UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:	)	
	)	
SARAH M. PHOUMINH,	)	Bankruptcy Case No. 03-26899-HRT
	)	Chapter 7
Debtor.	)	
_____	)	

ORDER REGARDING MOTION TO EXTEND DEADLINES

THIS MATTER is before the Court on the United States Trustee's Motion to Extend Time to File a Complaint Pursuant to 11 U.S.C. § 727 and to File a Motion to Dismiss Under 11 U.S.C. § 707(b) and the Debtor's Objection to that request. The Court has reviewed the Court's file and considered the parties' arguments, evidence and submissions at hearing on June 2, 2004, and is ready to rule.

The facts are as follows:

1. The Debtor filed her petition for bankruptcy relief under Chapter 7 on August 26, 2003.

2. The Debtor filed her Statement of Financial Affairs, Schedules and Notice of Intent on the petition date, having signed them under penalty of perjury on August 25, 2003.

3. The Section 341 First Meeting of Creditors was held on October 2, 2003. A representative of the United States Trustee's ("UST") Office did not attend. As a result of that meeting, the Debtor sometime later provided the Chapter 7 trustee with a number of documents that he had requested.

4. The Debtor's Objection to the UST's Motion to Extend Time lists a number of items provided to the Chapter 7 Trustee, such as business records for Super Asian Market, tax returns for 2001 and 2002, bank records for all personal and business accounts for 2001-2003, and other explanatory documents. However, no evidence was presented at hearing to explain the nature and extent of this documentation or provide the date on which it was provided to the case Trustee.

5. On November 24, 2003, creditor Enger Family Partnership, L.L.L.P. ("Enger") conducted a Rule 2004, F.R.B.P. examination of the Debtor, after the Debtor provided requested documents to Enger's counsel, Martin Long, on or about November 21, 2004. About that time, Enger's counsel also contacted the UST's office regarding his concerns about this case; and, a UST representative attended the Rule 2004 examination. The UST did not ask any questions, but did obtain copies of certain exhibits or documents used during the examination.

6. The last date by which a party could file a complaint objecting to discharge was December 1, 2003.

7. On December 1, 2003, the UST filed a Motion to Extend Time to file a Complaint pursuant to 11 U.S.C. § 727 and a Motion to Dismiss pursuant to 11 U.S.C. §707(b) requesting an additional 60 days to file such complaint or motion.

8. On December 15, 2003, the Debtor filed her Objection to the UST's Motion to Extend Time.

9. On January 30, 2004, the UST filed a Complaint to Deny Discharge pursuant to 11 U.S.C. §727. A motion to dismiss pursuant to §707 (b) was not filed and that part of the UST's request for extension is now moot. The Court notes that Enger had also filed its own Motion on December 1, 2003 for a thirty (30) day extension within which to object to the discharge and/or the dischargeability of its debt. The Debtor objected to it. Enger has not filed any Complaint nor pursued its Motion so the Court deems that matter to be moot as well.

10. On February 3, 2004, the UST filed a Certificate of Contested Matter and requested a hearing on the Motion to Extend Time and the Debtor's Objection thereto. The Court initially set the hearing for March 3, 2004, which was continued at the Debtor's request until March 17, 2004. At that hearing, the parties requested and were granted an extension of 60 days within which to exchange more information.

11. Evidently, no further agreements were reached and the UST filed a Motion to Set an Evidentiary Hearing on this matter on May 18, 2004. That Motion alleges the Debtor did not produce any further information or documentation in response to the UST's two letters and an email to Debtor's counsel for such production. Apparently, there was some response by Debtor's counsel that the items would be produced in early May. However, little evidence was presented on these matters, and the Court has not considered them in its ruling since they involve factual allegations occurring after the Motion to Extend Time was filed.

DISCUSSION

Rule 9006(b) controls a motion for enlargement of time. Rule 9006(b)(3) provides that the Court's discretion to allow an extension of time for certain actions is limited by provisions of other rules addressing those actions.

Rule 4004(b) controls the granting of a motion to extend the deadline for filing a complaint objecting to a debtor's discharge. The motion for extension must be filed within 60 days after the first date set for the § 341 meeting. An extension may only be granted for cause.

