



SO ORDERED,

A handwritten signature in blue ink that reads "Neil P. Olack".

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: February 28, 2019**

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

ON-SITE FUEL SERVICE, INC.,

CASE NO. 18-04196-NPO

ALLEGED DEBTOR.

CHAPTER 7

ORDER DENYING MOTION TO DISALLOW JOINDER OF ESI SUPPLY, LLC

This matter came before the Court for hearing on February 27, 2019 (the “Hearing”), on the Motion to Disallow Joinder of ESI Supply, LLC (the “Motion”) (Dkt. 99) filed by the alleged debtor, On-Site Fuel Service, Inc. (the “Alleged Debtor”), and the Response to Motion to Disallow Joinder of ESI Supply, LLC (the “Response”) (Dkt. 104) filed by the petitioning creditor, Mansfield Oil Company of Gainesville, Inc. (“Mansfield”); and the joining creditors, Don Wood Inc.; ESI Supply, LLC (“ESI”); John M. Ellsworth Co. Inc.; Knowles On Site Repair, Inc.; M&M Tire & Mechanical Services, Inc.; Northstar Fleet Service, Inc.; Professional Datasolutions, Inc.; SCI Distribution, LLC; Titus Talent Strategies, LLC; Wayside Truck & Repair, Inc.; Clark Webb; and Werts Welding & Tank Service, Inc. (collectively, the “Petitioning Creditors”) in the above-

referenced involuntary chapter 7 proceeding. At the Hearing, Kristina M. Johnson represented the Alleged Debtor, and Douglas C. Noble represented the Petitioning Creditors. The Court ruled from the Bench at the Hearing, and this Order memorializes and supplements the Court's bench ruling.

Facts

1. On October 30, 2018, Mansfield filed the Involuntary Petition Against a Non-Individual (the "Petition") (Dkt. 1) under chapter 7 of the United States Bankruptcy Code (the "Code") against the Alleged Debtor.

2. On January 11, 2019, the Court issued the Scheduling Order (the "Scheduling Order") (Dkt. 46), setting deadlines for filing an answer to the Petition and for discovery and scheduling the Petition for trial on March 11, 12, and 13, 2019, beginning each day at 9:00 AM in the Thad Cochran United States Courthouse, Bankruptcy Courtroom 4C, 501 East Court Street, Jackson, Mississippi 39201.

3. On January 30, 2019, the Court issued the Memorandum Opinion and Order Granting Amended Motion to Approve Joinder in Involuntary Petition and Denying Motion to Dismiss Involuntary Petition and Request for Money Judgment Against Petitioning Creditor for Costs, Attorneys' Fees and Damages (the "Opinion") (Dkt. 52), declining to adopt the judicially created bar-to-joinder doctrine and finding that § 303(b)'s requirements are nonjurisdictional.

4. On February 25, 2019, the Alleged Debtor filed the Motion, requesting the Court to "preclude ESI as a petitioning creditor because its attempt to join the involuntary petition is untimely and incompatible with the discovery scheduled established by the . . . Scheduling Order." (Dkt. 99).

5. On February 26, 2019, the Petitioning Creditors filed the Response, asserting that the Court decided the issue raised in the Motion in the Opinion when it declined to adopt the bar-to-joinder doctrine and that 11 U.S.C. § 303(c)¹ unambiguously provides for joinder after the filing of a petition but before the court dismisses a bankruptcy case or enters an order for relief.

Discussion

Section 303 provides that “[a]fter the filing of a petition . . . but before the case is dismissed or relief is ordered, a creditor holding an unsecured claim that is not contingent . . . may join in the petition with the same effect as if such joining creditor were a petitioning creditor.” 11 U.S.C. § 303(c). Additionally, Rule 1003 of the Federal Rules of Bankruptcy Procedure provides that “the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.” FED. R. BANKR. P. 1003(b).

At the Hearing, the Alleged Debtor argued that the Court should disallow ESI from joining the Petition because ESI filed the Joinder in Petition for Involuntary Bankruptcy (Dkt. 89) on February 20, 2019, which was three (3) business days before the deadline to complete discovery. The Alleged Debtor further asserted that ESI’s “untimely” joinder prevented it from conducting any meaningful discovery with respect to ESI because “depositions were scheduled in the case on every business day through February 25, 2019 [the discovery deadline] and Sunday, February 24, 2019.” (Dkt. 99). For these reasons, the Alleged Debtor urged the Court to find that it would be unreasonable to allow ESI to join the Petition at this juncture. In response, the Petitioning Creditors argued that § 303 provides that a creditor may join the Petition at any time while the case is open but before the court enters an order for relief.

¹ Hereinafter, all code sections refer to the Code found at Title 11 of the United States Code, unless otherwise noted.

After fully considering the matter, the Court found at the Hearing that ESI may join the Petition. Importantly, the Scheduling Order does not provide for a joinder deadline. Since no party has asked for a joinder deadline and this Court has not imposed such a deadline,² the Court finds that ESI's joinder in the Petition is reasonable under the circumstances and at this stage of the proceedings. The Court does not suggest that a creditor's joinder in a petition is unrestricted. Instead, rather, the Court will examine the facts and circumstances surrounding the joinder on a case-by-case basis. *See generally Riverview Trenton R.R. Co. v. DSC, Ltd. (In re DSC, Ltd.)*, 486 F.3d 940, 948 (6th Cir. 2007) (“[Section 303(c)] does not prohibit a court from setting an earlier [joinder] deadline, based upon its case management authority, in order to ensure orderly, fair, and efficient proceedings.”). In the interest of fairness, the Court further found at the Hearing that the deadlines for discovery and the submission of the pretrial order contained in the Scheduling Order should be extended. All fact discovery should be completed on or before March 4, 2019, and the parties should file a pretrial order on or before March 5, 2019.

Conclusion

For the above and foregoing reasons, the Court finds that the Motion should be denied. Additionally, the Court finds that the deadlines for discovery and the submission of the pretrial order contained in the Scheduling Order should be extended.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

IT IS FURTHER ORDERED that all fact discovery shall be completed on or before March 4, 2019.

² The Court makes no determination as to the appropriateness of a joinder deadline. *See Efron v. Gutierrez*, 226 B.R. 305, 317 (D.P.R. 1998) (“The only time limitations placed by [§ 303(c)] on petitioning creditors who seek to join a petition is that they do so before the case is dismissed or relief is ordered.”).

IT IS FURTHER ORDERED that the parties shall file a pretrial order on or before March 5, 2019.

##END OF ORDER##