

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

MICHAEL L. BAYUS,

Debtor.

CAROLYN BALES,

Plaintiff,

vs.

MICHAEL L. BAYUS,

Defendant.

CASE NUMBER 04-41365

ADVERSARY NUMBER 04-4131

M E M O R A N D U M O P I N I O N

This cause is before the Court on the Motion to Dismiss, Presenting Defense of Failure to State a Claim Under Rule 12(b) and for Reasonable Attorney Fees and Costs (the "Motion to Dismiss") filed by Debtor/Defendant Michael Bayus ("Debtor" or "Defendant"). Plaintiff Carolyn Bales ("Plaintiff") has not opposed the Motion to Dismiss. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

F A C T S

Debtor filed a petition under Chapter 7 of Title 11, United States Code, on March 26, 2004. On July 20, 2004, Plaintiff filed a Complaint Objecting to Discharge of Debtor to Determine Debt to be Nondischargeable, and for Money Judgment (the "Complaint"). Plaintiff asserts five causes of action in the Com-plaint: concealment of assets; false oaths and accounts; perjury; willful and malicious injury to property; and fraud and larceny.

L E G A L A N A L Y S I S

The Federal Rules of Bankruptcy Procedure provide that, to timely file a complaint that either objects to a debtor's discharge under 11 U.S.C. § 727(a) or seeks the determination of a debt to be nondischargeable under 11 U.S.C. § 523(c), the complaint must be filed no later than sixty (60) days after the first date set for the meeting of creditors.¹ FED. R. BANKR. P. 4004(a) and 4007(c). In the case at bar, the meeting of creditors was first scheduled to be held on May 18, 2004. The Court provided notice of such meeting to Plaintiff. Thus, Plain-

¹"In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall 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).

"A complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)." FED. R. BANKR. P. 4007(c).

tiff was required to file the Complaint at issue no later than July 19, 2004. However, Plaintiff filed the Complaint on July 20, 2004. Accordingly, the Complaint is time barred and Defendant's Motion to Dismiss is granted.

C O N C L U S I O N

Defendant's Motion to Dismiss is granted.

An appropriate order shall enter.

JUDGE

**HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY**

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O R D E R

For the reasons set forth in this Court's Memorandum
Opinion entered this date, Debtor/Defendant's Motion to Dismiss
is granted. This case is dismissed.

IT IS SO ORDERED.

HONORABLE KAY WOODS
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Opinion and Order were placed in the United States

Mail this _____ day of May, 2005, addressed to:

CAROLYN BALES, 6460 Shafer Road, Warren, OH 44481.

JOHN A. HOLLISTER, ESQ., 640 High Street, N.E., Warren, OH 44483.

MICHAEL L. BAYUS, 4922 Hiram Avenue, N.W., Warren, OH 44483.

ROBERT J. BUCKLEY, ESQ., 5704 Youngstown-Warren Road, Niles, OH 44446.

RICHARD G. ZELLERS, ESQ., 3810 Starrs Centre Drive, Canfield, OH 44406.

SAUL EISEN, United States Trustee, BP America Building, 200 Public Square, 20th Floor, Suite 3300, Cleveland, OH 44114.

JOANNA M. ARMSTRONG