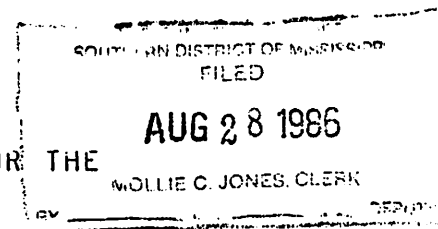


IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION



IN RE:

GEORGE WILLIAM VANDERFORD d/b/a  
GEORGE VANDERFORD SAWMILL AND  
FANNIE MAE VANDERFORD

CASE NO. 8501399JC

TIMOTHY CAMPER

PLAINTIFF

vs.

GEORGE VANDERFORD

DEFENDANT

ADVERSARY PROCEEDING NO. 850170JC

ORDER ON MOTION TO DISMISS

THIS MATTER came on for hearing on the Debtor's Motion Ore Tenus to Dismiss the Plaintiff's complaint as being untimely filed. After hearing the facts and considering the same, the Court finds that the Motion is well taken and should be sustained. Thus, this adversary proceeding before the Court is dismissed.

FACTS

Defendant-Debtor filed a joint bankruptcy petition with his wife under Chapter 11 on September 11, 1985. By Order of the Bankruptcy Court dated

September 27, 1985, the 11 U.S.C. §341 meeting of creditors was set for October 18, 1985, at 1:30 p.m. (Attached as Exhibit "A"). In the same Order, the Bankruptcy Court stated that the last day for filing complaints to determine the dischargeability of any debt would be December 17, 1985, that date being the sixtieth day after the date set for the meeting of creditors.

On October 2, 1985, the Debtor's attorney sent to all creditors a notice resetting the §341 meeting of creditors for October 24, 1985, at 1:30 p.m. (Attached as Exhibit "B"). This notice was silent as to the date for filing complaints seeking a determination of the dischargeability of a debt.

On December 20, 1985, Plaintiff-Creditor filed a complaint seeking a determination of the dischargeability of a debt pursuant to 11 U.S.C. §523(a)(6).<sup>1</sup> Thereafter, the debtor filed an Answer to

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Footnote 1- Note that the Creditor's complaint filed on December 20, 1985 based its cause of action on section 523(c)(6). Such code section does not exist and the Creditor filed an amended complaint on March 17, 1986 which based the cause of action on section 523(a)(6). This code section correction was the only significant difference between the original complaint and the amended complaint. An Order of this Court was entered on March 24, 1986 deeming the amended complaint to be the original complaint filed by the Creditor and to be considered filed on the date the original complaint was filed. An answer to the amended complaint was not filed.

the complaint on February 7, 1986 and asserted as a defense that the complaint was filed more than sixty days following the first date set for the meeting of creditors and thus untimely filed pursuant to Bankruptcy Rule 4007(c).

This proceeding was set for a pre-trial conference on March 20, 1986, at which time the debtor made a Motion Ore Tenus to have this adversary proceeding dismissed in accordance with the defense he had asserted. This conference resulted in an Order of this Court setting a hearing for May 1, 1986, on certain preliminary matters, including the Motion to Dismiss to be disposed of prior to a hearing on the merits of the case. Briefs were received by the Court from both parties prior to the hearing.

On May 1, 1986, the Motion to Dismiss came on for hearing and was heard before the Court. The Creditor opposed the Motion to Dismiss and requested the Court to enlarge the time for filing complaints seeking a dischargeability determination by pleading "excusable neglect." The matter was taken under advisement and the Court now renders its decision.

#### DISCUSSION

##### 1. Timeliness of Complaint

11 U.S.C. 523(a)(6) provides:

A discharge under section 727, 1141, or 1382(b) of this title does not discharge an individual debtor

from any debt for willful and malicious injury by the debtor to another entity or to the property of another entity.

11 U.S.C. 523(c) provides:

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section.

Bankruptcy Rule 4007(c) provides:

Time for Filing Complaint Under §523(c) in Chapter 7 Liquidation and Chapter 11 Reorganization Cases; Notice of Time Fixed. A complaint to determine the dischargeability of any debt pursuant to §523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to §341(a). The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired. (Emphasis Added)

Bankruptcy Rule 9006(b)(3) provides:

Enlargement Limited. The Court may enlarge the time for taking action under Rules 1006(b)(2), 3002(c), 4003(b), 4004(c), 4007(c), and 8002 only to the extent and under the conditions stated in those rules. (Emphasis Added)

A party may request the time limits be enlarged but that request must be made before the expiration of the original time limit. Bankruptcy Rules 4007(c) and 9006(b)(3). In this case, no request for an extension was made by the creditor prior to the expiration of the 60 day period.

