

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

ISLAND PROPERTIES LTD., et al

Creditor-Appellant

v.

Civil Action No. 91-0420-T

BRIAN J. GILLSON, SUSAN GILLSON,  
d/b/a/ GREENHOUSE INN AND RESTAURANT

Debtors-Appellees

MEMORANDUM AND ORDER

Ernest C. Torres, United States District Judge.

This is an appeal by Island Properties Ltd. and 11 other creditors<sup>1</sup> ("the appellants") from an Order of the Bankruptcy Court denying their motion to enlarge the time for filing a complaint to determine whether a debt is dischargeable pursuant to 11 U.S.C.A. §§ 523(a)(2)(A), (c) (West Supp. 1992).

BACKGROUND

On April 24, 1990, Brian and Susan Gillson, doing business as the Greenhouse Inn and Restaurant ("the debtors"), filed a Chapter 11 bankruptcy petition listing the appellants as creditors. Pursuant to Rule 4007(c) of the Bankruptcy Rules, July

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<sup>1</sup> Coastal Associates, Seacoast Associates, Carol E.R. Bohmer, Kenneth K. Bridges, Warren P. Hudson, Sarah Josephson, Gerald J. Keller, Ronald D. Tucker, Roger Rasley, Christopher Withers, and Clifford D. Warfield.

20, 1990, was fixed as the deadline for filing complaints to determine the dischargeability of debts (i.e., 60 days after the first creditors meeting).

On April 23, 1991, the appellants moved for an enlargement of time in which to file a complaint to determine whether the debt to them was dischargeable under 11 U.S.C.A. § 523(c) (West Supp. 1992). Specifically, they asserted that the debt was not dischargeable because it represented money or property obtained by false representations or fraud within the meaning of 11 U.S.C.A. § 523(a)(2)(A) (West Supp. 1992).

The Bankruptcy Court denied that motion, and the appellants have appealed.

#### STANDARD OF REVIEW

Bankruptcy Rule 8013 sets forth the standard of review to be applied by district courts with respect to bankruptcy appeals. Rule 8013 provides:

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Bankr. Rule 8013.

Thus, in reviewing the decision of the Bankruptcy Court, this Court must accept the Bankruptcy Judge's findings of fact unless they are clearly erroneous. Id; Briden v. Foley, 776 F.2d

379, 381 (1st Cir. 1985). On the other hand, the Bankruptcy Court's conclusions of law are not entitled to the same deference. They are subject to de novo review. See In re BWL, Inc., 123 B.R. 675, 682 (D. Me. 1991) (citation omitted); In re First Software Corp., 107 B.R. 417, 420 (D. Mass. 1989) (citations omitted).

#### DISCUSSION

Generally speaking, enlargements of time are governed by Rule 9006(b). Subsection (b)(3) states:

Enlargement Limited. The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 8002, and 9033, only to the extent and under the conditions stated in those rules.

Bankr. Rule 9006(b)(3) (emphasis added).<sup>2</sup> Thus, in determining the circumstances under which an enlargement may be granted for taking a particular action, reference must be made to the statutory section governing that action.

The time for filing a complaint to determine whether a debt is dischargeable pursuant to § 523(a)(2)(A) is governed by Rule 4007(c). It provides that:

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).

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<sup>2</sup> Appellant's brief states that its motion to enlarge was filed pursuant to Rule 9006(b)(2). However, that section deals with situations in which an enlargement is not permitted. Therefore, the Court assumes that the intended reference was to Rule 9006(b)(3).

. . . 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.

Bankr. Rule 4007(c) (emphasis added).

In this case, the appellants do not argue that the Bankruptcy Judge abused his discretion in refusing to extend the 60 day period. Indeed, it is difficult to see how the Bankruptcy Judge could have acceded to the appellants' request inasmuch as the motion for an enlargement was not filed until after the 60 day period had expired.

Rather, appellants appear to contend that their complaint was timely under both Bankr. Rules 4004(a) and 4007(b). That contention is without merit because neither section is applicable to a complaint to determine the dischargeability of a debt under § 523(c). Rule 4004(a) requires that "a complaint objecting to the debtor's discharge under § 727(a) . . . be filed not later than the first date set for the hearing on confirmation." Rule 4004(a) (emphasis added). Appellants contend that since no date was ever set for the hearing on confirmation, their complaint is timely and should have been allowed. However, by its terms, § 4004(a) applies only to complaints objecting to discharge under § 727(a) and not to those objecting to dischargeability under § 523(c) which is the section relied upon by the appellants.

Similarly, Rule 4007(b) provided that "[a] complaint other than under § 523(c) may be filed at any time." Bankr. Rule

4007(b) (emphasis added). Plaintiffs, in effect, assert that this provision means there is no time limit for filing their complaint. However, once again, their reliance on that section is misplaced because it is specifically inapplicable to complaints filed pursuant to § 523(c).

CONCLUSION

For all of the foregoing reasons, the appeal is denied, and the Order of the Bankruptcy Court is affirmed.

IT IS SO ORDERED.

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Ernest C. Torres  
United States District Judge

Date: \_\_\_\_\_<sup>3</sup>