The allegations appearing in U.S. Trustee's Motion for an extension of time are that

a. The Chapter 7 Trustee and an attorney for some creditors have initiated both formal and informal discovery in an effort to determine whether a motion to dismiss under §707(b) or a 727 complaint should be filed. The UST left a message for Debtor's counsel regarding the filing of the instant Motion, but as of the time of filing, had not received a response as to whether the extension is agreeable or not.

b. The failure to accurately and fully disclose all relevant information including assets and explain the dissipation of assets may justify the filing of a complaint to deny the Debtor a discharge under 11 U.S.C. §727(a)(2), (3) and/or (4), if such grounds exist. It is possible that additional information may be discovered in the process of investigating their conduct that would provide justification for an objection to discharge. Additionally, grounds may exist for the UST to file a Motion to Dismiss for Substantial Abuse Pursuant to 11 U.S.C. §707.

c. The UST is seeking more information about the nature and extent of Debtor's assets which may not have been listed on the schedules as well as the basis for many of the debts owed.

The Debtor argues that extensions of this type must be exercised cautiously, that the deadlines to object must be construed strictly, and that the UST has not demonstrated cause for the Court to grant an extension of the Rule 4004 deadline. The UST asserts that it acted diligently in pursuing his investigation in this case.

Deadlines to extend objections to discharge and dischargeability – 60 days – are very short relative to other statute of limitation deadlines. This is to give Debtors some degree of certainty in the process of obtaining a discharge. The parties have referred the Court to cases where Courts have either (1) liberally extended deadlines to object if such motions to do so are filed before the 60-day deadline ends; or (2) where Courts have strictly enforced the deadline as originally set.

In support of her position that the UST's requested extension to file a complaint objecting to discharge should be denied, the Debtor cites the cases of *In re Woods, 260 B.R. 41*, (Bkrtcy. N.D.Fla. 2001) and *In re Littel*, 58 B.R. 937 (Bkrtcy. S.D.Tex. 1986). These cases hold that the deadlines for filing complaints objecting to a debtor's discharge or to the dischargeability of a debt "are to be interpreted strictly, and in a manner consistent with the Bankruptcy Code policies . . . favoring [the] fresh start for the debtor and [the] prompt administration of the case." *Woods*, 260 B.R. at 43.

On the other hand, the UST cites the case of *In re Amezaga*, 192 B.R. 37 (Bkrtcy. D. Puerto Rico 1996), holding that extensions of time to object to discharge should be granted liberally, especially where based on the need for discovery and absent a clear showing of bad faith. This Court's research indicates that although Courts tend to construe liberally what constitutes cause warranting an extension of time to file a discharge or dischargeability complaint, the creditor must exhibit some minimum degree of due diligence prior to seeking such extension. *In re Davis*, 195 B.R. 422 (Bkrtcy. W.D.Mo. 1996).

This Court would not go so far as endorsing either a routine liberal policy or an overly-rigid, strict policy, but would instead tend to view each case on its facts and circumstances. This is consistent with the Bankruptcy Code policies providing "to a substantial extent, for the balancing of the interests of debtors against those of creditors". *Amezaga* 192 B.R. at 41. This Court believes that a debtor's interest in receiving a prompt discharge and obtaining a fresh start should be balanced with the interests of creditors and other parties in timely obtaining information from the debtor and exercising, if necessary, their available rights and remedies under the Bankruptcy Code.

The Court first notes that *Woods*, and the other cases cited, involve creditors' rights and obligations in objecting to a debtor's discharge or the dischargeability of a debt. Factually, most of these cases demonstrate that creditors cannot be dilatory and sit on their rights and then expect at the last moment to be granted an extension of time to investigate and/or contest a debtor's discharge. Most of these cases are examples of where a creditor does little or nothing until a few days before the deadlines end or really has few or no valid reasons for the delay.

The case here is different. The UST is not a creditor. The UST is not an economically affected party. The UST has powers and duties that extend beyond the debtor/creditor relationship of individual bankruptcy cases. The UST has broad regulatory and administrative responsibilities that involve the entire system and implicate the agency's required or discretionary involvement in individual cases as necessary and appropriate.

Here, cause to grant an extension of time to file exists at 2 levels[1]:

1. Cause exists to allow UST to conduct an investigation of the Debtor's case based on the agency's statutory charge to monitor and supervise the administration of bankruptcy cases and trustees.

28 U.S.C. § 586(a)(3)(D) directs that the UST shall exercise this supervisory and administrative role by "whenever the UST considers it to be appropriate –

> (D) taking such action as the United States Trustee deems to be appropriate to ensure that all reports, schedules and fees required to be filed under title 11 and under this title [title 28] by the debtor are properly and timely filed;

As a result, the UST is given wide discretion as to timing and manner of the UST's involvement in a case, consistent with other requirements of the Code and Rules.