Although the "first date set for the meeting of creditors" was October 18, 1985, and the creditor's complaint was filed more than 60 days after this date, the creditor urges the Court to accept its complaint as being timely filed by pleading "excusable neglect." The creditor argues that the re-setting of the date of the first meeting of creditors to October 24, 1985 misled the creditor into assuming that the deadline for filing complaints seeking a determination of the dischargeability of a debt would effectively be re-set to 60 days following the new date.

This is precisely the factual situation addressed in In re: Hill, 48 B.R. 323 (D.C. N.D.Ga., 1985). The District Court in Hill stated:

"Appellant-creditor apparently would have the court construe the phrase, '60 days following the first date set for the meeting of creditors', to mean 60 days following the date of the first meeting of creditors. This construction ignores the language of the Rules and cannot be adopted by the court.

The Bankruptcy Rules make no special provision for the filing date of dischargeability complaints in the event of a rescheduling of the first meeting of creditors and the court will not read one into them." Id at 325.

This Court is in agreement with the District Court in Hill and concludes that any other interpretation of Bankruptcy Rule 4007(c) would be contrary to the plain meaning of the Rule. Thus, this Court finds that the complaint was untimely filed as well as the request for enlargement of time.

2. Excusable Neglect

The creditor has pled "excusable neglect" as to the untimely filing of his complaint and has requested the Court in essence for an enlargement of time and to accept the complaint as being timely filed. As previously noted, Rule 9006(b)(3) provides that the court may enlarge the time for taking action under Rule 4007(c) only to the extent and the conditions stated in the rule. Rule 4007(c) requires that a motion to extend the time in which to file a dischargeability complaint must be made before the time has expired.

"In construing Rule 4007(c) and 9006(b)(3), courts have consistently held that an extension of time may only be granted where so moved before time has expired." In re Mapother, 53 B.R. 433 (W.D. Ky., 1985).

The Court also notes In re Grant, 45 B.R. 265 (Bkrtcy.D.Maine, 1984), which concludes:

". . .the Court may only extend the time for filing objections to discharge or objections to the dischargeability of a specific debt if the motion for the enlargement of time is made prior to the expiration of the specified time period. See Bankruptcy Rule 9006(b)(3); 4004(a) and (b); 4007(c). The Rules have removed the excusable neglect from the Court's consideration when the motion is made after the expiration date." Id at 266, n.3.

Of like importance is In re Barr, 47 B.R. 334, 336 (Bkrtcy.E.D. N.Y., 1985) which states:

"The court has no discretion to grant such a request when it is made after the deadline has past. See, In re Floyd, 37 B.R. 890 (Bankr.N.D. Texas, 1984); In re Lane, 37 B.R. 410, 11 B.C.D. 707 (Bankr.E.D. Va., 1984); In re Waldman, 33 B.R. 328, 11 B.C.D. 81 (Bankr.S.D. N.Y., 1983); In re Johnson, 35 B.R. 79 (Bankr.Conn., 1983)."

The Advisory Committee's Note for Rule 9006 provides in relevant part:

Unless a rule which contains a specific authorization to extend time is listed in paragraph (3) of this subdivision, an extension of the time may be granted under paragraph (1) of this subdivision. If a rule is included in paragraph (3) an extension may not be granted under paragraph (1)." (Emphasis Added)

Thus, the only way to receive an enlargement of time is by strict compliance with Rule 4007(c), i.e., to file such request before the deadline date.

"The Advisory Committee's Note indicates that a Bankruptcy Court may no longer exercise its discretion under the excusable neglect doctrine to enlarge the time for taking action under Rule 4007(c) beyond the conditions stated in that rule." In re Lagrotteria, 42 B.R. 867, 870 (Bankr.N.D. Ill., 1984).

Under former Bankruptcy Rules the Court could clearly grant a creditor's motion for enlargement of time after the deadline date as long as it proved that its failure to timely file was due to "excusable neglect." However, Bankruptcy Rules 4007(c) and 9006(b)(3) no longer permit the courts to extend the time to file a §523(c) complaint after the expiration date.

"It is clear that by prohibiting that which it formerly permitted, Congress intended to no longer subject the pre-eminent fresh start policy to the uncertainties of excusable neglect in failing to timely object to discharge of a claim." In re Figueroa, 33 B.R. 298, 300 (Bankr.S.D. N.Y., 1983).

