

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION**

IN RE:

FRANKLIN HAROLD WATSON, &  
DEBBIE WEBB WATSON,

CASE NO.: 13-30420-KKS  
CHAPTER: 7

Debtors.

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**ORDER GRANTING IN PART AND DENYING IN PART MOTION (AMENDED AND  
SUPPLEMENTED) OF SEPH TO EXTEND TIME FOR FILING COMPLAINTS  
OBJECTING TO DISCHARGE AND DISCHARGEABILITY (DOC. 90)**

This case came before the Court for a final evidentiary hearing on April 24, 2014 upon SE Property Holdings, LLC's Motion (Amended and Supplemented) to Extend Time for Filing Complaints Objecting to Discharge and Dischargeability (the "Motion," Doc. 90), and the Debtors' Response (Doc. 91). The Motion seeks an extension of time within which SE Property Holdings, LLC, successor by merger to Vision Bank ("SEPH") may file a complaint objecting to discharge pursuant to 11 U.S.C. § 727 and to the dischargeability of certain debts under 11 U.S.C. § 523. The Court held a preliminary non-evidentiary hearing on November 20, 2013 and took the matter under advisement. After determining that material issues of fact remained as to whether SEPH had shown sufficient cause under Federal Rules of Bankruptcy Procedure 4004(b)(1) and 4007(c) to grant the relief requested, the matter was set for a final evidentiary hearing (Doc. 96). At the final evidentiary hearing the Court heard additional argument, received evidence and heard testimony, and again took the matter under advisement. Having considered the Motion and Response in opposition, documentary evidence, testimony and additional argument of counsel, the Court finds that the Motion should be granted in part to allow SEPH additional time within which to file a complaint objecting to discharge pursuant to § 727; and denied in part as to SEPH's request for an extension of time to file a non-dischargeability complaint pursuant to § 523.

The Debtors, Frank and Debbie Watson, filed their bankruptcy petition on April 4, 2013.<sup>1</sup> Both Debtors are sophisticated business people that have previously controlled or had some other record interest in more than forty separate business entities.<sup>2</sup> Frank Watson is an attorney who has been a member of the Florida Bar since 1997 and for years had his own law firm and title company.<sup>3</sup> The original deadline to file complaints under § 727 or § 523 was July 18, 2013.<sup>4</sup> By consent orders, the deadline was extended twice, first to August 12 and then to September 26, 2013.<sup>5</sup> Two days prior to the extended deadline, on September 24, 2013, SEPH filed its Motion requesting an additional extension of the deadline to file a complaint through October 18, 2013.<sup>6</sup> This time the Debtors did not consent, but instead filed an objection.<sup>7</sup>

At the final hearing, lead counsel for SEPH, Roland Kiehn (“Mr. Kiehn”) testified on behalf of SEPH that he was retained by SEPH on May 1, 2013. He attended the § 341 meeting and conducted Rule 2004 examinations of the Debtors and Ms. Sewell, Frank Watson’s sister and also an attorney. In late June Mr. Kiehn received a flash drive from the Debtors that contained at least ten thousand pages of documents, including bank records, financial documents, papers from a divorce action, and business records of around forty entities.<sup>8</sup> The review of these documents was, according to Mr. Kiehn, extremely time-consuming and led to SEPH’s first request to extend the deadline to file complaints. After SEPH conducted the 2004 examinations of the Debtors, the Debtors produced an additional six hundred pages of documents.<sup>9</sup> Mr. Kiehn and others at his law firm spent over 100 hours reviewing discovery documents.

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<sup>1</sup> Doc. 1.

<sup>2</sup> Joint Statement of Undisputed Facts for Hearing On Motion (Amended and Supplemented) to Extend Time for Filing Complaints. Doc. 106, ¶¶3-5.

<sup>3</sup> SEPH Exhibit 3 at 9-10.

<sup>4</sup> Doc. 106, ¶15.

<sup>5</sup> Doc. 55 & Doc. 68.

<sup>6</sup> Doc. 80. This Motion was subsequently amended. Doc. 90.

<sup>7</sup> Doc. 91.

<sup>8</sup> Doc. 106, ¶7.

