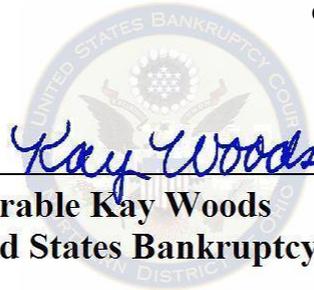


IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
	*	
ROBERT HOWARD VANSICKLE,	*	CASE NUMBER 07-43255
	*	
	*	
Debtor.	*	CHAPTER 7
	*	

	*	
ELAINE LAWSON,	*	
Administratrix of the Estate of	*	
Stephen A. Lawson,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	
ROBERT VANSICKLE,	*	
	*	HONORABLE KAY WOODS
Defendant.	*	
	*	

MEMORANDUM OPINION REGARDING MOTION FOR LEAVE TO
FILE ADVERSARY COMPLAINT

On June 12, 2008, the Court held a hearing ("Hearing") on Motion for Leave to File Adversarial Complaint ("Motion for Leave")

(Doc. # 61) filed by Elaine Lawson, Administratrix of the Estate of Stephen A. Lawson ("Lawson") on May 22, 2008. The Motion for Leave sought authority to commence an adversary proceeding and file *instanter* Complaint Objecting to Dischargeability of Indebtedness ("Complaint") against Debtor Robert Howard Vansickle ("Debtor").

Present and in attendance at the Hearing were counsel for Debtor, Donald DeSanto, Esq., and counsel for Lawson, Ronald D. Yarwood, Esq. and James S. Gentile, Esq. Neither party asked for an evidentiary hearing nor did either side ask to present evidence. Each side, however, presented arguments to the Court.

Debtor filed the instant chapter 7 case on December 21, 2007. The first meeting of creditors pursuant to 11 U.S.C. § 341 ("§ 341 Meeting") was scheduled for February 19, 2008, resulting in April 21, 2008, as the deadline to file a complaint objecting to discharge or to determine the dischargeability of certain debts. Lawson filed Motion for Leave on May 22, 2008. The Complaint attached as an exhibit to the Motion for Leave is based on 11 U.S.C. § 523(c) and seeks a determination that an alleged debt arising from the wrongful death of Lawson's decedent is not dischargeable.

Debtor's counsel represented at the Hearing, without contradiction, that Lawson was not a known creditor at the time Debtor filed his bankruptcy petition, despite Lawson having asserted a claim against an adult care facility, which is a corporate entity in which Debtor has an ownership interest and which he operates. Debtors' counsel stated that Debtor did not know that Lawson had any

alleged claims against him until Lawson filed a lawsuit (Case No. 2008 CV 00973) ("State Court Lawsuit") in the Mahoning County Court of Common Pleas on March 10, 2008. The State Court Lawsuit alleges a "variety of claims against Debtor concerning his ownership of the adult care facility in which [Lawson's] deceased lived, and in which [Lawson's] deceased was killed by another resident." (Memo. in Support of Motion for Leave at 2.) Subsequent to Lawson filing the State Court Lawsuit, Debtor amended his schedules on April 17, 2008, to include Lawson as an additional creditor. Debtor also filed a Notice of Filing Bankruptcy in the State Court Lawsuit on April 18, 2008.

Because the Complaint is based on § 523, Rule 4007 [Interim] of the Federal Rules of Bankruptcy Procedure applies. Rule 4007 provides that, in a chapter 7 case:

[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). . . . On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

Fed. R. Bankr. P. 4007(c) [Interim] (West 2007) (emphasis added). As set forth above, the first date set for the § 341 Meeting was February 19, 2008, making April 21, 2008, the last date to file a complaint to determine the dischargeability of a debt. Lawson's Motion for Leave was not filed before the expiration of the 60-day period. Accordingly, Lawson's Motion for Leave is untimely and cannot be granted.

Although Lawson was not originally scheduled, Debtor amended his schedules to list Lawson on April 17, 2008 - four days before the expiration of the time to file a complaint or seek an extension of time pursuant to Rule 4007(c). Despite having notice of Debtor's bankruptcy prior to the expiration of the 60-day period in Rule 4007(c), Lawson failed to either: (i) timely file a complaint to determine the dischargeability of a debt, or (ii) timely seek to extend the period in which to file such complaint.

The 60-day period in Rule 4007(c) is jurisdictional; the Court does not have the discretion to extend the time period if a timely request to extend the time has not been made.