After examining Rule 4007(c), Rule 9006(b)(3) and pertinent cases since these rules came into effect, this Court concludes that it may not exercise its discretion under the excusable neglect doctrine to enlarge the time for taking action under Rule 4007(c)



beyond the conditions stated in that rule. Thus, considering the facts of the present case, the Court finds that the Motion to Dismiss is well taken and should be granted.

THEREFORE, IT IS ORDERED that this Adversary Proceeding, No. 850170JC, is dismissed.

SO ORDERED this the 28 day of August, 1986.

  
U. S. BANKRUPTCY JUDGE

# United States Bankruptcy Court

For the SOUTHERN District of MISSISSIPPI

In re GEORGE WILLIAM VANDERFORD d/b/a  
GEORGE VANDERFORD SAWMILL and  
FANNIE MAE VANDERFORD  
S.S. #428-60-4882  
Debtor\* 426-82-5849

Case No. 8501399JC

## ORDER FOR MEETING OF CREDITORS AND FIXING TIMES FOR FILING COMPLAINTS TO DETERMINE DISCHARGEABILITY OF CERTAIN DEBTS, COMBINED WITH NOTICE THEREOF AND OF AUTOMATIC STAY

An order for relief under 11 U.S.C. chapter 11 having been entered on a petition filed by [or against]

Above Debtor of\*\* P. O. Box 25, Puckett, MS 39151

on September 11, 1985, it is ordered, and notice is hereby given, that:

1. A meeting of creditors pursuant to 11 U.S.C. §341(a) has been scheduled for the 18th day of October, 1985, at 1:30 o'clock p.m. at Room 1339, Deposit Guaranty Building, Jackson, Mississippi.

2. The debtor shall appear in person [or, if the debtor is a partnership, by a general partner, or, if the debtor is a corporation, by its president or other executive officer] at that time and place for the purpose of being examined.

3. A complaint objecting to the discharge of the debtor shall be filed not later than the first date set by the court for the hearing on confirmation of the plan of which you will receive notice.

4. [If the debtor is an individual] December 17, 1985, is fixed as the last day for the filing of a complaint to determine the dischargeability of a debt pursuant to 11 U.S.C. §523(c).

You are further notified that:

The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to creditors.

At the meeting the creditors may file their claims, [if appropriate] designate a person to supervise the meeting, examine the debtor, and transact such other business as may properly come before the meeting.

As a result of the filing of the petition, certain acts and proceedings against the debtor and his property are stayed as provided in 11 U.S.C. §362(a).

[If the debtor is an individual] If no complaint to determine the dischargeability of a debt under clause (2), (4) or (6) of 11 U.S.C. §523(a) is filed within the time fixed therefor as stated in subparagraph 4 above, the debt may be discharged.

The debtor [or trustee] has filed or will file a list of creditors and equity security holders pursuant to Rule 1007. Any creditor holding a listed claim which is not listed as disputed, contingent, or unliquidated as to amount, may, but need not, file a proof of claim in this case. Creditors whose claims are not listed or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to participate in the case or share in any distribution must file their proofs of claim on or before \*\*\*, which date is hereby fixed as the last day for filing a proof of claim [or, if appropriate, on or before a date to be later fixed of which you will be notified]. Any creditor who desires to rely on the list has the responsibility for determining that he is accurately listed.

Unless the court extends the time, any objection to the debtor's claim of exempt property (Schedule B-4) must be filed within 30 days after the conclusion of the meeting of creditors.

[If appropriate]

of\*\*

~~has been appointed trustee of the estate of the above-named debtor.~~

\*\*\*approval of disclosure statement

Debtor's Attorney: William B. Howell

P. O. Box 14, Jackson, MS 39205

BY THE COURT

Dated: September 27, 1985

BARNEY E. EATON, III

CHIEF Bankruptcy Judge

POST OFFICE DRAWER 2448

JACKSON, MISSISSIPPI 39225-2448

\*Include all names used by debtor within last 6 years.

\*\*State mailing address.

EXHIBIT "A"


IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI 103 111 '85  
JACKSON DIVISION

IN RE: GEORGE WILLIAM VANDERFORD           :   CHAPTER 11 PROCEEDING  
      d/b/a GEORGE VANDERFORD SAWMILL   :   NUMBER 8501399 JC  
      and FANNIE MAE VANDERFORD

NOTICE OF RESETTING OF §341 MEETING

PLEASE TAKE NOTICE that the First Meeting of Creditors in the above captioned Chapter 11 proceeding in the Bankruptcy Court for the Southern District of Mississippi HAS BEEN RESET TO A DATE LATER THAN WAS ORIGINALLY NOTICED BY THE COURT.