In addition, Section 727(c), in relevant part, states

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[1] The Court concurs with the comments appearing in the Bench Ruling dated April 7, 2004, by Chief Judge Paul Glenn of the Middle District of Florida, Tampa Division, in the Chapter 7 case of Harold Newberg, Case No. 03-25207-8G7. That case involved the UST's ability to conduct a Debtor Audit and seek an extension of time regarding the filing of a § 707(b) Motion to Dismiss. This Court found that ruling persuasive in its own ruling in *In re Chamness*, Case No. 03-35099-HRT. The Court finds that analysis to be persuasive in this circumstance as well.

> (1) The trustee, a creditor, or the United States trustee may object to the granting of a discharge under subsection (a) of this section.

On its face, this section gives independent authority to a case trustee, a creditor, or the UST to file an objection to discharge. Therefore, the fact that the Debtor initially provided documents at the request of the Chapter 7 case trustee does not in itself prohibit the UST from acting independently in the exercise of his own statutory discretion.

Unlike creditors, the UST does not usually have a pre-existing, pre-petition relationship with the debtors that file for bankruptcy protection. The UST's involvement in any bankruptcy case begins at filing. Therefore, where it may be reasonable to assume that creditors should be able to act within the first 30 to 90 days of a case to protect their rights if they so choose, it is not outside the realm of possibility that at times the UST may need to request additional time to carry out his or her statutory responsibilities. That is what the UST did here.

In addition, it is not unusual for the UST to receive requests from case trustees and creditors in certain cases that the UST investigate matters which those parties believe to be violations of the Code. That is also what happened here, albeit the evidence shows that creditor Enger only brought the matter to the UST's attention approximately 10 days before the expiration of discharge objection deadlines. But that is not within the UST's power to control.

2. Cause also exists under the facts and circumstances of this case even considering the authority cited by the Debtor. The Court finds that the UST acted diligently to investigate this case.

The case appears to be somewhat complex in that the Debtor's estate may involve certain related businesses and in that her husband is not a debtor. At the §341 meeting of creditors on October 2, 2003, the Chapter 7 trustee requested documents consistent with his duty of investigating the Debtor's affairs. To her credit, the Debtor complied with the case trustee's request for information and documents.

On November 3, 2003, creditor Enger filed an *ex parte* Motion to conduct a Rule 2004 examination of the Debtor and the Court entered its Order the next day, allowing said examination and indicating what documents shall be produced. The documents for the examination were produced on November 21, 2003. At hearing, counsel Martin Long testified that he attempted to arrange a mutually convenient date for the examination, which was conducted on November 24, 2003. Mr. Long also testified as to some delays in the process since the Debtor initially failed to produce certain documentation or answer questions regarding her husband or his involvement in her business affairs. The "box" of documents eventually produced to Enger apparently included much of the same or similar information that was previously provided to the Chapter 7 case trustee.

The testimony also indicates that Mr. Long contacted the UST's office concerning possible disclosure improprieties by the Debtor on or about November 21, 2003, or within a

"couple of days" of Enger's Rule 2004 Examination of the Debtor. This was the UST's first notification of a creditor's concerns about this case. A representative of the UST's office attended that 2004 Examination and observed, but did not ask any questions. The UST representative did obtain copies of certain exhibits used by Enger during the course of the examination. This was apparently the first documentation the UST received about this case since there is no indication that any of the documents submitted to the Chapter 7 case trustee were in the UST's possession prior to this point. Therefore, it appears the UST obtained documentation possibly relevant to Enger's concerns about one week prior to the expiration of the discharge objection deadline.

The Debtor has provided a lot of information. It is evident the information requested and voluntarily provided is the type of information relevant to any bankruptcy case inquiry. Given the high volume of filings, most cases do not get anywhere near this type of in-depth review.

The bankruptcy system relies on Debtor's good faith effort, albeit under penalty of perjury, to be accurate in filing her bankruptcy papers. It also relies on the good judgment and experience of UST, case trustees and affected creditors to timely point out the more glaring problems. Indeed, that is what happened here. Enger, an economically-affected creditor, participated in the case. It attended the §341 meeting of creditors and requested a Rule 2004 exam to further investigate perceived problems and questions. As information and documents were eventually acquired, the creditor raised its concerns with the UST. Unfortunately, for the reasons described above, this information only came to the UST's attention about ten (10) days before the deadlines for objecting to discharge or for filing a 707(b) dismissal.

