

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501

IRVIN N HOYT
CHIEF BANKRUPTCY JUDGE

TELEPHONE
(605) 224-0560

August 9, 1995

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Woonsocket, South Dakota 57385

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Counsel for Defendant
#202, 505 West 9th Street
Sioux Falls, South Dakota 57104

Subject: *Ion Tarrant v. Darwin H. Kurtz (In re Kurtz)*,
Adversary No. 95-4017
Chapter 7; Bankr. No. 95-40192

Dear Counsel:

The matter before the Court is the Motion to Dismiss Complaint filed by Defendant-Debtor on August 2, 1995. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter memorandum of decision and accompanying orders shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below more fully, the Court concludes that the complaint must be dismissed because it was not filed timely.

The deadline for filing a discharge complaint under 11 U.S.C. § 727 or a dischargeability complaint arising from fraud or willful and malicious injury under 11 U.S.C. §§ 523(c) is established by rule and that date coincides with the entry of discharge. Under F.R.Bankr.P. 4004(a), a discharge complaint must be filed within sixty days after the date originally set for the § 341 meeting of creditors unless an extension is granted before the original deadline passes. Similarly, under F.R.Bankr.P. 4007(c), a complaint objecting to the dischargeability of a debt for fraud or willful and malicious injury -- as set forth at §§ 523(a)(2), (4), or (6), must be filed within sixty days after the date originally set for the § 341 meeting of creditors unless an extension is granted before the original deadline passes. Correspondingly, under F.R.Bankr.P. 4004(c), discharge shall be entered "forthwith" upon the expiration of sixty days following the first date set for the § 341 meeting of creditors unless a discharge complaint is pending.

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After a careful review of Rules 4004(a) and 4007(c) and the applicable dates in this case, the Court concludes that the complaint was untimely. Plaintiff did not file a motion under F.Rs.Bankr.P. 4004(b) or 4007(c) to extend the time for filing a complaint objecting to discharge or the dischargeability of a debt. Therefore, the last date for filing an objection to discharge or an objection to the dischargeability of a debt for fraud or willful and malicious injury was July 10, 1995 -- sixty days after the originally scheduled § 341 meeting on May 10, 1995. Plaintiff's complaint was not filed until July 24, 1995. Therefore, the complaint must be dismissed.

The Court of Appeals for the Eighth Circuit has not ruled on this issue. However, this Court agrees with that line of cases, including some from other Bankruptcy Courts in this Circuit, which concludes that the deadlines in Rules 4004(a) and 4007(c) for filing a discharge complaint under § 727 or a dischargeability complaint under § 523(a)(2), (4), or (6) must be strictly enforced unless an extension of time to file is obtained under Rules 4004(b) or 4007(c). *Estate of Oliver Hanson v. Walgamuth (In re Walgamuth)*, 144 B.R. 465, 467-68 (Bankr. D.S.D. 1992) (cites therein); *Herndon v. De La Cruz (In re De La Cruz)*, 176 B.R. 19, 22 (9th Cir. BAP 1994). "Deadlines may lead to unwelcome results, but they prompt parties to act and produce finality." *Taylor v. Freeland & Kronz*, 112 S.Ct. 1644, 1648 (1992).

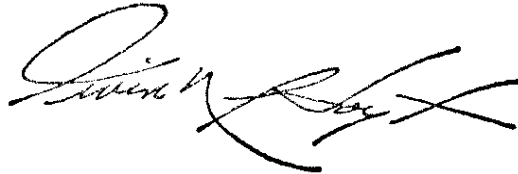
There is one other issue raised by Plaintiff's complaint, however, that will be addressed regardless of the dismissal of the complaint. Plaintiff requests that Debtor be ordered to amend his schedules to show all assets, including tools and equipment of his construction business, and all liabilities, including a debt to Plaintiff based on a contract that guarantees Plaintiff a percentage of Debtor's business income. Plaintiff also asks that the schedules be amended to identify more completely Debtor's creditors, the dates of the debts, and the amounts due.

Under F.R. Bankr.P. 1009(a), the Court, after notice and hearing may order a debtor to amend his schedules. Therefore, to bring this matter to an expedient resolution, the Court will consider Plaintiff's complaint as a motion for an amendment of Debtor's schedules. An order will be entered in the main case scheduling a hearing. Debtor will be given an opportunity to respond. The hearing will be set in the September term so that Trustee Yarnall will have time to investigate whether all assets and liabilities have been scheduled properly.

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An Order will be entered in the adversary proceeding dismissing the complaint because it was untimely. Plaintiff's request for an amendment of schedules will survive and be heard in the main case.

Sincerely,



Irvin N. Hoyt
Chief Bankruptcy Judge

INH:sh

CC: Bankruptcy Clerk
Trustee Rick A. Yarnall
United States Trustee

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

AUG 10 1995

Clerk

U.S. Bankruptcy Court, District of S.D.