed to by the Debtor also applies to Truist.

² Although the plain language of Rule 4004(a) is clear and Truist is seeking to extend the time to object to the Debtor's general discharge under 11 U.S.C. § 727 rather than seeking to have its debt excepted from discharge pursuant to 11 U.S.C. § 523, the Court finds the advisory committee's note to the 1999 amendment to Rule 4007(c), which discusses 11 U.S.C. § 523, instructive:

Subdivision (c) is amended to clarify that the deadline for filing a complaint to determine the dischargeability of a debt under § 523(c) of the Code is 60 days after the first date set for the meeting of creditors, *whether or not the meeting is held on that date. The time for filing the complaint is not affected by any delay in the commencement or conclusion of the meeting of creditors.*

(Emphasis added.)

“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.” *In re Cavin*, No. 12-60927-MHM, 2012 WL 6090282, at *1–2 (Bankr. N.D. Ga. Nov. 20, 2012) (citing *Marshall v. Demos*, 57 F.3d 1037 (11th Cir. 1995)); *Ichinose v. Homer Nat’l Bank*, 946 F.2d 1169 (5th Cir. 1991); *In re Pizzuti* 2011 WL 43530 (Bankr. M.D. Fla.2011). However, courts can conclude otherwise dependent upon the circumstances.

For example, in *In re Demos*, 57 F.3d 1037, 1038, 1039 (11th Cir. 1995), the Eleventh Circuit permitted a trustee’s extension of time to apply to a creditor, where the debtor joined in the trustee’s motion to extend the time, the creditor adopted and concurred in the trustee’s motion, and the motion was based upon 11 U.S.C. § 105, not Rule 4004. In addition, the order granting the motion for extension of time noted the large number of creditors and the numerous parties interested in attending the 2004 examination scheduled to occur after the deadline. *In re Demos*, 57 F.3d at 1039. But here the circumstances here are different: the extension was sought under Rule 4004 and not § 105; there is no suggestion Trust was involved in the discussions regarding the extension agreed to between the Debtor and Mahendru; no party cross noticed Trust’s 2004 examination of the Debtor; and there do not appear to be any other creditors who desire a further extension to object to the Debtor receiving a discharge.

Although the Debtor did agree to an extension, there is no evidence that the Debtor agreed to supply an extension to anyone other than Mahendru, although arguably the wording in the order granting the extension could be interpreted as having a broader effect, as it simply provides that “[t]he deadline to file a complaint objecting to discharge is extended to September 23, 2022.” (Doc. No. 15). The order does not say that the deadline *for Mahendru* to file a complaint objecting to discharge is extended to September 23, 2002. But the order also does not

say that the deadline *for any party in interest* to file a complaint objecting to discharge is extended to September 23, 2022.

Under the case facts, however, the Court sees no reason to deviate from the general rule that an extension of the deadlines for filing claims under § 727 or § 523 inures only to the benefit of the movant. No other creditor is interested in objecting to the Debtor's general discharge and Truist did not present any other compelling facts that would merit a departure from the general rule. Therefore, the Court concludes that the extension of time only applied to Mahendru. *In re Gallagher*, 70 B.R. 288, 289 (Bankr. S.D. Tex. 1987) (rejecting creditor's argument that the trustee's motion for extension of time to object to discharge inures to the creditor's benefit); *In re Canape*, No. 20-10303, 2021 WL 5508509, at *4 (Bankr. N.D.N.Y. Nov. 24, 2021) (rejecting creditor's argument that order granting trustees' motion for an extension of time to object to discharge applied to the creditor and distinguishing *Demos* because, unlike in *Demos*, there was no indicia that the extension could be applied to anyone other than the trustees); *In re Pizzuti*, No. 6:10-BK-12098-ABB, 2011 WL 43530, at *2-3 (Bankr. M.D. Fla. Jan. 6, 2011) (denying debtors' motion for reconsideration of order issued under 11 U.S.C. § 105(a) granting extension of time for any party in interest to object to discharge where order specifically stated that the deadline was extended to any party in interest and multiple parties moved for the extension of time before the deadline, among other reasons); *In re Cavin*, No. 12-60927-MHM, 2012 WL 6090282, at *1-2 (Bankr. N.D. Ga. Nov. 20, 2012) (denying motion to compel trustee to object to discharge where prior order extending time to object did not apply to trustee because it was not brought by the trustee and did not seek to extend the deadline for anyone other than the movant and there was no express finding that all creditors needed an extension). As such, Truist's request for an extension of time to object to the Debtor's discharge is untimely.

C. **Truist's request to extend the deadline to file a motion to dismiss pursuant to 11 U.S.C. § 707(a) is unnecessary.**

The Debtor argues that the Extension Motion as it relates to Truist's request to extend the deadline to file a motion to dismiss the Debtor's case was also untimely, but this is not correct. Although it is true that Rule 1017(e)(1) supplies a deadline for filing a motion to dismiss a case for abuse under § 707(b) or (c) – “within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss” – here, Truist relies on § 707(a) as a basis for dismissal and *not* subsections (b) or (c). Because the time limit under Rule 1017(e)(1) applies only to motions to dismiss filed under § 707(b) or (c) and not § 707(a), the Debtor's argument fails. *In re Champion*, 600 B.R. 459, 465 (Bankr. S.D. Ga. 2019) (“[T]he Rules and Code do not establish a deadline for filing § 707(a) motions to dismiss.”). And because there is no time limit to file a motion to dismiss under § 707(a) and the parties have not requested that the Court establish a time limit, there is no deadline to file a motion to dismiss under § 707(a).

In sum, the Court concludes that Mahendru's extension of time to object to the Debtor's discharge did not apply to Truist, and therefore the Extension Motion is untimely as to that request. In addition, there is no deadline to file a motion to dismiss under 11 U.S.C. § 707(a) in this case, and therefore no basis for requesting an extension of time to do so.

Accordingly, it is **ORDERED** that the Extension Motion (Doc. No. 19) is **DENIED**.

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The Clerk is directed to serve a copy of this order on all interested parties.