<sup>9</sup> *Id.*

The 2004 Examinations of the Debtors revealed that pre-petition Mr. Watson was the sole owner of a law practice known as Franklin H. Watson, P.A. (“Watson, P.A”) and a title insurance agency known as South Walton Title & Escrow, Inc. d/b/a Watson Sewell Title (“Watson Title”).<sup>10</sup> Before the Debtors filed bankruptcy, Watson, P.A. employed Mr. Watson’s sister, Kimberly Watson Sewell (“Ms. Sewell”) as an associate attorney; Ms. Sewell was also associated with Watson Title.<sup>11</sup> By the time the Debtors filed their bankruptcy petition, Mr. Watson had shut down Watson, P.A. and Ms. Sewell had become the sole owner of a law firm and title insurance business known as Watson Sewell, P.L. (“Sewell P.L.”) which employed Frank Watson as a non-equity employee.<sup>12</sup> This new entity, Sewell P.L., was operating in the same market where Mr. Watson’s previous title company, Watson Title, had operated, and began with the same employees and at the exact same location; it also used the same accountant, and furniture of the allegedly discontinued business.<sup>13</sup> Prior to the Debtors’ bankruptcy, Ms. Sewell was integrally involved in Frank Watson’s pre-petition law practice and title agency business.<sup>14</sup> Mr. Kiehn testified that after this information was revealed he felt it necessary to conduct a 2004 examination of Ms. Sewell in order to complete discovery into potential causes of action.

The parties were unable to schedule a Rule 2004 examination of Ms. Sewell until August 30, 2013. Prior to that exam Mr. Kiehn provided to Ms. Sewell a copy of the Motion for 2004 Examination along with a request for documents.<sup>15</sup> According to Mr. Kiehn, at the 2004 examination Ms. Sewell could not accurately recall key facts regarding the events surrounding the transition from Watson P.A. and Watson Title to Sewell P.L. This testimony is supported by Ms. Sewell’s, given during her Rule 2004 Examination. The Debtors’ testimony about and

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<sup>10</sup> *Id.* ¶¶ 8-11.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* ¶¶ 10-11

<sup>13</sup> SEPH’s Exhibit 3 at 162, 174, 176.

<sup>14</sup> Doc. 106, ¶ 10.

<sup>15</sup> SEPH’s Exhibit 4.

documentation pertaining to the change from Frank Watson’s law firm and title business to Ms. Sewell’s law firm and title business were confusing. For example, Ms. Sewell testified that a document showing that Frank Watson’s law firm name had changed to Watson Sewell PL was incorrect, and that no name change had actually occurred.<sup>16</sup> Ms. Sewell also testified that South Walton Title was formed “early on” by Frank Watson, and that it “filed for its fictitious name – South Walton Title to be called Watson Sewell Title because were trying to brand the name, but we never used it.”<sup>17</sup> After the conclusion of her 2004 exam Ms. Sewell agreed to produce additional documents and information<sup>18</sup>, according to SEPH to clear up her testimony. These documents were produced over a span of time beginning on September 20 and continuing through September 27, 2013, which was one day after the expiration of the last extension of time granted to SEPH.<sup>19</sup> In addition, on or about September 24, 2013 Ms. Sewell wrote Mr. Kiehn to tell him that she was changing her testimony about certain facts that she testified to in her Rule 2004 examination.<sup>20</sup>

SEPH argues that the extension of time to file its complaint is necessary because the late discovery received from Ms. Sewell, coupled with her change in testimony after her Rule 2004 exam, created a need for additional investigation and analysis regarding potential objections to discharge and dischargeability.<sup>21</sup> SEPH, according to Mr. Kiehn, wasn’t asking for more discovery, but needed more time to look at what the Debtors and Ms. Sewell had already produced.<sup>22</sup>

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<sup>16</sup> Transcript of Rule 2004 Examination of Ms. Sewell, Doc. 89, at 12-15.

<sup>17</sup> *Id.* at 15.

<sup>18</sup> Doc. 106, ¶13.

<sup>19</sup> *Id.* at 14.

<sup>20</sup> SEPH’s Exhibit 11.

<sup>21</sup> Doc. 90.

<sup>22</sup> SEPH’s Exhibit 14.

The Debtors argue that the information provided by Ms. Sewell was not necessary for SEPH to compile and assert all of its objections to discharge and dischargeability.<sup>23</sup> They maintain that they already consented to two extensions of the deadline to file § 727 and § 523 complaints and they believe that the “doubled” time was sufficient. Although Debtors argued in closing that any additional extension would prejudice their right to a fresh start, they presented no evidence or testimony that showed potential harm if the Court were to grant SEPH’s Motion. When questioned directly regarding what prejudice a twenty day extension would cause him, Mr. Watson’s only answer was, essentially, to ask his attorney.<sup>24</sup>

