

SO ORDERED.**SIGNED this 30th day of November, 2021.**

A handwritten signature in cursive script, reading "Lena Mansori James", is written over a horizontal line.

LENA MANSORI JAMES

UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

IN RE:)	
)	
Judith Judalena Short,)	Chapter 7
)	
Debtor.)	Case No. 21-50463
)	
_____)	

ORDER**DENYING TRUSTEE'S MOTION TO EXTEND TIME TO OBJECT TO DISCHARGE**

THIS MATTER came before the Court on the Motion to Extend Time to Object to Discharge (Docket No. 13, the "Motion") filed by the chapter 7 trustee, James Lanik (the "Trustee"). The Trustee moved under Federal Rule of Bankruptcy Procedure 4004(b) for an extension of the applicable deadline by which he must file a complaint objecting to the discharge of Judith Judalena Short (the "Debtor"). Specifically, the Trustee asserted, without elaboration, that he "needs additional time to investigate information regarding the Debtor's assets and liabilities listed on the Schedules and Statement of Financial Affairs" (Docket No. 13, ¶ 8). The Debtor timely filed an objection to the Motion (Docket No. 18, the "Objection"), arguing that the Trustee has not diligently pursued any discovery or documentation required to file a complaint and, therefore, has not shown cause to extend the deadline under Rule 4004(b). The Court sustained the Objection and denied the Motion at the conclusion of the hearing held on November 10, 2021, at which Evan

Lee appeared on behalf of the Trustee and Daniel Bruton appeared on behalf of the Debtor. The Court enters this order to fully set forth the issues and explain its reasoning.

While the Motion itself provided only a cursory explanation of why cause existed under Rule 4004(b), counsel for both the Trustee and the Debtor provided more insight at the hearing as to the sequence of events that led the Trustee to request an extension of the deadline to object to discharge. The Debtor's bankruptcy case was initiated on July 21, 2021 and the Trustee held the initial meeting of creditors on August 20, 2021, at which the Debtor was examined. As stated by the Debtor's counsel, and confirmed by Mr. Lee, an attorney representing creditor Forsyth Redi-Mix, Inc. ("Redi-Mix") was present at the initial meeting of creditors and questioned the Debtor. As reflected in the related docket entry, the meeting of creditors was continued "for additional documents requested by trustee/BA." The continued meeting was held on September 3rd and continued once more to September 30th, after which it was marked as held. The docket reflects no other attempts by the Trustee to obtain further documentation from the Debtor until the Motion was filed on October 19th. Both parties confirmed at the hearing that the only communication sent by the Trustee to the Debtor's attorney during this timeframe was a single email regarding the general accuracy of the Debtor's schedules.

On October 13, 2021, Redi-Mix filed an adversary proceeding objecting to the dischargeability of its debt (AP # 21-06021). On October 18, 2021, five days after that filing and one day before the deadline to object to discharge, the Trustee held a phone conference with the creditor's counsel and requested a copy of the underlying state court complaint that formed the basis of the adversary proceeding. The Trustee asserts that Redi-Mix's filing of the adversary proceeding is what prompted his stated need to look further into the Debtor's assets and liabilities.

In response, the Debtor asserted that the Trustee was aware of the state-court litigation that was the basis for the adversary proceeding at the time of the meeting of creditors and, moreover, could have asked the Debtor for a copy of the

state-court complaint or other documentation but declined to do so. The Trustee did not dispute the Debtor's representations and could point to no other actions, outside of the single email communication, he had taken prior to requesting the extension of time in the Motion. While the Trustee sought to examine the Debtor under Federal Rule of Bankruptcy Procedure 2004 (Docket No. 19), he moved to do so on November 8, 2021, which was only two days before the hearing on the Motion and more than two weeks after the applicable Rule 4004 deadline he sought to extend.

The Bankruptcy Code grants interested parties a limited time to object to a debtor's discharge, which "provides the fresh start that is the hallmark of our bankruptcy system." *Jenkins v. Simpson (In re Jenkins)*, 784 F.3d 230, 234 (4th Cir. 2015). As "[t]he discharge is the most important element of the debtor's fresh start, ... the debtor has an interest in the prompt resolution of discharge issues and the law sets a tight time frame for discharge objections." *In re Nowinski*, 291 B.R. 302, 305 (Bankr. S.D.N.Y. 2003) (internal citations omitted). To that end, the Federal Rules of Bankruptcy Procedure require that a complaint objecting to a debtor's discharge be filed "no later than 60 days after the first date set for the meeting of creditors under § 341(a)." Fed. R. Bankr. P. 4004(a).

The first date set for the meeting of creditors in this case was August 20, 2021, and thus any complaint objecting to discharge was to be filed on or before October 19, 2021. Rule 4004 does provide, however, a mechanism by which any party in interest may extend the 60-day deadline:

(1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4004(b)(1). "If the motion for extension is not filed within the required time period, the court normally has no discretion to grant the motion." 9 COLLIER ON BANKRUPTCY ¶ 4004.03(1) (16th ed. 2021). On October 19, 2021, the objection deadline, the Trustee timely moved to extend the time in which to object to the Debtor's discharge under Rule 4004(b).

When seeking relief under Rule 4004(b)(1), “it is the burden of the moving party to demonstrate that cause exists.” *421 Chestnut Partners, LP v. Aloia (In re Aloia)*, 496 B.R. 366, 380 (Bankr. E.D. Pa. 2013); *see also In re Marsh*, No. 12-60195, 2021 WL 4482581, at *2 (Bankr. D. Mont. Sept. 26, 2012); *In re Bomarito*, 448 B.R. 242, 248 (Bankr. E.D. Cal. 2011). The movant’s burden of proof as to cause cannot be “satisfied with only a scintilla of evidence[.]” and, while the power to extend the deadline under Rule 4004(b)(1) “rests entirely within the discretion of the bankruptcy judge,” that power should be “exercised cautiously[.]” *In re Bomarito*, 448 B.R. at 248 (internal citations omitted).