The First Meeting of Creditors will be held on Thursday, October 24, 1985 at 1:30 p.m. in Room 1339, Deposit Guaranty Building in Jackson, Mississippi. The meeting originally noticed October 18 will not take place.

  
\_\_\_\_\_  
WILLIAM B. HOWELL,  
Attorney for the Debtors

WILLIAM B. HOWELL, LTD.  
P. O. Box 14  
Jackson, Mississippi 39205  
(601)362-5900

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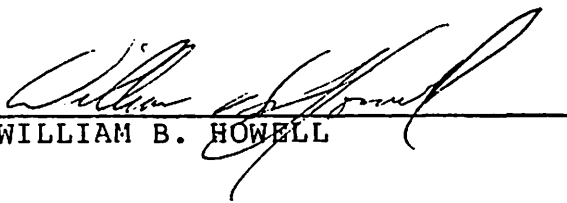
IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

IN RE: GEORGE WILLIAM VANDERFORD                      CHAPTER 11 PROCEEDING  
d/b/a GEORGE VANDERFORD SAWMILL                      NUMBER 8501399 JC  
and FANNIE MAE VANDERFORD

CERTIFICATE

I, William B. Howell, do hereby certify that I have this date mailed by United States Mail, postage prepaid, a true and correct copy of the Notice of Resetting of §341 Meeting to all creditors and interested parties as shown on the attached Amended Master Address List.

DATED this the 2nd day of October, 1985.

  
WILLIAM B. HOWELL

WILLIAM B. HOWELL, LTD.  
P.O. Box 14  
Jackson, Mississippi 39205  
(601)362-5900

William B. Howell  
P.O.Box 14  
Jackson, MS 39205

Mr./Mrs. George Vanderford  
P.O. Box 25  
Puckett, MS 39151

Bank of Raleigh  
P.O. Box 218  
Raleigh, MS 39153

Dr. Bates  
409 N. Main St.  
Mendenhall, MS 39114

Corinth Mill Supply  
P.O. Box 218  
Corinth, MS 38834

Currie Trucking Co.  
P.O. Box 235  
Raleigh, MS 39153

ENTEX  
1210 W. Government St.  
Brandon, MS 39042

Excel Saw & Tool  
P.O. Box 6290  
Jackson, MS 39209

Employment Sec. Comm.  
P.O. Box 22781  
Jackson, MS 39225

Empl. Sec. Comm.  
P.O. Box 1699  
Jackson, MS 39205

First United Bank  
P.O. Box 27  
Brandon, MS 39042

Forshee Auto Parts  
P.O. Box 12  
Puckett, MS 39151

Forshee Grocery  
P.O. Box 12  
Puckett, MS 39151

Harper & Co., Ltd.  
P.O. Drawer 53235  
2704 W. Ardenwood Dr.  
Baton Rouge, LA 70805

Harper Fdry. & Mach. Co  
P.O. Box 992  
Jackson, MS 39205

Billy Hosey  
Rt. 3  
Magee, MS 39111

Gayle Hosey  
Rt. 3  
Magee, MS 39111

Internal Revenue Servi  
District Office  
100 E. Capitol  
Jackson, MS 39201

Mr. Timothy Kemper  
c/o Hon. Bob Owens  
P.O. Box 19  
Jackson, MS 39205

John C. McLaurin  
P.O. Box 220  
Brandon, MS 39042

Means Auto Supply  
P.O. Box 146  
Puckett, MS 39151

Peoples Bank  
Mendenhall, MS 39114

Puckett Water System  
Puckett, MS 39151

Rose Machinery, Inc.  
Rt. 1, Box 625  
Greenwood, MS 38930

S.O.S. Gas Company  
P.O. Box 1450  
606 W. Hwy. 80  
Winton, MS 39056

So. Pine Elect. Power  
Taylorsville, MS 39168

State Tax Comm.  
Legal Div.  
P.O. Box 960  
Jackson, MS 39205

Thornton's Farm Store  
P.O. Box 57  
Puckett, MS 39151

Tigrett, T. A.  
Brandon, MS 39042

Traveler's Inc.  
c/o Elten Ruffin  
5360 I-55 North  
Jackson, MS 39211

Tucker Machinery  
Meridian, MS 39301