SEPH filed a five count complaint seeking denial of the Debtors’ discharge and objecting to the dischargeability of certain debts on October 17, 2013. This was within the additional extension of time through October 18, 2013 that SEPH is requesting in the Motion.<sup>25</sup>

Pursuant to Bankruptcy Rules 4004(a) and 4007(c) objections to a debtor’s discharge under § 727, or the dischargeability of a debt under § 523, must be filed not later than 60 days following the first date set for the meeting of creditors under § 341.<sup>26</sup> On motion of any party in interest, after notice and hearing, the court may for *cause* extend the time to object to discharge or dischargeability.<sup>27</sup> The legal standard for assessing a motion for an extension of time to file a complaint to object to discharge under Rule 4004(b), and to file a complaint to determine the dischargeability of a debt under Rule 4007(c), is the same.<sup>28</sup>

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<sup>23</sup> Doc. 91.

<sup>24</sup> Ms. Watson did not testify at the final evidentiary hearing.

<sup>25</sup> Doc. 1. 13-03029, The five Counts alleged are: Count I: Denial of Discharge Pursuant to § 727(a)(2) (Transfer of Watson, P.A. and Watson Title); Count II: Denial of Discharge Pursuant to § 727(a)(2) (Transfer or Concealment of Personal Property); Count III: Denial of Discharge Pursuant to § 727(a)(5) (Failure to Satisfactorily Explain Loss of Assets); Count IV: Denial of Discharge Pursuant to § 727(a)(4)(A) (False Oath in Connection with Bankruptcy case); Count V: Non-Dischargeability Pursuant to § 523(a)(6) (Aiding and Abetting Fraudulent Transfers).

<sup>26</sup> *In re Chatkhan*, 455 B.R. 365 (Bankr. E.D. N.Y. 2001).

<sup>27</sup> See Fed. R. Bankr. P. 4004(b)(1); Fed. R. Bankr. P. 4007(c). (emphasis added).

<sup>28</sup> *In re Chatkhan*, 455 B.R. at 367.

SEPH cites to *In the Matter of James* for evidentiary factors that guide courts in evaluating the presence of “*cause*”.<sup>29</sup> These factors include: (1) the adequacy of notice provided; (2) the source of delay and the sophistication of the creditor; (3) the prejudice, if any, that will inure to the debtor should the objection be allowed; (4) the resultant burden upon efficient court administration; (5) whether the creditor acted in good faith; and (6) whether clients should be penalized for the mistakes of their counsel.<sup>30</sup> The court in *James* stated that “ultimately... courts conclude that what constitutes ‘*cause*’ rests within the complete discretion of the bankruptcy court... and ‘for cause’ should receive a liberal construction.”<sup>31</sup> Nonetheless, a creditor must show that it exercised some minimum degree of due diligence prior to asking for the extension, and the bankruptcy court cannot allow the creditor to have a license for a baseless “fishing expedition.”<sup>32</sup>

This Court held in *In re Woods* that a creditor failed to demonstrate the required “*cause*” where the creditor’s attorney did not attend the meeting of creditors or request Rule 2004 examinations, and failed to conduct any investigation into the viability of a nondischargeability complaint.<sup>33</sup> The creditor filed its motion for extension of the filing deadline the same day the deadline expired; this Court sustained the debtor’s objection and denied the creditor’s motion for extension of time.<sup>34</sup>

The facts here are completely different from those in *In re Woods*. SEPH played an active role throughout this case; it attended the § 341 meeting, conducted 2004 examinations, and reviewed thousands upon thousands of pages of complex discovery. Testimony at the final evidentiary hearing from the Debtor, Frank Watson, revealed that there would be no real

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<sup>29</sup> *In the Matter of James*, 187 B.R. 395 (Bankr. N.D. Ga. 1993).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *In re Woods*, 260 B.R. 41 (Bankr. N.D. Fla. 2001).

<sup>34</sup> *Id.* at 42.

prejudice to the Debtors if the Court were to grant SEPH the short requested extension of time to file a § 523 or § 727 action.

Courts view extensions of time to file § 523 complaints differently from extensions to file complaints under §727.<sup>35</sup> In many instances, a creditor may have knowledge of a potential § 523 cause of action before the debtor files bankruptcy. By contrast, in most instances creditors will not have the information necessary with which to determine whether to file a § 727 complaint until after the debtor files his bankruptcy petition. As one bankruptcy court put it:

There is a sound policy reason for permitting a creditor to extend the deadline for objecting to a debtor's discharge under § 727 even after the original deadline has expired. Many of the acts giving rise to the objection would not occur until after the petition date and, in some cases, after the original deadline has expired. For instance, a debtor is not entitled to a discharge if the debtor transfers, destroys, or conceals property of the estate after the petition date. . . . The same is not true for determining the dischargeability of a particular debt under § 523.

