

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

SCOTT M. GOLDSTEIN,

Debtor.

Case No. DL 07-04566
Chapter 7
Hon. Scott W. Dales

MEMORANDUM OF DECISION
REGARDING NORTH AMERICAN SPECIALTY INSURANCE COMPANY'S MOTION
PURSUANT TO RULES 9023 AND 9024 FOR AN ORDER ALLOWING IT TO PROCEED
WITH ITS OBJECTION TO DISCHARGE AND DISCHARGEABILITY

By Order dated June 10, 2008, I denied a Motion for Order *Nunc Pro Tunc* Extending the Deadline to File Complaint to Determine Dischargeability of Claim (the "9006 Motion") that North American Specialty Insurance Company ("NAS") filed nearly four months after the deadline at issue in the 9006 Motion. NAS now files a Motion Pursuant to Rules 9023 and 9024 for an Order Allowing It to Proceed with Its Objection to Discharge and Dischargeability (the "9023 Motion"), which I construe as a motion to reconsider the court's June 10, 2008 Order. The court has jurisdiction over the 9006 Motion and the 9023 Motion under 28 U.S.C. § 1334, and I have determined that these motions fall well-within the bankruptcy court's "core" jurisdiction under 28 U.S.C. § 157(b)(2)(l). For the following reasons, the court's order denying the 9006 Motion will stand.

Scott M. Goldstein filed a voluntary bankruptcy petition on June 26, 2007. Because the court scheduled the First Meeting of Creditors for August 15, 2007, the original deadline to file a complaint objecting to discharge of the Debtor pursuant to 11 U.S.C. § 727 or § 707(b), or excepting particular debts from discharge pursuant to 11 U.S.C. § 523, was October 14, 2007.

On October 3, 2007, the Trustee filed a Motion to Extend Time to Object to Discharge pursuant to 11 U.S.C. § 727.¹ She did not request an extension of time to file complaints to determine dischargeability of particular debts pursuant to 11 U.S.C. § 523, nor would I have expected her to do so given the limited effect of non-dischargeable debt proceedings. Bankruptcy Trustees concern themselves with the bigger picture, and in fact the Bankruptcy Code limits standing to commence non-dischargeable debt actions to “the creditor to whom such debt is owed.” See 11 U.S.C. § 523(c)(1). On October 9, 2007, the United States Trustee filed a similar motion under 11 U.S.C. § 727.² It is worth noting that before the October 14, 2007 deadline had expired, Fifth Third Bank and Irwin Union Bank and Trust Company each filed motions to extend the deadline to file complaints to determine dischargeability of their particular debts pursuant to 11 U.S.C. § 523. NAS did not file such a motion prior to the original deadline. Instead, without benefit of an order allowing the extension of the deadline, NAS filed an adversary proceeding pursuant to 11 U.S.C. § 523 on February 21, 2008 – four months after the deadline passed. NAS then filed its 9006 Motion to extend the deadline, *nunc pro tunc*.

On May 14, 2008, I heard oral argument on the 9006 Motion. At the hearing, NAS, through counsel, said it relied upon a telephone message from the Trustee, and upon the court’s orders granting extensions of time to object to the Debtor’s discharge (the “Extension Orders”). I considered these arguments and nevertheless denied NAS’s 9006 Motion, explaining that although the Extension Orders extended the time to file a complaint to object to the Debtor’s discharge or seek dismissal pursuant to 11 U.S.C. § 727 and 11 U.S.C. § 707(b), respectively, they did not extend the deadline to file a complaint

¹ The Trustee ultimately requested two more extensions to file a complaint to object to discharge.

² The United States Trustee also filed two more requests for extensions before filing a Complaint Objecting to the Debtor’s Discharge on March 3, 2008. This adversary proceeding is still pending and, if the plaintiff is successful, will render moot NAS’s concerns about the Debtor’s discharge, because none of the Debtor’s debts will be discharged.

to determine the dischargeability of a particular debt pursuant to 11 U.S.C. § 523. I also noted that Bankruptcy Rule 4007(c) and 9006(b)(3) required NAS to file the 9006 Motion “before the time had expired.” See Fed. R. Bankr. P. 4007(c) and 9006(b)(3) (Enlargement Limited).

As instructed, the Debtor presented a proposed order denying the 9006 Motion and (after some discussion) I signed it on June 10, 2008. On June 19, 2008, NAS filed its 9023 Motion, again arguing that it suffered prejudice by relying on the Extension Orders and the Trustee’s telephone message concerning the deadline for filing objections to discharge.

Motions for reconsideration serve a limited purpose and courts should grant them only for the following reasons: (1) because of an intervening change in controlling law; (2) because evidence not previously available has become available; or (3) because it is necessary to correct a clear error of law or prevent manifest injustice. See, e.g., General Truck Drivers Local No. 957 v. Dayton Newspapers, Inc., 190 F.3d 434, 445 (6th Cir. 1999) (Clay, J., dissenting), cert. denied, 528 U.S. 1137 (2000). A successful moving party must establish at least one of these factors. NAS has not met this standard.

The Bankruptcy Code and Rules distinguish between complaints objecting to discharge generally, and complaints to determine the dischargeability of a particular debt. Compare 11 U.S.C. § 727 with 11 U.S.C. § 523; compare Fed. R. Bankr. P. 4004 with Fed. R. Bankr. P. 4007. The Extension Orders similarly made this distinction. That NAS misunderstood this distinction, or that the company over-read the Extension Orders, does not warrant relief from the court’s Order dated June 10, 2008. NAS’s reliance on the Trustee’s message, which similarly referred to Section 727 actions but not Section 523 actions, is also bootless. Deadlines frequently have serious consequences, but I will enforce them vigorously because I believe that Congress intends bankruptcy proceedings to move swiftly. By

statutory design, both the discharge and the distribution are matters of considerable urgency. Particularly where a debtor's fresh start is concerned, the Code and Rules tolerate very little delay.

Finally, under the circumstances, I see no need to resort to my authority under 11 U.S.C. § 105 because I perceive in the 9023 Motion no abuse of process or other hardship to redress.

For the foregoing reasons, I will enter a separate order denying the 9023 Motion.

Dated: June 24, 2008
Grand Rapids, Michigan

Scott W. Dales
United States Bankruptcy Judge