




**SO ORDERED.**

**SIGNED this 22nd day of November, 2016.**

  
Janice Miller Karlin  
United States Chief Bankruptcy Judge

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

IN RE:

Case No. 13-41055-7

Julie Ann Nielson,

Debtor.

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State of Kansas, *ex rel.*,  
Lana Gordon, Secretary of Labor,

Plaintiff,

vs.

Adversary No. 16-7037

Julie Ann Nielson,

Defendant.

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**Order Denying Debtor's Motion to Dismiss**

This adversary proceeding is before the Court on Defendant/Debtor's motion to dismiss<sup>1</sup> the adversary complaint of Plaintiff/Creditor Kansas Department of

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<sup>1</sup> Doc. 8.

Labor (“KDoL”), arguing KDoL’s claim for the nondischargeability of debt under 11 U.S.C. § 523(a)(2)<sup>2</sup> is time barred. But this is a converted case, and the Federal Rules of Bankruptcy Procedure dictate that a new filing period for filing a complaint to determine the dischargeability of a debt “shall commence” when a Chapter 13 case converts to Chapter 7. Because KDoL filed its complaint under § 523(a)(2) within that new time period, the complaint is timely and the motion to dismiss should be denied.

### **I. Procedural Facts**

Debtor filed a Chapter 13 petition in August, 2013, and a meeting of creditors was set for August 29, 2013. An order was entered confirming Debtor’s proposed repayment plan in October 2013. Debtor listed an unsecured claim to KDoL for \$642 in overpayment of unemployment benefits. The KDoL claim was not specifically addressed in Debtor’s plan.

Due to stated “unforeseen post-petition problems,” Debtor converted her Chapter 13 case to a Chapter 7 case on June 13, 2016. The Clerk’s Office then, on June 14, 2016, filed a “Notice of Chapter 7 Bankruptcy Case,” that set a date for the § 341 meeting of creditors on July 11, 2016, and stated that the deadline to file a “complaint to have a debt excepted from discharge under 11 U.S.C. § 523(a)(2)” was September 9, 2016.

On September 1, 2016, KDoL filed its adversary complaint against Debtor,

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<sup>2</sup> All future references to title 11 will be to section number only.

alleging under § 523(a)(2) that she improperly received \$642 in unemployment benefits based on willful and knowing false representations. A summons was issued for Debtor on September 20, 2016, and then an alias summons on September 30, 2016, and Debtor's answer was due October 31, 2016.

Rather than answer, Debtor filed the instant motion to dismiss. In it, she claims that because Federal Rule of Bankruptcy Procedure 4007(c) requires complaints to determine the dischargeability of a debt be "filed no later than 60 days after the first date set for the meeting of creditors," and her Chapter 13 meeting of creditors occurred on August 29, 2013, the adversary complaint filed in September 2016 was untimely.

## **II. Analysis**

In general, the time for filing complaints alleging the nondischargeability of a debt is governed by Federal Rule of Bankruptcy Procedure 4007(c). That Rule requires complaints to "be filed no later than 60 days after the first date set for the meeting of creditors under § 314(a)." But Rule 4007(c) is qualified by Federal Rule of Bankruptcy Procedure 1019. Rule 1019(2)(A) grants a new 60-day deadline to file a nondischargeability complaint in converted cases. Rule 1019(2)(A) states: "When a . . . chapter 13 case has been converted . . . to a chapter 7 case . . . [a] new period for filing . . . a complaint to obtain a determination of dischargeability of any debt shall commence under Rule[] . . . 4007."

As a result, when a case is converted to Chapter 7 from Chapter 13, the deadline to file a complaint objecting to the dischargeability of a debt is extended 60 days past the first date set for the meeting of creditors in the Chapter 7 case. Exceptions apply if a case was converted from Chapter 7 to Chapter 13 and then reconverted back to Chapter 7 after the deadline has already expired in the original

Chapter 7.<sup>3</sup> In those cases, Bankruptcy Rule 1019(2)(A) provides for no new deadline.<sup>4</sup> But that is not the situation here.

