

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

IN RE: \*  
\* CASE NUMBER 04-41352  
RANDALL JOSEPH HAKE and \*  
\* MARY ANN HAKE, \*  
\* CHAPTER 7 \*  
\*  
Debtors. \* HONORABLE KAY WOODS \*  
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ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR EXTENSION  
OF TIME TO FILE COMPLAINT TO OBJECT TO DISCHARGE  
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The matter before the Court is the Motion for Extension of Time to File Complaint to Object to Discharge or Determine Dischargeability and Notice ("Motion for Extension of Time") filed by Buckeye Retirement Co., L.L.C., Ltd. ("Buckeye"). In response to the Motion for Extension of Time, (i) Michael D. Buzulencia, Interim Trustee ("Interim Trustee") filed Limited Response of Interim Trustee to Motion to Extend Time to File Complaint or Object to Discharge or Determine Dischargeability ("Trustee's Response"), and (ii) Debtors Randall J. Hake and Mary Ann Hake ("Debtors") filed Partial Objection of Debtors' (sic) to Motion of Buckeye for Extension of Time to File Complaint to Object to Discharge or Determine Dischargeability ("Debtors' Objection").

Buckeye has moved the Court for an extension of time - until December 31, 2006 - for "all parties in interest to file a complaint to object to discharge or determine dischargeability" in this case. For the reasons set forth below, the Court grants the Motion for Extension of Time in part and denies the motion in part.

By way of background, Debtors filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code on March 25, 2004.

The original Meeting of Creditors pursuant to 11 U.S.C. § 341 ("341 Meeting") was held on May 3, 2004. The Court entered Order Converting Case on April 26, 2006, which converted this case to a case under Chapter 7. The Interim Trustee was appointed and the 341 Meeting was noticed for June 20, 2006. The 341 Meeting was continued until July 11, 2006, at which time Buckeye, purporting to hold the requisite amount of claims and votes, elected Mark Gleason, CPA, as trustee. On July 13, 2006, the United States Trustee filed United States Trustee's Report of Election of Trustee, pursuant to FED. R. BANKR. P. 2003, which stated that if a motion to resolve the dispute over the trustee was not filed within ten days, the Interim Trustee would serve as trustee in this case. On July 21, 2006, Buckeye filed Motion to Resolve Disputed Election of Trustee and Notice ("Motion to Resolve"), to which Debtors filed a Response on July 27, 2006. A hearing on the Motion to Resolve is scheduled for August 22, 2006.

Buckeye asserts in the Motion for Extension of Time that an extension until December 31, 2006 for all parties in interest to file a complaint objecting to discharge or to determine dischargeability of a debt is necessary because "neither the Interim Trustee nor Buckeye has conducted Rule 2004 examinations of the Debtors, their son Christopher or entities under their control." (Motion for Extension of Time, p. 7.) Buckeye acknowledges that there is no entitlement to an extension of time in which to object to discharge or contest the dischargeability of a debt, but whether to extend such time rests in the sound discretion of the court. (Motion for Extension of Time, p. 5.) Buckeye further acknowledges that a "finding of cause should implicate a need for additional

information or investigation as to the debtors' conduct or other issues associated with reasons justifying denial of the debtors' discharge." (Motion for Extension of time, p. 6.)

Debtors do not oppose the Motion for Extension of Time to the extent it seeks an extension of time for the "eventual Trustee" and "if it is limited to an extension of 60 days." (Debtors' Objection, p. 1.) Debtors, however, do oppose an extension of time for Buckeye on the grounds that "Buckeye's assertion in its Motion that it needs 'additional information and investigation as to Debtors' conduct and other issues' is beyond the realm of creditability (sic)." (Debtors' Objection, p. 1.) Likewise, Interim Trustee "indicates his qualified concurrence" with the Motion for Extension of Time as long as the extension of time (i) is limited to the "elected Trustee herein, Mark Gleason, or his successor," (ii) is limited to 60 days, and (iii) does not apply to actions under 11 U.S.C. § 523. (Trustee's Response, p. 1.)

Federal Rule of Bankruptcy Procedure 4004(a) sets forth the time for filing a complaint objecting to discharge as "no later than 60 days after the first date set for the meeting of creditors under § 341(a)." FED. R. BANKR. P. 4004(a). Rule 4004(b) provides that the court may "for cause" extend the time to file a complaint objecting to discharge as long as the motion is filed before the time has expired. FED. R. BANKR. P. 4004(b). In this case, since the 341 Meeting was first set for June 20, 2006, the last day to file a complaint objecting to discharge is August 21, 2006.

Rule 4007(c) provides that 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)." As a consequence, the last day to file a complaint to determine the dischargeability of a debt is also August 21, 2006. The court may also "for cause" extend the time to file a dischargeability complaint if the motion is filed before the time has expired. FED. R. BANKR. P. 4007(c).

Accordingly, Buckeye's Motion for Extension of Time was timely filed. The question before this Court is whether Buckeye has established "cause" to extend the time periods in Rules 4004(a) and 4007(c) and, if so, whether the requested time period for the extension is reasonable.

