

1 UNITED STATES BANKRUPTCY COURT
 2 SOUTHERN DISTRICT OF MISSISSIPPI
 3 JACKSON DIVISION

4 PHILLIP MORRIS TEMPLE
 5 MOTION TO EXTEND TIME FILED BY
 6 CAPITOL MEDICAL SUPPLY, INC.
 7 AND ON THE RESPONSE THERETO
 8 FILED BY THE DEBTOR

NO. 8900690JC

U.S. BANKRUPTCY COURT
 SOUTHERN DISTRICT OF MISSISSIPPI
 FILED

NOV 27 1989

MOLLIE C. JONES

BY _____ DEPUTY

BANKRUPTCY COURT PROCEEDINGS

9 Held Before the Honorable Judge Edward
 10 Ellington, taken in the United States
 11 Bankruptcy Court, 100 East Capitol Street,
 12 Jackson, Mississippi, beginning at 9:45 a.m.
 on Wednesday, October 18, 1989.

ORAL OPINION OF
 JUDGE ELLINGTON

APPEARANCES:

15 THOMAS BRYSON
 16 4566 Office Park Drive
 17 Jackson, Mississippi 39206
 ATTORNEY FOR DEBTOR

18 FORREST REN WILKES
 19 Satterfield & Allred
 20 Post Office Drawer 1120
 Jackson, Mississippi 39215-1120
 ATTORNEY FOR CREDITOR

REPORTED BY:

24 KELLYE S. SMITH
 Court Reporter
 25 Notary Public

ORIGINAL

1 Supply could have filed a motion to extend time at
2 that time. However, while these events were
3 transpiring and depositions were being typed and
4 delivered, I can't state the precise dates on
5 which depositions -- on when copies of these
6 depositions were delivered.

7 But at the time, Capitol Medical Supply
8 was struggling to understand, with no help from
9 the debtor, of precisely what was going on with
10 these two corporations. And although hindsight is
11 appealing, in that it may suggest that we could
12 have filed some sort of motion to extend time, at
13 the time Capitol Medical Supply did not feel that
14 it had the information sufficient to make a good
15 faith objection to discharge. And it did not, in
16 fact, acquire a belief that it had sufficient
17 information until after the bar date had passed.

18 And that was largely based on --
19 including the deposition of Reita Keyes, which was
20 taken on June 22nd at the request of the
21 Bankruptcy Trustee, after Reita Keyes returned
22 from out of the country and after the bar date had
23 already passed. That's all I have to say.

24 THE COURT:

25 The following comments constitute

1 findings of fact and conclusions of law by the
2 Court:

3 The Court finds that the petition in
4 bankruptcy was filed by the debtor Phillip Morris
5 Temple on February the 28th, 1989. The notice for
6 the first meeting of creditors was sent out on
7 March 1st, 1989, and a copy of that notice will be
8 given to the court reporter to be included as an
9 exhibit to this opinion.

10 In that notice it provided the filing
11 deadline for section 523(c) and section 727
12 complaints is June 12, 1989. And that put all --
13 there's a certificate on the back showing it was
14 sent to all interested parties. There's been
15 really no issue about the fact that they got the
16 notice. So, the deadline for filing was on June
17 the 12th, 1989.

18 Actually, 60 days from April the 12th;
19 which is the date first set for the first meeting
20 of creditors, which was June the 11th. June the
21 11th was on Sunday, so the next working day was on
22 June the 12th, and so that's the reason the
23 deadline was on June the 12th.

24 The particular Rules that we need to
25 look at in this matter are Bankruptcy Rule 9006

1 and Bankruptcy Rule 4004. Rule 9006 is the Rule
2 that deals with general computation of time and
3 enlargement of time and stuff for things that are
4 supposed to be done. Bankruptcy Rule 9006(b)
5 deals with enlarging time and for giving
6 additional time to do things that are required to
7 be done by the Rules.

