

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

NORTH AMERICAN SPECIALTY INSURANCE
COMPANY,

Adversary Proceeding
No. 08-80075

Plaintiff,

v.

SCOTT M. GOLDSTEIN,

Defendant.

**MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
AND SCHEDULING ARGUMENT ON PLAINTIFF'S MOTION TO AMEND**

Debtor-Defendant Scott M. Goldstein filed a Chapter 7 bankruptcy petition on June 26, 2007. The court set the First Meeting of Creditors for August 15, 2007 so, under Bankruptcy Rules 4004 and 4007, the deadline to file a complaint objecting to discharge pursuant to 11 U.S.C. §§ 727 or 707(b), or to except particular debts from discharge pursuant to 11 U.S.C. §523, fell on October 14, 2007.

On October 3, 2007, the Chapter 7 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.

¹ The Trustee ultimately requested two more extensions to file a complaint to object to discharge. The United States Trustee sought and obtained similar extensions by filing motions for such relief prior to the expiration of the deadline, as Bankruptcy Rules 4004(b) and 9006(b)(3) require.

Without benefit of an order allowing the extension of its deadline, Plaintiff North American Specialty Insurance Company (“NAS”) filed a Complaint to Determine Dischargeability of Debt Pursuant to 11 U.S.C. §523 (the “Complaint”) on February 21, 2008 – four months after the expiration of the deadline. It then filed a Motion for Order *Nunc Pro Tunc* Extending the Deadline to File Complaint to Determine Dischargeability of Claim (the “9006 Motion”). On May 14, 2008, the court held a hearing on the 9006 Motion. NAS argued that it relied upon the Trustee’s representations and upon the court’s orders granting extensions of time to object to the Debtor’s discharge (the “Orders”). I denied NAS’s 9006 Motion, explaining that although the Orders extended the time to file a complaint to object to the Debtor’s discharge pursuant to 11 U.S.C. §727, they did not extend the deadline to file a complaint to determine the dischargeability of a particular debt pursuant to 11 U.S.C. §523. I also observed that the 9006 Motion did not warrant relief under Bankruptcy Rule 9006(b)(3) because NAS filed it after the expiration of the deadline prescribed in Bankruptcy Rule 4007. Bankruptcy Rule 4007(c) authorizes the court to extend the deadline, but only upon motion “filed before the time has expired.” See Fed. R. Bankr. P. 4007(c). Bankruptcy Rule 9006, which generally authorizes the court to enlarge deadlines, specifically provides that the court may enlarge the deadline to file a complaint under Section 523 “only to the extent and under the conditions” stated in Bankruptcy Rule 4007. One of the conditions, as noted above, is that the moving party must file the motion prior to the expiration of the deadline. NAS did not meet this condition. It is one thing to extend a deadline *nunc pro tunc* upon timely filed motion, and quite another to ignore the restrictions on enlargement prescribed in the Bankruptcy Rules. Where the fresh start is concerned, I will adhere strictly to deadlines and will require the parties to do so, too. Cf. Taylor v. Freeland & Kronz, 503 U.S. 638, 644 (1992) (“Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality”). The Debtor presented a proposed order denying the 9006 Motion, which I signed on June 10, 2008.

On June 12, 2008, the Debtor filed a Motion for Summary Judgment in the NAS adversary proceeding, arguing that the Complaint should be dismissed as untimely. In the meantime, NAS filed 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"), again arguing that it suffered prejudice by the Orders extending time as well as certain representations that the Trustee made in a telephone message. I have denied the 9023 Motion in a separate order and find that NAS's Complaint filed in this adversary proceeding is untimely pursuant to Fed. R. Bankr. P. 4007(c). The reasons I set forth in denying the 9023 Motion amply support an order granting the Debtor's summary judgment motion, summarily.²

Finally, I am aware that NAS has filed Plaintiff's Motion for Leave to File Its Amended Complaint to Assert Claims Under 11 U.S.C. § 523 and § 727 ("7015 Motion"). NAS has attached to its 7015 Motion a proposed amended complaint. To the extent that NAS seeks to assert claims under 11 U.S.C. § 523, I will deny the 7015 Motion. It is well settled that the futility of an amended pleading is good reason to disallow it, and I regard the allegations under Section 523 as untimely and therefore futile. To the extent that NAS seeks to assert claims under 11 U.S.C. § 727, the 7015 Motion remains pending and I will hear argument on that aspect of the motion on July 22, 2008, at 1:30 p.m., at the United States Courthouse in Lansing, Michigan. Prior to that hearing, NAS shall file a revised, proposed amended complaint that comports with my ruling on the Debtor's motion for summary judgment. In addition, NAS should be prepared to explain on July 22, 2008 how the claims asserted in its proposed amended complaint qualify for "relation back" under Federal Rule of Civil Procedure 15(c), given that the allegations in the original complaint have roots in transactions that occurred more than one year before the filing of the Debtor's Chapter 7 petition.

² Because NAS has been fully heard on these issues in the course of seeking extension of the filing deadline, I feel justified in granting the Debtor's summary judgment motion without awaiting a response from NAS or holding another hearing. See Fed. R. Bankr. P. 1001 (courts must construe the Bankruptcy Rules to secure the "just, speedy, and inexpensive determination of every case and proceeding"). In fact, when I announced my intention to deny the 9006 Motion, I assumed the decision would end the present adversary proceeding, and stated as much on the record.

I remind NAS's counsel that litigation is not a game, but an opportunity, within the rules of procedure, to resolve disputes. I will not hesitate to impose costs on any attorney if I am persuaded that he or she has unreasonably or vexatiously multiplied proceedings before me. Cf. 28 U.S.C. § 1927.

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

- (1) Debtor's Motion for Summary Judgment is GRANTED;
- (2) On or before July 2, 2008, NAS shall file and serve a revised, proposed amended complaint that comports with this Order, if it wishes to pursue its 7015 Motion;
- (3) On or before July 15, 2008, Debtor shall file and serve a response to the 7015 Motion;
- (4) The court will entertain oral argument on the 7015 Motion on July 22, 2008, 1:30 p.m., at the United States Courthouse in Lansing, Michigan.

IT IS FURTHER ORDERED THAT the Clerk shall serve a copy of this Order upon Scott M. Goldstein, Charles R. Cuzydlo, Esq., Phillip G. Alber, Esq., Kelly M. Hagan, Esq., and the Office of the United States Trustee, pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4.

IT IS SO ORDERED.

Dated: June 24, 2008
Grand Rapids, Michigan

Scott W. Dales
United States Bankruptcy Judge

Served as ordered:
6/25/2008 (kw)