

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

In the Matter of:	:	Chapter 7
	:	
JENNIFER L. FOWLER,	:	
	:	
Debtor	:	Case No. 03-54812 RFH
	:	
RETAILERS NATIONAL BANK, :	:	
	:	
Plaintiff	:	
	:	
vs.	:	
	:	
JENNIFER L. FOWLER,	:	
	:	
Defendant	:	Adversary Proceeding
	:	No. 04-5009

BEFORE

ROBERT F. HERSHNER, JR.  
CHIEF UNITED STATES BANKRUPTCY JUDGE

COUNSEL:

For Plaintiff: Mr. Rob Rickman  
271 Roswell Street  
Marietta, Georgia 30060

For Defendant: Mr. John K. James  
1109 Russell Parkway, Suite #2  
Warner Robins, Georgia 31088

## MEMORANDUM OPINION

Jennifer L. Fowler, Defendant, filed on February 3, 2004, a Motion for Summary Judgment. Retailers National Bank, Plaintiff, filed a response on March 9, 2004. The Court, having considered the record and the arguments presented by counsel, now publishes this memorandum opinion.

Defendant filed a voluntary petition under Chapter 7 of the Bankruptcy Code on October 15, 2003. The first meeting of creditors under § 341(a) of the Bankruptcy Code,<sup>1</sup> was scheduled for and held on November 19, 2003. On January 20, 2004, Plaintiff filed a complaint objecting to the dischargeability of certain obligations. The Court issued a summons on January 23, 2004. The summons and complaint were served on Defendant and her attorney on January 27, 2004. Defendant filed on February 3, 2004, an answer, a Motion for Summary Judgment, and a Statement of Uncontested Facts. Plaintiff filed a response to Defendant's motion on March 9, 2004.

Plaintiff's complaint contends that Defendant's obligations are nondischargeable pursuant to § 523(a)(2) of the Bankruptcy Code. In her Motion for Summary Judgment, Defendant contends that Plaintiff's complaint was not timely filed and should be dismissed. In her Statement of Uncontested Facts, Defendant contends that the final

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<sup>1</sup> 11. U.S.C.A. § 341(a) (West 1993).

date to file a complaint under § 523(a)(2) was January 20, 2004. Defendant contends that Plaintiff filed its complaint on January 23, 2004.<sup>2</sup>

Section 523(c) of the Bankruptcy Code<sup>3</sup> provides in part that the debtor shall be discharged from a debt of the kind specified in § 523(a)(2) unless the court determines that the debt is nondischargeable under § 523(a)(2).

Rule 4007(c) of the Federal Rules of Bankruptcy Procedure (hereinafter “Bankruptcy Rules”) provides in part that a complaint filed under § 523(c) in a Chapter 7 case shall be filed no later than sixty days after the first date set for the meeting of creditors under § 341(a).<sup>4</sup> In computing the sixty-day time period, Bankruptcy Rule 9006(a) provides in part: (1) the day which the designated period of time begins to run (i.e., the first date set for the meeting of creditors) shall *not* be included; (2) the last day of the period shall be included *unless* it is a Saturday, a Sunday, a or legal holiday;

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<sup>2</sup> The Court notes that the summons in this adversary proceeding was issued on January 23, 2004.

<sup>3</sup> 11 U.S.C.A. § 523(c) (West 1993 & Supp. 2003).

<sup>4</sup> FED. R. BANKR. P. 4007(c).

**(c) Time for filing complaint under § 523(c) in a chapter 7 liquidation, chapter 11 reorganization, or chapter 12 family farmer’s debt adjustment case; notice of time fixed** 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). The court shall give all creditors no less than 30 days’ notice of the time so fixed in the manner provided in Rule 2002. 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.

and (3) the Birthday of Martin Luther King, Jr., is a legal holiday.<sup>5</sup>

In the case at bar, the first meeting of creditors was scheduled for and held on November 19, 2003. Applying Bankruptcy Rule 9006(a), the sixty-day time period for filing a complaint under § 523(a)(2) began to run on November 20, 2003. The sixtieth and final day for Plaintiff to file a complaint was Sunday, January 18, 2004. Bankruptcy Rule 9006(a) provides that if the final day of the designated period falls on a Saturday, Sunday, or legal holiday, that day shall not be included in the computation. January 18, 2004 was a Sunday. The following day, Monday, January 19, 2004, was a legal holiday, the Birthday of Martin Luther King, Jr. Thus, the final date for Plaintiff to file a timely complaint under § 523(a)(2) was Tuesday, January 20, 2004.

The official date stamp located in the top right corner of Plaintiff's complaint shows that the complaint was filed with the Court on January 20, 2004. Therefore, Plaintiff's complaint was timely filed within the time period provided by Bankruptcy Rule 4007(c). The Court is persuaded that Defendant's Motion for Summary Judgment must be denied.

An order in accordance with this memorandum opinion shall be entered this date.

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<sup>5</sup> FED R. BANKR. P. 9006(a).

**(a) Computation** In computing any period of time prescribed or allowed by these rules . . . the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday . . . As used in this rule and in Rule 5001(c), "legal holiday" includes . . . [the] Birthday of Martin Luther King, Jr. . . .

DATED this 1st day of April, 2004.

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ROBERT F. HERSHNER, JR.  
Chief Judge  
United States Bankruptcy Court