UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 05-10797	)	
	)	
ANTHONY EUGENE GONYA	)	
KATHY SUE GONYA	)	
	)	
Debtors	)	
	)	
	)	
STAR FINANCIAL BANK	)	
	)	
Plaintiff	)	
	)	
vs.	)	PROC. NO. 05-1131
	)	
ANTHONY EUGENE GONYA	)	
KATHY SUE GONYA	)	
	)	
Defendants	)	

DECISION ON MOTION TO DISMISS

At Fort Wayne, Indiana, on August 22, 2005.

The debtors filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on March 8, 2005. The next day, the court issued a notice to all debtors' creditors advising them of the bankruptcy and that the deadline for filing complaints to determine dischargeability of debt was June 13, 2005. On June 14, 2005 the plaintiff initiated this adversary proceeding by filing a complaint asking the court to declare that the defendant/debtor's obligation to it was a non-dischargeable debt pursuant to §§ 523(a)(2) and (a)(6) of the United States Bankruptcy Code. The defendant filed a motion to dismiss because the complaint is untimely. It is that motion which is presently before the court.

Creditors holding debts which may be excepted from discharge pursuant to subparagraphs

(2), (4), and (6) of § 523(a) must ask the bankruptcy court to make that determination or the debt will be discharged. 11 U.S.C § 523(c). In re Betts, 142 B.R. 819, 824 (Bankr. N.D. Ill. 1992). Rule 4007(c) of the Federal Rules of Bankruptcy Procedure establishes the deadline by which the issue must be raised. "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 . . . ." Fed. R. Bankr. P. Rule 4007(c). This rule functions as a statue of limitations and, unless the defense is waived, bars the prosecution of actions brought after the time permitted by the rule. Kontrick v. Ryan, 540 U.S. 443, 124 S. Ct. 906 (2004); 9 Collier on Bankruptcy ¶ 4007.04[1][a]. See also, In re Manuel, 67 B.R. 825, 826 (Bankr. E.D. Mich. 1986).

Even though its complaint was not filed by the June 13, 2005 deadline, the plaintiff, nonetheless, argues that this action is timely because the trustee originally assigned to the case rejected the appointment, a new trustee was assigned and a new date was set for the meeting of creditors. Plaintiff argues that the 60-day period established by Rule 4007(c) began to run on the new date that was set for the meeting of creditors (April 29, 2005) after the reassignment of the trustee. Since the complaint was filed within 60 days of that date, Plaintiff contends the action is timely and should not be dismissed.

Plaintiff's counsel has failed to cite any authority to support its argument and the authority the court has located on the issue is to the contrary. See e.g., In re McGinnis, 111 B.R. 585 (Bankr. E.D. Tex. 1989) (appointment of a new trustee and rescheduling of the first meeting of creditors does not extend the time for filing dischargeability complaints). This is hardly surprising because the argument ignores the clear commandment of the rule. Complaints to determine dischargeability must "be filed no later than 60 days after the first date set for the meeting of creditors . . . ." Fed. R.

Bankr. P. Rule 4007(c) (emphasis added). It does not matter if the meeting is continued, rescheduled, or even held. See e.g., In re Williamson, 15 F.3d 1037 (11th Cir. 1994); In re Gordon, 988 F.2d 1000 (9th Cir. 1993); Neeley v. Murchison, 815 F.2d 345 (5th Cir. 1987); In re Moss, 258 B.R. 391 (Bankr. W.D. Mo. 2001); In re Miller, 228 B.R. 399 (6th Cir. BAP 1999); In re De la Cruz, 176 B.R. 19 (9th Cir. BAP 1994); In re Cortes, 125 B.R. 418 (Bankr. E.D. Pa. 1991); In re Hill, 48 B.R. 323 (Bankr. N.D. Ga. 1985); In re Dipalma, 94 B.R. 546 (Bankr. N.D. Ill. 1988); In re Lewis, 71 B.R. 633 (Bankr. N.D. Ill. 1988); In re Bartlett, 87 B.R. 445 (Bankr. W.D. Ky. 1988). What matters is the FIRST DATE set for that meeting. Here, that date was April 13, 2005 and 60 days thereafter yields the June 13, 2005 deadline contained in the court's notice.

This adversary proceeding was filed on June 14, 2005 after the expiration of the applicable deadline. It is not timely and should be dismissed. An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court