While “[c]ause’ is narrowly construed to promote the prompt resolution of the case and the implementation of the debtor’s ‘fresh start[.]’” *In re Nowinski*, 291 B.R. at 305, the term “cause” is not defined in the Bankruptcy Code. Consequently, courts have considered several factors in determining if the movant has met the burden to extend the deadline under Rule 4004(b)(1):

- 1) whether the creditor had sufficient notice of the deadline and the information to file an objection;
- 2) the complexity of the case;
- 3) whether the creditor exercised diligence;
- 4) whether the debtor refused in bad faith to cooperate with the creditor;
- 5) the possibility that proceedings pending in another forum will result in collateral estoppel of the relevant issues.

In re Nowinski, 291 B.R. at 305–06. Courts in the Fourth Circuit have similarly applied the same factors in determining cause to extend the deadlines to object to discharge or dischargeability of certain debts.¹ *See, e.g., Monbo v. Blair*, 621 B.R. 383, 389 (D. Md. 2020); *In re Martin*, No. 2:15-bk-20581, 2017 WL 1026560, at *2 (Bankr. S.D. W. Va. Mar. 13, 2017); *In re Estrin*, 529 B.R. 865, 870 (Bankr. D.S.C. 2015). These factors “provide an analytical framework and are not exclusive,” but the movant’s showing on diligence is afforded the most weight. *In re Chatkhan*, 455

¹ Due to the use of parallel language and shared subject matter, i.e. the right to receive chapter 7 relief, courts have used the same analysis to determine whether “cause” exists to extend the deadlines under Federal Bankruptcy Rules 1017(e), 4007(c), and 4004(b). *See, e.g., In re Bomarito*, 448 B.R. at 248; *In re Chatkhan*, 455 B.R. 365, 367 (Bankr. E.D.N.Y. 2011); *In re Holland*, No. 18-10488, 2019 WL 3283050, at *4 (Bankr. D. Vt. July 19, 2019).

B.R. 365, 368 (Bankr. E.D.N.Y. 2011). “Knowledge of the deadline coupled with the failure to diligently seek discovery is, absent unusual circumstances, fatal to an extension motion.” *In re Nowinski*, 291 B.R. at 306.

Based on the record before the Court and the representations of the parties, the Court finds the factors weigh decisively against granting an extension of the deadline under Rule 4004(b)(1). The Trustee had ample notice of the deadline and makes no assertion that the Debtor has been unresponsive to any of his questions or requests. Most importantly, the Trustee failed to take any steps to acquire the information regarding the Debtor’s assets and liabilities he now says he needs more time to obtain. During the nearly three-month period prior to the deadline, the Trustee conducted and closed the meeting of creditors without issue, did not follow up on the underlying state court litigation until after the creditor filed an adversary proceeding, and sent a single email to the Debtor’s attorney, which was merely sent to verify all pending state-court litigation and litigation parties were included in the Debtor’s schedules. The Trustee did not file any motions for Rule 2004 examinations until *after* the deadline expired, only doing so two days before the hearing on the Motion (Docket No. 19). Such delayed action in seeking discovery is not sufficient to demonstrate diligence for purposes of a Rule 4004(b)(1) extension. *See, e.g., In re Nowinski*, 291 B.R. at 306–07 (no cause where creditor did not attend meeting of creditors and failed to file a Rule 2004 motion until two weeks after the deadline); *In re Grillo*, 212 B.R. 744, 747 (Bankr. E.D.N.Y. 1997) (no cause where, except for filing a Rule 2004 motion five days before the deadline, creditor sat on its rights and made no effort to obtain information); *In re Dekelata*, 149 B.R. 115, 117 (Bankr. E.D. Mich. 1993) (no cause where creditor sought Rule 2004 examination only eleven days prior to expiration of the deadline).

The Trustee has not come forward with any evidence of unusual circumstances that would overcome the lack of diligence. The Trustee does not allege the Debtor has been uncooperative or withholding of any information and, while there is an adversary proceeding related to the Debtor’s actions as owner-operator of a business entity, those facts on their own do not render the Debtor’s

bankruptcy case “any more complex than a normal chapter 7 case.” *See In re Kramer*, 492 B.R. 366, 371 (Bankr. E.D.N.Y. 2013) (finding the complexity factor weighed against the creditor’s motion to extend under Rule 4004 where the debt at issue arose from the debtor’s personal obligations on a business debt and actions taken as owner of a food service business).

Based upon the foregoing, THE COURT FINDS the Trustee has failed to meet his burden in demonstrating cause for an extension of the deadline to object to discharge under Rule 4004(b)(1). The Trustee has not shown the requisite degree of due diligence or established the presence of any unusual circumstances justifying such an extension.

Accordingly, IT IS HEREBY ORDERED that the Trustee’s Motion to Extend Time to Object to Discharge is DENIED.

END OF DOCUMENT

PARTIES TO BE SERVED

Judith Judalena Short

21-50463

Daniel C. Bruton on behalf of Debtor
via cm/ecf

James C. Lanik, Trustee
via cm/ecf

William P. Miller, Bankruptcy Administrator
via cm/ecf

Arvind Nath Rawal on behalf of Creditor Ally Financial, c/o AIS
Portfolio Services, LP
via cm/ecf

Ashley S. Rusher on behalf of Plaintiff Forsyth Redi-Mix, Inc.
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