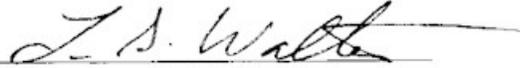


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: October 07, 2005


Lawrence S. Walter
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re: DEBORAH S. SCOTT,

Debtor

Case No. 05-31538
Adv. No. 05-3266

DELBERT B. SCOTT,

Plaintiff

Judge L. S. Walter
Chapter 7

v.

DEBORAH S. SCOTT,

Defendant

**DECISION GRANTING, IN PART, AND DENYING, IN PART,
DEFENDANT DEBORAH SCOTT'S MOTION TO DISMISS**

The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334, and the standing General Order of Reference in this District. This proceeding constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This matter is before the court on Debtor-

Defendant Deborah Scott's Motion to Dismiss Adversary Proceeding [Doc. 7]. The twenty day notice, required with the motion, was served on September 19, 2005 [Doc. 9]. As no response has been filed within the proper time after the notice was served, the court is prepared to render its decision.

FACTUAL AND PROCEDURAL BACKGROUND

Debtor Deborah Scott ("Debtor") filed her bankruptcy petition on February 24, 2005. The § 341 first meeting of creditors was scheduled for April 14, 2005. Prior to the meeting, creditors were provided a notice of the § 341 meeting which also contained the deadline to file complaints objecting to discharge / dischargeability of certain debts. The deadline for filing such a complaint was June 13, 2005.

On June 24, 2005, Plaintiff Delbert Scott ("Plaintiff") filed an adversary complaint captioned a "Complaint Objecting to Discharge and For Fraud" [Adv. Doc. 1]. The complaint was amended by the Plaintiff on July 20, 2005 [Adv. Doc. 2]. Both the original and amended complaint are somewhat vague, but appear to contain three counts: one count objecting to the Debtor's discharge, one count for "fraud," and one count for a determination of the dischargeability of the debt owed by the Debtor to the Plaintiff under 11 U.S.C. § 523(a)(5) [Adv. Docs. 1 and 2].

On August 26, 2005, the Debtor filed a motion to dismiss the complaint for lack of timeliness. Specifically, the Debtor notes that the Plaintiff's Complaint objecting to discharge was filed on June 24, 2005 beyond the June 13, 2005 deadline and without first obtaining an extension of the June 13, 2005 deadline. The Plaintiff has not responded to the motion to dismiss.

LEGAL ANALYSIS

The deadline for filing a complaint objecting to a debtor's discharge in a Chapter 7 case under 11 U.S.C. § 727 is sixty (60) days from the date first set for the § 341 meeting of creditors. Fed. R. Bankr. P. 4004(a). In this case, the deadline for filing such a complaint was June 13, 2005 and that date had passed by the time the Plaintiff filed his complaint on June 24, 2005. The Plaintiff did not request an extension of the deadline, did not respond to the Debtor's motion to dismiss, or otherwise provide reasons why the deadline should be tolled. Consequently, the court will dismiss the cause of action in the Plaintiff's adversary complaint objecting to the Debtor's discharge.

However, the Plaintiff's complaint contains two other counts: 1) one for "fraud" which the court construes as a request for a determination of the dischargeability of a debt for fraud under 11 U.S.C. § 523(a)(2) or (a)(4); and 2) one for determination of the dischargeability of a debt under 11 U.S.C. § 523(a)(5). The deadlines for filing complaints to determine the dischargeability of debts are found in Fed. R. Bankr. P. 4007. The Rule provides different deadlines depending on the type of debt at issue. If a plaintiff's complaint objects to the dischargeability of the kinds of debts discussed in 11 U.S.C. § 523(c), the complaint must be filed no later than sixty (60) days following the first date scheduled for the § 341 meeting of creditors. Fed. R. Bankr. P. 4007(c). However, Rule 4007(b) states that there is no deadline for the filing of a complaint to determine the dischargeability of other types of debts not described in § 523(c). Fed. R. Bankr. P. 4007(b).

As such, the sixty (60) day deadline applies only to complaints to determine the dischargeability of the types of debts indicated in 11 U.S.C. § 523(c) which includes debts under § 523(a)(2), § 523(a)(4), § 523(a)(6), and § 523(a)(15). 11 U.S.C. § 523(c)(1). Based on this analysis, the sixty (60) day limitation applies to the Plaintiff's claim to determine the

dischargeability of a debt for “fraud” under either § 523(a)(2) or § 523(a)(4). Because the Plaintiff’s complaint was filed after the deadline had passed, the Plaintiff did not request an extension of the deadline, and did not otherwise respond to the motion to dismiss, the court will dismiss the Plaintiff’s count for “fraud” as untimely.

The Plaintiff’s third count, for a determination of the dischargeability of a debt under 11 U.S.C. § 523(a)(5), however, is not subject to the sixty (60) day deadline found in Fed. R. Bankr. P. 4007(c). Consequently, this claim is timely filed and withstands the Debtor’s motion to dismiss.

CONCLUSION

For the above reasons, the court grants, in part, and denies, in part, Defendant-Debtor Deborah Scott’s Motion to Dismiss. Specifically, the court concludes that the Plaintiff’s Objection to Discharge is untimely and that this cause of action is hereby dismissed. In addition, the Plaintiff’s count for “fraud,” construed as a cause of action to determine the dischargeability of a debt under 11 U.S.C. § 523(a)(2) or (a)(4) is also dismissed as untimely filed.

However, the Plaintiff’s count to determine the dischargeability of a debt pursuant to 11 U.S.C. § 523(a)(5) is not subject to the sixty (60) day deadline and is, therefore, timely filed under Fed. R. Bankr. P. 4007(b). Consequently, the Debtor-Defendant’s motion to dismiss that count is denied and the Plaintiff may proceed with his cause of action to determine the dischargeability of the \$20,000 debt at issue under 11 U.S.C. § 523(a)(5).

SO ORDERED.

cc:

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