

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In Re:)	
)	
JOSEPH DANIEL ROGERS and)	Case No. 02-13598
BREE MICHELLE ROGERS,)	Chapter 7
)	
Debtors.)	
_____)	

**MEMORANDUM AND ORDER DENYING MOTION FOR EXTENSION OF
TIME TO FILE COMPLAINT TO DETERMINE DISCHARGEABILITY
OF CERTAIN DEBTS**

This matter is before the court on a Motion for Extension of Time to File Complaint to Determine Dischargeability of Certain Debts (Doc. 5) and a Motion for Second Extension of Time to File Complaint to Determine Dischargeability of Certain Debts (Doc. 8), both filed by Sunflower Bank, N.A. For the reasons set forth below, the motions are hereby denied.

I. FINDINGS OF FACT

The movant is a secured and unsecured creditor of the debtors who is seeking to extend the deadline to file a complaint to determine dischargeability of certain debt. According to the motion, the movant and the debtors are attempting to agree upon a Reaffirmation Agreement which, once executed, would relinquish the movant's right to seek a determination as to the dischargeability of the unsecured debt.

Pursuant to the Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines ("Notice"), the initial meeting of creditors in this case was first set to be held August 26, 2002. The Notice also indicated that the deadline for filing a Complaint Objecting to Discharge was October 25, and that the complaint must be received by the bankruptcy clerk's office by that date. According to the Certificate of

Service attached to the Notice, the movant was served with a copy of the Notice. The current motion was filed with the court on October 28, 2002.

II. CONCLUSIONS OF LAW

The deadline for filing a motion to determine the dischargeability of a debt is governed by Federal Rules of Bankruptcy Procedure Rule 4007. The court assumes the debt in question is of the type addressed in 11 U.S.C. §523(c) because, pursuant to Rule 4007(b), a complaint other than one under 11 U.S.C. §523(c) may be filed at any time – thus making the instant motion unnecessary. However, Rule 4007(c) requires “[a] complaint to determine the dischargeability of a debt under §523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a).” Rule 4007(c) allows the court to extend the time limit for filing a complaint, but requires that “[t]he motion shall be filed before the time has expired.”

The Tenth Circuit Court of Appeals has held that the time limits of Rule 4007(c) must be strictly enforced. *H.T. Paul Co. v. Atteberry (In re Atteberry)*, 194 B.R. 521, 523 (D. Kan. 1996) (citing *In re Themy*, 6 F.3d 688, 689 (10th Cir. 1993)). There are two recognized exceptions in the Tenth Circuit to the rule of strict enforcement of the time limits in Rule 4007(c). First, if the bankruptcy court affirmatively misleads a litigant by issuing an order establishing an incorrect deadline for filing objections to discharge and complaints objecting to dischargeability, creditors will not be prejudiced by the court’s misleading information. *Id.* Second, the Tenth Circuit has held that creditors should be allowed to file untimely objections or complaints if the creditor has not received adequate notice of the proceedings. *Id.* at 524.

III. ANALYSIS

The deadline for filing complaints to determine the dischargeability of certain debts was October 25, 2002. This date was properly calculated by the court and was contained in the Notice which was served on the movant. Because the first motion for extension of time was not filed until October 28, 2002, it was untimely and must be denied. The second motion for extension of time seeks to extend the deadline an additional thirty days beyond the date sought in the initial motion. As a result of the court's determination that the first motion must be denied as untimely, the second motion will also be denied.

IV. CONCLUSION

The movant was properly notified that the deadline for filing any complaint to determine the dischargeability of debt was October 25, 2002. The first motion for extension of time, which was filed on October 28, 2002, is untimely and will, therefore, be denied. The second motion for extension of time will also be denied as it seeks an additional thirty days beyond that sought in the initial motion.

IT IS, THEREFORE, BY THIS COURT ORDERED that Motion for Extension of Time to File Complaint to Determine Dischargeability of Certain Debts (Doc. 5) is denied.

IT IS FURTHER ORDERED that the Motion for Second Extension of Time to File Complaint to Determine Dischargeability of Certain Debts (Doc. 8) is denied.

IT IS SO ORDERED this ____ day of December, 2002.

Janice Miller Karlin
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

The undersigned certifies that copies of **MEMORANDUM AND ORDER DENYING MOTION FOR EXTENSION OF TIME TO FILE COMPLAINT TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBTS** was deposited in the United States mail, postage prepaid on this 6th day of December, 2002, to the following:

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