8 Paragraph (b)(1) says: Except as
9 provided in paragraphs (2) and (3) of this
10 subdivision, when an act is required or allowed to
11 be done at or within a specified period by these
12 rules or by a notice given thereunder or by order
13 of court, the court for cause shown may at any
14 time in its discretion (1) with or without motion
15 or notice order the period enlarged if the request
16 therefore is made before the expiration of the
17 period originally prescribed or as extended by a
18 previous order or (2), on motion made after the
19 expiration of the specified period permit the act
20 to be done where the failure to act was the result
21 of excusable neglect.

22 Now, as I noticed, there are some
23 exceptions to that Rule which are contained in
24 paragraphs (2) and (3). The one that pertains to
25 this particular case is Rule 9000(b)(3), which

1 says enlargement and limited in relevant parts, it
2 says the Court may enlarge the time for taking
3 action under Rule 4004(a), only to the extent and
4 under the conditions stated in those rules.

5 The particular rule that is, you know,
6 involved in this case is Bankruptcy Rule 4004. In
7 part the rule says, 4004(a), in a Chapter 7
8 liquidation case a complaint objecting to the
9 debtor's discharge under section 727(a) of the
10 Code shall be filed not later than 60 days
11 following the first date set for the meeting of
12 creditors held pursuant to section 341(a).

13 You go to another part of that rule,
14 4004(b), and it deals with extension of time. It
15 says: On motion of any party in interest, after
16 hearing on notice, the court may extend for cause
17 the time for filing a complaint objecting to
18 discharge. The motion shall be made before such
19 time has expired.

20 In our particular case the deadline for
21 filing the motion was June 12, 1989, and that was
22 set out in the notice. The motion which was filed
23 by Capitol Medical Supply, Inc., by their
24 attorneys, was filed on June 27, 1989, which is
25 clearly after the time had run.

1 It's the court's opinion that I have
2 absolutely no authority to grant any additional
3 time after the time has run. In other words, if
4 you had filed your motion before June 12, then
5 it's -- and no show cause, then I can grant the
6 extension. If you don't file the thing by filing
7 your motion for extension of time before the time
8 runs, I don't think I have any authority to extend
9 it.

10 The particular case I rely on for that,
11 outside of the fact that the Code says that, the
12 particular case that I rely on is the Fifth
13 Circuit Case of Neeley, N-e-e-l-e-y, versus
14 Murchison, M-u-r-c-h-i-s-o-n, 815 Fed Second 345,
15 which was decided on April the 29th, 1987.

16 Now, that particular case does not deal
17 with Rule 4004. It deals with rule, Bankruptcy
18 Rule 4007. 4004 deals with objection to
19 discharge, Rule 4007 deals with the determination
20 of dischargeability of a particular debt. Now, of
21 course, they're two different things but the
22 wording is practically identical.

23 If you take 4004(a), the first part of
24 it that deals with 7, you know, Chapter 7, and
25 4004(b), which deals with the extension of time,

1 and compare it to 4004(7)(c) about filing your
2 complaints objecting to dischargeability for a
3 particular debt, the wording is almost identical.
4 They're both 60 days, the deadline for both of
5 them is 60 days following the first date set for
6 the meeting of creditors.

7 And then the language is very similar
8 on extension of time. And it says the motion
9 shall be made before the time has expired. That
10 language is dealt with in the Neeley case. And
11 they were just very clear in that, that if you
12 don't do it in time, you've missed the boat.

13 It talks about how at one time the
14 court could use the standard of quote, excusable
15 neglect to allow extensions after the time had
16 run. But it goes on to say on page 346 of that
17 opinion, by contrast, Rule 4007 sets a fixed
18 limitation period of 60 days and further
19 constrains the granting of extension. The
20 bankruptcy court can extend the time only if the
21 creditor has filed a motion before the 60-day
22 period expires, and then only quote, for cause,
23 end quote.

24 Rule 9006(b)(3) explicitly accepts Rule
25 4007(c) from the quote, excusable neglect

1 standard, permitting time enlargement quote, only
 2 to the extent and under conditions stated in Rule
 3 4007. And as I said -- well, then it goes on to
 4 say these departures from past practice is
 5 embodied in Rule 4007(c) events a strong intent
 6 that the participants in bankruptcy proceedings be
 7 assured that within the set period of 60 days they
 8 can know which debts are subject to an exception
 9 to discharge. But as I said, those rules are
 10 practically identical and I think the same law
 11 applies in both of them.