Buckeye argues that "the Interim Trustee may lose his authority to act due to the election held on July 11, 2006." Buckeye further contends that if the 60 day deadline passes before Mark Gleason can take office, "he may be prejudiced." (Motion for Extension of Time, p. 6.) Neither Debtors nor the Interim Trustee object to an extension of time for the "eventual Trustee" to file a complaint objecting to discharge as long as the extension is limited to 60 days. This Court finds that, if the time period to file a complaint objecting to discharge expires before a permanent trustee is put in place, such expiration may prejudice the trustee in the exercise of his fiduciary duties. This Court also finds that an extension until December 31, 2006 is far beyond what Rule 4004(a) contemplates. Under normal circumstances, the Bankruptcy Code and Bankruptcy Rules contemplate a short period of time from a debtor's filing a Chapter 7 petition to receipt of discharge. The period for filing a complaint objecting to discharge has been established as 60 days following the 341 Meeting. Buckeye has proposed a time period that is more than six months after the date first set for the 341 Meeting

and more than four months after the expiration of the current filing deadline. Buckeye has offered no justification for providing the ultimate trustee in this case more than twice the ordinary time period to determine if a complaint objecting to discharge should be filed. Since the hearing on the Motion to Resolve is scheduled for August 22, 2006, there is no reason to believe that identification of the ultimate trustee will not be determined shortly thereafter and that a 341 Meeting cannot be quickly convened. This Court will extend the time for the trustee to file a complaint to object to dischargeability for 60 days, until October 20, 2006. If the trustee needs additional time, he may file an appropriate motion with this Court.

Buckeye has not, however, provided any reason that constitutes "cause" to extend the time period for objecting to discharge and/or seeking a determination regarding the dischargeability of a debt to "all parties in interest." Buckeye's only basis for the extension of time is that "neither the Interim Trustee nor Buckeye has conducted Rule 2004 examinations of the Debtors, their son Christopher or entities under their control." (Motion for Extension of Time, p. 7.) This statement is, at best, disingenuous with respect to Buckeye. During this case, Buckeye has taken Rule 2004 examinations, as well as depositions of the Debtors, and many other entities. Buckeye had the opportunity to examine Christopher Hake, but failed to avail itself of that opportunity.

Buckeye relies on cases that are factually quite distinct from the facts before the Court. All of the cases cited by Buckeye involve cases that were originally filed under Chapter 7 and in some of those cases no 341 Meeting had occurred. In this case, Debtors

filed a Chapter 11 case more than two years ago and submitted to a 341 Meeting, at which Buckeye participated. Buckeye has been very active in the case of these Debtors and is well aware of all developments therein. Buckeye deposed and examined both Debtors, as well as others, in connection with the Disclosure Statement and in anticipation of a hearing on confirmation. Moreover, most of the cases cited by Buckeye are based on the debtor's failure to cooperate to allow the creditor to conduct discovery. See *In re Nowinski*, 291 B.R. 302, 305 (Bankr. S.D. N.Y. 2003) (Creditor charged that debtor failed to cooperate when creditor requested information prior to the petition date.); *In re McCormack*, 244 B.R. 203, 208 (Bankr. D. Conn. 2000) (Creditor demonstrated cause because it had not obtained pre-filing discovery via Rule 2004 examination based on debtors' change of counsel, debtors' counsel's non-responsiveness and disputes between the attorneys.). That is not the situation here. Indeed, Buckeye has not only had the opportunity to conduct discovery, it has taken extensive discovery from these Debtors. Buckeye should be in a position to know whether it has reason to object to Debtors' discharge and/or a cause of action regarding the dischargeability of the debt Debtors owe to Buckeye and, if so, to timely file such action(s).

In order to obtain an extension of time to file a complaint objecting to discharge or regarding dischargeability, Buckeye must establish "cause." This Buckeye has failed to do. An appropriate motion seeking an extension of time must set forth with specificity the reasons that an extension is necessary. In *In re Nevius*, 269 B.R. 209 (Bankr. N.D. Ind. 2001) - a case upon which Buckeye relies in its Motion for Extension of Time - the court

denied the request for an extension of time to file a complaint objecting to discharge because the movant failed to specify any facts that would constitute cause for doing so. The court cited FED. R. BANKR. P. 9013 and held that "an appropriate motion will identify the cause that leads the movant to seek an extension of time and should do so with some degree of specificity." *Id.* at 211.

The court went on to state:

The entire basis for the requested extension is set out at paragraph 4, which states: "That at [the] § 341 Meeting of Creditors, there were certain questions and issues uncovered by the Trustee which would enable the Trustee to administer the estate." Accepting all this to be true says nothing about why the Trustee needs additional time to decide whether she should file a complaint objecting to the debtor's discharge.

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The Trustee's articulated "cause" for an extension of time in no way implicates a need for additional information or investigation concerning the debtor's conduct or any of the other issues associated with the statutory reasons justifying denial of discharge.

*Id.* Similarly, here Buckeye has not articulated any reason why additional time is necessary. Buckeye merely asserts (not entirely accurately) that it has not conducted certain Rule 2004 examinations.

As the *Nowinski* court pointed out, "discharge is the most important element of the debtor's fresh start. . . . Accordingly, 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* at 305. The court further noted that although "cause" is not defined, it is to be "narrowly construed to promote the prompt resolution of the case and the implementation of the debtor's 'fresh start.'" *Id.*

For the foregoing reasons, this Court grants Buckeye's motion to the extent it requests an extension of time for the ultimate trustee to file a complaint objecting to discharge, but only for a period of 60 days, until October 20, 2006. Buckeye's request for an extension of time for all interested parties to file complaints objecting to discharge or to file complaints regarding the dischargeability of debts is hereby denied.

**IT IS SO ORDERED.**

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**HONORABLE KAY WOODS  
UNITED STATES BANKRUPTCY JUDGE**