There are no Tenth Circuit or BAP cases discussing these Rules, presumably because they are straightforward.<sup>5</sup> In this case, although the deadline in the Chapter 13 case for filing a § 523 complaint ended 60 days after the first date set for the meeting of creditors in that case, there was a new deadline established when Debtor converted her case on June 13, 2016. After the conversion, a new meeting of creditors date was set for July 11, 2016, and, therefore, the new deadline for KDoL to file its nondischargeability complaint was September 9, 2016. KDoL thus timely

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<sup>3</sup> Regarding this exception, Rule 1019(2)(A) states: “but a new time period shall not commence if a chapter 7 case had been converted to a chapter 11, 12, or 13 case and thereafter reconverted to a chapter 7 case and the time for filing . . . a complaint to obtain a determination of the dischargeability of any debt, or any extension thereof, expired in the original chapter 7 case.”

<sup>4</sup> See also 9 *Collier on Bankruptcy* ¶ 1019.04 (16th ed.) (“Federal Rule of Bankruptcy Procedure 1019(2) provides that, in general, new time periods for ‘filing a motion under section 707(b) or (c), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any debt’ arise in the converted case. These time periods are generally keyed to the first date set for the section 341 meeting of creditors in the converted case. Since there is a new meeting of creditors in the converted case, it is reasonable to establish new time periods for these creditor actions. . . . Rule 1019(2) begins a new time period for the filing of a . . . dischargeability complaint under section 523(c) when a case is converted from chapter 11, 12 or 13 to chapter 7, unless the case was previously converted from chapter 7 to one of those chapters and the time had expired in the original chapter 7 case. The date fixed for the meeting of creditors in the converted case is used to determine the complaint filing period, which runs for 60 days from that date. Notice of the new deadline for such complaints should be given under Rule 2002(f)(5).”).

<sup>5</sup> Many cases outside the Tenth Circuit, however, have applied Rule 1019(2)(A) in cases converted from Chapter 13 to Chapter 7. See, e.g., *Michigan Unemployment Ins. Agency v. Perry (In re Perry)*, No. 16-44135, 2016 WL 6407361, at \*1 (Bankr. E.D. Mich. July 9, 2016) (stating that “upon a conversion of the Chapter 13 case to either Chapter 7 or Chapter 11, the Plaintiff would have a new period of time in which to file a nondischargeability action,” citing Rule 1019(2)(A)); *Gasunas v. Yotis (In re Yotis)*, 521 B.R. 625, 640 (Bankr. N.D. Ill. 2014) (“If [the debtor] does convert to a Chapter 7, there will be a new period for filing objections to discharge,” citing Rule 1019(2)(A)). Rule 1019 was amended in 1987 to reflect this line of thinking, in accordance with a prior case so holding, *F&M Marquette Nat’l Bank v. Richards*, 780 F.2d 24, 25–26 (8th Cir. 1985).

filed its complaint on September 1, 2016.

Debtor's motion to dismiss cites no case law to support her position, and the only authority she cited is Rule 4007(c). But, as stated, Rule 4007(c) is modified in converted cases by Rule 1019(2)(A). As a result, Debtor's motion is unfounded.<sup>6</sup>

### **III. Conclusion**

Debtor's motion to dismiss<sup>7</sup> is without basis and is denied. Debtor is now required to file an answer to KDoL's complaint in accordance with Federal Rule of Bankruptcy Procedure 7012(a). The Clerk is directed to set this matter for a Scheduling Conference on December 13, 2016.

**It is so ordered.**

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<sup>6</sup> KDoL's response to Debtor's motion to dismiss cites, and distinguishes, *In re Schupbach*, 473 B.R. 423 (Bankr. D. Kan. 2012). But *Schupbach* was a case converted from Chapter 13 to Chapter 11, and therein the Court concluded that no new time period commences for a dischargeability complaint in that circumstance because "the rationale justifying for a new period to file a complaint in a converted Chapter 7 proceeding is not present when a Chapter 13 proceeding is converted to a Chapter 11 proceeding. A creditor has the same motivation to file an objection to discharge of a particular debt in the Chapter 13 proceeding as in the converted individual Chapter 11 proceeding." The *Schupbach* case is completely inapposite from the facts at hand, and is not applicable.

<sup>7</sup> Doc. 8.