

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

ROOM 211

FEDERAL BUILDING AND U.S. POST OFFICE

225 SOUTH PIERRE STREET

PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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September 8, 2000

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Subject: *Wanda G. Gaston v. Evan D. Pipitone*
(*In re Pipitone*), Adversary No. 00-5009;
Chapter 7; Bankr. No. 00-50113

Dear Counsel:

The matter before the Court is a complaint under 11 U.S.C. § 523(a)(5) and (a)(15). A pre-trial conference was held August 22, 2000. The issue raised at the conference through Defendant-Debtor's Answer that is now before the Court is whether Plaintiff's complaint under § 523(a)(15) was timely. This is a core proceeding under 28 U.S.C. § 152(b)(2). This interim letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052 on this issue. As discussed below, the Court concludes that those counts of Plaintiff's complaint under 11 U.S.C. § 523(a)(15) must be dismissed.

SUMMARY OF MATERIAL FACTS. Evan D. Pipitone ("Debtor") filed a Chapter 7 petition on March 15, 2000. The meeting of creditors was scheduled for April 20, 2000, in Rapid City, South Dakota. Based on this scheduled meeting date, the deadline for filing a dischargeability complaint under § 523(c), which references a complaint under § 523(a)(15), was set as June 19, 2000. Appropriate notice of the April 20, 2000 deadline was given via the Clerk's Notice of Chapter 7 Bankruptcy Case.

A blizzard struck Rapid City on April 20, 2000. The case trustee did not hold meetings of creditors that day. All were rescheduled to May 11, 2000. Parties were given notice of the rescheduled meetings by the Clerk through an Amended Notice of

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Chapter 7 Bankruptcy Case. The meeting was concluded on May 11, 2000.¹

On June 30, 2000, Wanda G. Gaston, Debtor's former wife, ("Plaintiff") filed a non dischargeability complaint under 11 U.S.C. §§ 523(a)(5) and (a)(15). Debtor answered on July 26, 2000. He denied that the subject debts fell under § 523(a)(5). He also asked the Court to find that Plaintiff's complaint under § 523(a)(15) was untimely because it was filed after the June 19, 2000 deadline.

A pre-trial conference was held August 22, 2000. Plaintiff was given an opportunity to file a brief regarding the timeliness of her § 523(a)(15) complaint.

DISCUSSION. Under F.R.Bankr.P. 4007(c), the deadline for filing a complaint objecting to the dischargeability of a particular debt under §§ 523(a)(2), (4), (6), or (15) is "no later than sixty days after the first date **set** for the meeting of creditors under § 341(a) [emphasis added]." In this Circuit, this deadline is akin to a statute of limitations and must be strictly enforced unless a timely extension is obtained under Rule 4007(c). *KBHS Broadcasting Co. v. Sanders (In re Bozeman)*, 226 B.R. 627, 630 (B.A.P. 8th Cir. 1998); *In re Walgamuth*, 144 B.R. 465, 467-68 (Bankr. D.S.D. 1992) (citing several cases therein). The deadline can be extended only through the procedure established in Rule 4007(c). Fed.R.Bankr.P. 9006(b)(3).

In her brief, Plaintiff relies on *State Bank & Trust v. Dunlap (In re Dunlap)*, 217 F.3d 311 (5th Cir. 2000). In this recent case, the Court of Appeals concluded that a new deadline for filing a dischargeability complaint under § 523(c) had to be established when the Chapter 7 case was dismissed before the first scheduled meeting of creditors was held and then that dismissal order was vacated *after* the original dischargeability complaint deadline passed.

The Court concludes that *Dunlap* is not persuasive under the facts presented in this case nor controlling in this Circuit. First, unlike in the facts in *Dunlap*, the first date set for the meeting of creditors has always been April 20, 2000. There was no intervening dismissal of the case that essentially mooted the

¹ The trustee erroneously reported that the meeting was concluded on April 20, 2000.

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Total notices mailed: 4

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