Generally the acts giving rise to a nondischargeable debt occur prepetition. In fact, in many cases a creditor has already filed a lawsuit or even obtained a judgment for the underlying debt by the time that the bankruptcy case is filed.<sup>36</sup>

In Count V of its complaint, SEPH alleges non-dischargeability of debt under § 523(a)(6), on the basis that Mr. Watson aided and abetted fraudulent transfers that occurred in 2007. The complaint itself shows that SEPH knew about the fraudulent transfers as early as 2008, when it filed pleadings in state court seeking to set the fraudulent transfers aside.<sup>37</sup> Although in its Motion SEPH requested an additional extension of time to file both a § 523 and a §727 complaint, at the final hearing it did not argue for, or present evidence to prove any facts that support, granting additional time for discovery as to, or to file, an objection to dischargeability of its debt under § 523.

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<sup>35</sup> See *In re Moseley*, 470 B.R. 223, 227 (Bankr. M.D. Fla. 2012).

<sup>36</sup> *Id.* at 228 (Discussing why creditors may be granted extensions of time to object to discharge even after the time for doing so has expired, but the same is not true for objections to dischargeability).

<sup>37</sup> Doc. 1. 13-03029.

Under these facts, and with no showing by the Debtors of real prejudice, SEPH's motion for an extension of time to file its § 727 complaint should be granted. The Debtors are sophisticated and the facts underlying the transactions of and interactions between Mr. Watson, Ms. Sewell, Watson PA, Watson Title, Sewell Title and Sewell P.L. were not readily ascertainable. SEPH and its attorneys were active and diligent in their discovery efforts and acted in good faith. Extending the time for SEPH to file its § 727 complaint will not burden efficient court administration. Even though arguably SEPH did not need to complete all of its discovery before filing certain counts of its complaint, the Court cannot fault it for holding off filing the complaint until it had completed its discovery on all allegations and could file all § 727 counts at once. The testimony of Ms. Sewell and, to a lesser extent, the additional documents pertaining to the law firms and title company, were needed to try to determine when and how the transactions took place.

On the other hand, SEPH's request for an extension of time to file a non-dischargeability complaint pursuant to § 523 should be denied. The pleadings and testimony show clearly that SEPH had sufficient knowledge well before the Debtors filed bankruptcy that SEPH had a potential claim for "aiding and abetting fraudulent transfers." SEPH learned of and sued on the fraudulent transfers in 2008.<sup>38</sup> SEPH did not assert in its Motion or prove at the hearing that it did not have sufficient information in time to file its § 523 action well before the extended deadline for filing such complaints.<sup>39</sup> For these reasons, it is

ORDERED:

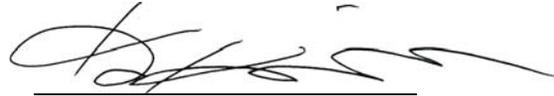
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<sup>38</sup> Mr. Kiehn did not represent SEPH in its state court litigation, and so was apparently not aware of any of these facts until after SEPH retained him to represent it in this Bankruptcy case. SEPH and its state court counsel, on notice of these facts for years, had ample time to make Mr. Kiehn aware of them, and to instruct him to pursue them, before expiration of the extended § 523 deadline.

<sup>39</sup> The Court was at one point considering whether to grant SEPH an extension of time to file certain of its § 727 counts, and deny time to file others, on the basis that the latest discovery that SEPH needed did not appear to apply to all § 727 counts, as alleged by the Debtors. The Court has found, and the Debtors have cited, no reported cases in which a bankruptcy court granted relief to file certain § 727 counts and not others.

1. The Motion (Amended and Supplemented) to Extend Time for Filing Complaints Objecting to Discharge and Dischargeability (Doc. 90) is GRANTED, in part. The deadline for SEPH to file a complaint pursuant to § 727 is extended through October 18, 2014, and Counts I-IV of the Complaint actually filed in Adversary Proceeding, Case No. 13-03029, are deemed timely.
2. The Motion (Doc. 90) is DENIED, in part, as to SEPH's request for an extension of time to file a complaint pursuant to § 523. Count V of the Complaint Adversary Proceeding, Case No. 13-03029, was filed after the extended deadline expired.

DONE and ORDERED in Tallahassee, Florida this the 21st day of May, 2014.



KAREN K. SPECIE  
United States Bankruptcy Judge

cc: all parties in interest