

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

MARK M. ADAMS and HEIDI K. ADAMS,

Debtors.

Case No. DK 12-09510
Chapter 7
Chapter Hon. Scott W. Dales

MEMORANDUM ORDER REGARDING
MOTION TO DEFER DISCHARGE

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

Chapter 7 debtors Mark and Heidi Adams (the “Debtors”), while in the process of negotiating divorce and reaffirmation agreements, became concerned that they might not be able to reach accord before the court entered their discharge. In order to ensure that any necessary reaffirmation agreements would be enforceable under 11 U.S.C. § 524(c)(1), they twice filed motions to defer entry of the discharge. *See* Fed. R. Bankr. P. 4004(c)(2).

The Clerk granted the first thirty-day extension pursuant to his authority delegated under LBR 4004-1(b). When the Debtors filed a second motion to defer the discharge (the “Second Motion,” DN 18), however, the court set the matter for a hearing, which took place on May 1, 2013, in Kalamazoo, Michigan. At that time the court announced its intention to grant the Second Motion.

Until recently, the court has been willing to permit the Clerk to grant deferral motions for successive thirty-day periods, without limitation, memorializing this authority in LBR 4004-1. The practice, though convenient and perhaps harmless, does not comport with Rule 4004(c)(2), which provides as follows:

(2) Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.

Fed. R. Bankr. P. 4004(c)(2). In other words, a debtor's second extension motion must be filed within the thirty-day period allotted to the first extension, and should request a "date certain," rather than simply another thirty days. The requirement of a date certain for the second deferral motion reinforces the policy favoring the early entry of discharge, at least in chapter 7 cases. *See* Fed. R. Bankr. P. 4004(c)(1) (directing the court to "forthwith" enter a chapter 7 discharge after expiration of the early deadlines for challenging the discharge or seeking dismissal). Although the concern is not present in the Debtors' case –the present motion is only their second request for extension– the court's dockets include examples of numerous thirty-day extensions in particular cases, contrary to Congressional design regarding discharges and reaffirmation.

Returning to the Debtors' Second Motion, their counsel reported that their divorce is not quite resolved, and they need additional time to determine, once and for all, which spouse will retain the marital home and reaffirm related obligations to their home lender. It now appears they are close to resolving these issues, and extending the deferral to May 29, 2013 will meet their needs. Under the circumstances, the requested extension is modest, reasonable, and consistent with federal policy. Accordingly, the court will grant it.

Going forward, the Clerk may grant second motions to defer entry of discharge under LBR 4004-1 in cases assigned to the undersigned, provided, however, the moving party proposes a date certain not more than sixty days after the original extension.¹

¹ The Clerk shall refrain from granting longer extensions, but instead shall set such requests for prompt hearing.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Second Motion (DN 18) is GRANTED and the Clerk shall not enter the Debtors' discharge before May 29, 2013.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Mark M. Adams and Heidi K. Adams, Robert J. Pleznac, Esq., the creditors listed on Debtors' Schedule D (Citimortgage '12, Greentree, and Toyota Motor Credit), and the United States Trustee.

IT IS SO ORDERED.

Dated May 3, 2013



A handwritten signature in black ink, appearing to read "S. Dales", written over a horizontal line.

Scott W. Dales
United States Bankruptcy Judge