

This opinion is not intended for publication

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	Case No. 01-21906
)	
JEFFREY ALLEN COWLEY,)	Chapter 7
Debtor.)	
)	
ROBERT FRISHKORN)	Adversary Proceeding No. 02-1120
Plaintiff,)	
)	
v.)	Judge Arthur I. Harris
)	
JEFFREY ALLEN COWLEY,)	
Defendant.)	
)	

ORDER

On February 13, 2003, this Court entered a tentative decision indicating that the complaint in this matter may have been filed untimely under Bankruptcy Rule 4007(c), and allowed the parties leave to file briefs on the issue of timeliness (Docket # 19). In response to the decision, the plaintiff filed a brief (Docket # 20). The defendant did not file a brief. The Court has reviewed the plaintiff's brief and the record. For the following reasons, the Court will defer ruling on the timeliness of the complaint until the plaintiff files an affidavit or declaration pursuant to 28 U.S.C. § 1746 by someone with knowledge of the events related to the attempt to file the adversary complaint at the bankruptcy clerk's office on March 8, 2002, and the defendant has had an opportunity to file a response.

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BACKGROUND

On December 5, 2001, the defendant filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. The deadline to file complaints to determine dischargeability of a debt was March 8, 2002. The deadline was provided in the initial notice of the Chapter 7 filing, which was mailed to all creditors. Bankruptcy Rule 2002(f)(5). The plaintiff was served with a copy of the notice of the March 8, 2002, deadline. (Main Case Docket # 2). The plaintiff did not file his adversary complaint to determine dischargeability on or before March 8, 2002. Nor did plaintiff file a motion under Rule 4007(c) to extend the time for filing an adversary complaint before the time expired on March 8, 2002. Rather, on March 12, 2002, the plaintiff filed both a motion for extension of time to file a complaint and the complaint to determine the dischargeability of a debt under § 523(a)(6). The issue before the Court is whether the adversary complaint was timely filed.

DISCUSSION

The Court has jurisdiction in this adversary proceeding pursuant to 28 U.S.C. § 1334(b) and Local General Order No. 84, entered on July 16, 1984, by the United States District Court for the Northern District of Ohio. This is a core

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proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

THE PLAINTIFF'S POSITION

The plaintiff contends the complaint filed on March 12, 2002, was timely and presents three arguments in support of his position. First, plaintiff asserts that during a pretrial conference on June 6, 2002, the defendant waived all objections to service of the complaint. Second, plaintiff asserts that he attempted to file the complaint on March 8, 2002, however, the bankruptcy clerk's office refused to accept the complaint because no signed adversary cover sheet was included with the complaint for filing. Third, plaintiff asserts that he was never properly served with notice of the bankruptcy as he lives in Florida, and the address listed in the bankruptcy schedule is an outdated address.

Without addressing the plaintiff's other arguments, the Court finds that plaintiff's second argument, if substantiated, would support a conclusion that the complaint was timely filed. According to plaintiff, he presented the complaint for filing on March 8, 2002, however, he was prevented from doing so because the bankruptcy clerk's office refused to accept the complaint for filing, as it was not accompanied with an adversary proceeding cover sheet, as required by Local Bankruptcy Rule 7003-1.

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"A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement." Bankruptcy Rule 9029(a)(2). The purpose of Bankruptcy Rule 9029(a)(2) is to protect parties from losing substantive rights through nonwillful failure to comply with local form requirements. Therefore, if the plaintiff can substantiate the events related to his efforts to file the complaint by filing an affidavit or declaration under 28 U.S.C. § 1746, the Court would be inclined to find the complaint was timely filed, pursuant to Bankruptcy Rule 9029(a)(2).

Accordingly, the Court requests that plaintiff file on or before May 2, 2003, an affidavit or declaration pursuant to 28 U.S.C. § 1746 describing the events related to the attempt to file the adversary complaint on March 8, 2002. The defendant may file an opposing affidavit or declaration pursuant to 28 U.S.C. § 1746 or other response on or before May 16, 2003.

IT IS SO ORDERED.

/s/ Arthur I. Harris 04/08/2003
Arthur I. Harris
United States Bankruptcy Judge