12 In this particular case -- and I want
 13 to comment further on one other thing that you
 14 might look at and I used it in arriving at this.
 15 The particular version of Bankruptcy Rules which I
 16 used for this particular case was Norton's
 17 Bankruptcy Law and Practice. And on pages 259 and
 18 260 it goes into the things that I was talking
 19 about. And it says in part quote, the limitation
 20 of Rule 9006(b)(3) restricts enlargement of time
 21 to the extent and under the conditions stated in
 22 the enumerated rules, including Rules 4004(a) and
 23 4007(b).

24 Thus, with respect to Rule 4004(a), a
 25 motion for an extension of time for filing a

1 complaint objecting to a debtor's discharge must
2 be made as mandated in subdivision (b) before the
3 60-day deadline in subdivision (a) has expired.
4 Once the 60-day period elapses, in the absence of
5 a filed motion, the court may not enlarge the
6 time; notwithstanding a showing of excusable
7 neglect, because Rule 9006(b)(3) restricts
8 extension beyond the original date deadline.

9 I feel that I am compelled to follow
10 those rules, which I consider the black letter
11 law. From what you say, there well may have been
12 grounds to deny his discharge, this, that and the
13 other. But apparently one time in the history of
14 bankruptcy you never could get something over
15 with, because you can just -- I think if you dig
16 long enough, you can come up for something two
17 years from now that a fellow probably did
18 something wrong. But they intend for it to be
19 over with in 60 days or they intend for a motion
20 to be filed within the 60 days.

21 From what you've said, and I'm sure
22 there's probably more to it, but you were in this
23 case very early and rightly smelled rags burning.
24 You certainly were not satisfied with the answers
25 that you had been getting. You had taken the

1 deposition of the debtor, taken the deposition of
2 one other party that was involved within the
3 deadline of June the 12th. And under the Rules,
4 the burden certainly was on you and your client to
5 file a motion for extension of time if you had the
6 least wiff of anything wrong in this case.

7 And if you had done that, saying what
8 I've done now, but if you had done it you would
9 have been in, it looks like to me, pretty good
10 shape to get an extension. But when the motion
11 wasn't filed, as far as I know, that's the end of
12 it and I have no authority to extend it.

13 Now, if the district court or the
14 circuit court tells me I'm supposed to get into
15 excusable neglect, they can remand it to me and
16 I'll do the best I can with it. But I don't think
17 I have any authority to do it since the motion
18 wasn't filed; therefore, your motion for extension
19 of time will be denied. And I will prepare a
20 written order and get that entered.

21 And, court reporter, here's the notice
22 that I want to put in as an exhibit to the
23 comment.

24 Are there any other questions? We
25 stand adjourned.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Exhibit No. 4 was marked for
identification and is attached hereto.)
(Court proceedings adjourned at 10:45
a.m.)

1 CERTIFICATE OF COURT REPORTER

2 I, KELLYE S. SMITH, Court Reporter and
3 Notary Public in and for the County of Madison,
4 State of Mississippi, hereby certify that the
5 foregoing pages, and including this page, contain
6 a true and correct transcript of the testimony of
7 the witness, as taken by me at the time and place
8 heretofore stated, and later reduced to
9 typewritten form by computer-aided transcription
10 under my supervision to the best of my skill and
11 ability.

12 I further certify that I placed the
13 witness under oath to truthfully answer all
14 questions in this matter under the authority
15 vested in me by the State of Mississippi.

16 I further certify that I am not in the
17 employ of, or related to, any counsel or party in
18 this matter, and have no interest, monetary or
19 otherwise, in the final outcome of the
20 proceedings.

21 Witness my signature and seal this the

22 27th day of, November, 1989.

23 Kellye S. Smith
24 -----
25 KELLYE S. SMITH
 Court Reporter/Notary Public
 My Commission Expires January 6, 1992