The time limitation for filing § 523 dischargeability complaints is set forth in Bankruptcy Rule 4007(c). Rule 4007(c) provides that a complaint to determine the dischargeability of any debt pursuant to § 523(c) must be filed not later than 60 days following the date of the first scheduled § 341 creditors' meeting. While the court may extend the limitation period upon the motion of any party in interest, it may do so only if the motion for extension is made prior to the expiration of the limitation period. FED. R. BANKR. P. 4007(c). Once the limitation period expires, a creditor is jurisdictionally barred from seeking a determination of dischargeability pursuant to § 523(c), and a court has no choice but to dismiss any complaint filed after that time. *In re Kirsch*, 65 Bankr. 297 (Bankr. N.D. Ill. 1986).

Toth v. Ham (In re Ham), 174 B.R. 104, 106-07 (Bankr. S.D. Ill. 1994).

In *Manufacturers Hanover v. Dewalt (In re Dewalt)*, 107 B.R. 719 (9th Cir. B.A.P. 1989), the 9th Circuit Bankruptcy Appellate Panel

("B.A.P.") held that a creditor, which was not originally scheduled, but which had notice of the bankruptcy seven calendar and five court days prior to the expiration of the 60-day period, had ample opportunity to file a motion to extend time to file a complaint to determine the dischargeability of a debt. The B.A.P. held:

A motion to extend time in which to file a § 523(c) complaint must be made before the original 60 day period for filing a complaint has expired.

[Creditor] had seven calendar and five court days in which to bring a motion seeking an extension of the deadline for filing a dischargeability complaint. While it is questionable whether a complaint could have been filed in the time remaining after [creditor] received notice of [debtor's] bankruptcy, there was ample opportunity to seek an extension of time to file a § 523(c) complaint under Rule 4007(c). A motion for extension of time in which to file a complaint is a simple matter and it would have been an abuse of discretion not to grant such a motion in this case. As a result we hold that [creditor's] complaint was properly dismissed as untimely.

Id. at 721-22 (citation omitted).

In re Dewalt was cited with approval in this District in *Toledo Teachers Credit Union v. Ezell (In re Ezell)*, 116 B.R. 556 (Bankr. N.D. Ohio 1990). "At a minimum, plaintiff had the opportunity to request an extension of time in which to file. See *Dewalt*, 107 Bankr. [sic] at 721. Because plaintiff failed to timely file the instant complaint, the court is without jurisdiction to adjudicate its § 523(a)(2) allegations." *Id.* at 558. Although the time period in the instant case is slightly shorter than the time period in *In re Dewalt*, this Court is not persuaded that five calendar days and

three court days was insufficient time for Lawson to timely file a motion to extend the 60-day time period in Rule 4007(c).

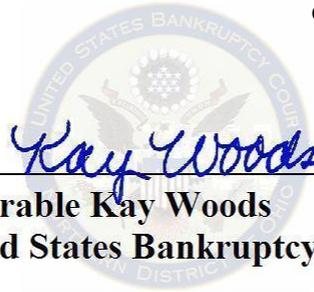
Because Lawson failed to file the Motion for Leave until more than one month after expiration of the 60-day period for filing complaints seeking to determine the dischargeability of debts, the Motion for Leave is untimely. Pursuant to Rule 4007(c) and case law interpreting this Rule, this Court does not have the discretion to grant the untimely Motion for Leave and extend the time for Lawson to file a complaint under § 523(c).¹ This Court finds that Lawson had sufficient opportunity to timely file a motion to extend the 60-day period in Rule 4007(c).

For the foregoing reasons, this Court will deny the Motion for Leave as untimely. An appropriate Order will follow.

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¹Although the cases cited *supra* base their analysis on the pre-BAPCPA version of Rule 4007(c), the jurisdictional requirements were unaffected by any subsequent or proposed amendments.

IT IS SO ORDERED.



Honorable Kay Woods
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:	*	
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ROBERT HOWARD VANSICKLE,	*	CASE NUMBER 07-43255
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Debtor.	*	CHAPTER 7
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Administratrix of the Estate of	*	
Stephen A. Lawson,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	HONORABLE KAY WOODS
ROBERT VANSICKLE,	*	
	*	
Defendant.	*	
	*	

ORDER DENYING LEAVE TO FILE ADVERSARY COMPLAINT

For the reasons set forth in the Court's Memorandum Opinion entered this date, the Motion for Leave to File Adversarial

Complaint filed by Elaine Lawson, Administratrix of the Estate of
Stephen A. Lawson on May 22, 2008, is denied as untimely.

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