Curiously, the Debtor, albeit by new, substitute counsel, admits that the schedules and statements initially filed may have been inadequate. In fact, at the Rule 2004 Exam, the Debtor informed Enger of upcoming amendments and Court records show the Debtor filed amendments to her Petition and Statement of Affairs on December 1, 2003. Now, the Debtor argues that given these facial inadequacies, the UST should have filed his Complaint objecting to discharge without the need of any extension. The Debtor further argues that the UST did not attend the §341 meeting of creditors or ask any questions at the Rule 2004 Examination, and therefore, did not utilize these opportunities to investigate the case. Apparently, the Debtor now believes the UST should have been able to file a Complaint even before Enger brought the case to the UST's attention. The Court does not find these Debtor's arguments to be persuasive.

With over 25,000 filed or pending cases in this District, the UST is not in a position to review every case in detail, or to be at every §341 meeting or Rule 2004 Examination, even those where the UST may have document requests or other investigative actions pending at the time of such meetings. As to the accuracy of the schedules and attendance at the §341 meeting of creditors, the UST had no knowledge that there was anything possibly suspicious or wrong in this case until Enger's counsel contacted the office. As to the UST not asking any questions at the Rule 2004 Examination, the UST had maybe two (2) days notice of the exam and did not receive any documents until his representative attended. These situations do not suggest any delay or lack of diligence by the UST, nor as the Debtor suggests, a lack of interest in the case by the UST.

The Debtor also argues that once having these documents, the UST should have filed the Complaint before the December 1, 2003 deadline. The Court does not find that the UST's choosing to file a request for an extension rather than a complaint to indicate delay or lack of diligence on the UST's part. The UST had about ten (10) days notice of the creditor's concerns on this case and about a week following the Rule 2004 Examination and obtaining some documents, in which to review that information and file a complaint. To have quickly filed such complaint prior to the deadline could have created more time and expense for the parties, without providing the Debtor an opportunity for further explanation. Additional investigation would permit the UST to put the creditor's concerns and the Debtor's documentation into context to see if any further action by the office was necessary. Indeed, to have quickly filed a Complaint as the Debtor suggests, without adequately investigating the Debtor's situation and information, could have exposed the UST to allegations involving Rule 9011 violations. Under the circumstances, the Court finds reasonable the UST's decision to seek additional time to investigate the creditor's allegations in more detail before deciding whether or not to file a complaint.

The Debtor seems to have tried her best to voluntarily comply with the Chapter 7 Trustee's request and she is to be commended for that. The fact that the Debtor disclosed certain information on her bankruptcy schedules and statements is only the initial phase of any bankruptcy case. But it is an extremely important one. The law requires full disclosure as a condition of a debtor's discharge. The fact that the UST or others may act on that information based upon the rights, remedies and responsibilities provided for under the Bankruptcy Code or case law is also an important and expected consideration for a debtor seeking a discharge. That process, even under the best of circumstances, may take more time and effort by the Debtor.

So, the UST's request for an extension should be granted. Having said that, that decision is somewhat mooted in that the UST requested a 60-day extension to file a complaint objecting to discharge or a Motion under 707(b) and has not, in fact, filed such complaint within that 60-day period.

The Court doesn't know if UST will be successful on its 727 complaint. It is not before the Court. The UST should have the ability to effectively investigate such matters related to his statutory responsibilities and to prosecute them as may be reasonably necessary. The Debtor may have additional information to provide to the UST to satisfy some unanswered follow-up questions and, once that happens, the Court is always hopeful that the parties may reach a better, more realistic and practical, solution than if the Court were called upon to do so. Accordingly, it is

ORDERED that the United States Trustee's Motion to Extend Time to File a Complaint Pursuant to 11 U.S.C. §727 and to File a Motion to Dismiss Under 11 U.S.C. §707(b) is hereby GRANTED as to the §727 Complaint and DENIED as to the §707(b) Motion.

FURTHER ORDERED that the Debtor shall file an Answer to the UST's Complaint Objecting to Discharge Under 11 U.S.C. §727 within fifteen (15) days of this Order.

Entered by oral ruling on the record this 10th day of June, 2004.

BY THE COURT:

/s/ Howard Tallman
Howard R. Tallman, Judge
United States Bankruptcy Court