

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION

In Re

ERNEST SHAHID

Case No. 04-30963-LMK

Debtor.

FRED SACKETT AND DIANE ROPER  
AS PERSONAL REPRESENTATIVES  
OF THE ESTATE OF JAMES E. SACKETT,  
AND FRED SACKETT AS PERSONAL  
REPRESENTATIVE OF THE ESTATE  
OF VIVIAN LUCY RAINWATER SACKETT,

Plaintiffs.

vs.

Adv. No. 05-03006

ERNEST W. SHAHID and  
MARGARET P. SHAHID

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

Yancey F. Langston, Attorney for Defendants, Pensacola, FL  
Louis L. Long, Jr., Attorney for Plaintiffs, Shalimar, FL

This case is before the Court on the defendants' motion to dismiss. The Court has jurisdiction to hear this matter pursuant to 28 U.S.C. § § 157 and 1334 and the Order of Reference of the District Court. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has the authority to enter a final order. For the reasons indicated below, the Court is granting the defendants' motion to dismiss.

FACTS

Plaintiffs filed an involuntary Chapter 7 petition against debtor-defendant, Earnest W. Shahid, on April 14, 2004. The Court entered an order for relief on September 1, 2004. The first meeting of creditors was held on December 7, 2004. Pursuant to Bankruptcy Rule 4003(b) the deadline to object to the debtor's claim of exemptions was January 7, 2005. On December 22, 2004, the Trustee filed a consent motion to extend time to object to debtor's exemptions. The motion, consented to by the debtor, states in pertinent part:

2. The trustee needs additional time to evaluate the claim of exemptions as tenants by the entireties.

3. The debtor consents to an extension of time to object to his exemptions until February 5, 2005.

Wherefore, the Trustee prays that the time for objecting to the exemptions of the debtor be extended until February 5, 2005, and for such other and further relief as is just and proper.

On December 27, 2004, the Court entered an order extending the time to object to exemptions. The order stated:

THIS CAUSE came before this Court of the Trustee's Consent Motion for Extension of Time to Object to Exemptions and no notice and hearing appearing necessary, and the Court being fully advised in the premises, it is

ORDERED that the time for objecting to the claim of exemptions of the debtor is extended until February 5, 2005.

On February 4, 2005, the plaintiffs filed suit against Ernest W. Shahid, debtor-defendant, and Margaret P. Shahid, defendant, objecting to the debtor's claimed exemptions. The defendants filed this motion to dismiss arguing that since the plaintiffs never requested or received an extension to the objections deadline, their complaint was untimely filed. The plaintiffs responded by asserting that their complaint was filed before the deadline as extended by the Court's December 27, 2004,

order.

The plaintiffs' argument is twofold: (1) that Rule 4003(b) does not expressly limit an extension only to the requesting party; and (2) that the order granting the extension did not specifically limit the extension to the trustee. The defendants argue that the debtor only consented to the Trustee's motion for extension of time to object to exemptions, which stated "the [T]rustee needs additional time . . . ." The Trustee's motion did not mention or refer to any other creditors, and the debtor did not consent to the extension of the deadline for any party in interest other than the Trustee.

#### LAW

Federal Rule of Bankruptcy Procedure 4003(b) provides the governing standards for objecting to a claim of exemptions. The rule provides, in relevant part, that "[a] party in interest may file an objection to the list of property claimed as exempt only within thirty days after the meeting of creditors held under § 341(a) is concluded." Fed.R.Bankr.P. 4003(b). Rule 4003(b) further provides that "[t]he court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension." *Id.*

The issue in this case is whether or not the extension of time to object to the debtor's exemptions granted on the motion of the trustee extends to the other parties in interest where the motion and order do not expressly limit the extension to the moving party. The Court found only one case squarely on point. In *Crustik v. Traurig (In re Traurig)*, 34 B.R. 325, 326 (Bankr. S.D. Fla. 1983), the Court dismissed the Trustee's adversary proceeding as untimely under Rule 4003(b), finding that the extension of time granted in favor of a creditor did not extend to the Trustee who filed an objection to exemptions after the deadline, but during the extension period granted to the

creditor. The Court stated that “an extension of time granted to a creditor under Rule 4003(b) does not generally inure to the benefit of the Trustee.” *Id.* This Court believes it is logical and appropriate that the same principle and result apply in the present case where the parties are reversed, with the Trustee receiving the extension and a creditor attempting to inure the benefit from it.

The plaintiffs are correct in noting that there is no express limitation in Rule 4003(b) stating that any extension is granted only to the requesting party. However, the Advisory Committee Note on the 2000 Amendments to Rule 4003 states, “[t]he amendments clarify that the extension may be granted only for cause.” Fed.R.Bankr.P. 4003 advisory committee’s note. Since an extension may be granted “only for cause,” each party requesting an extension must show cause to receive an extension. The Trustee’s extension request only showed cause why the Trustee should be given an extension. The Trustee’s motion did not mention or refer to plaintiffs, much less show cause why they should be granted an extension. Since cause must be shown for an extension, and the motion for extension filed by the Trustee did not mention or refer to plaintiffs, much less show any cause on plaintiffs’ behalf, the extension cannot apply to the plaintiffs. Therefore, the plaintiffs’ objection to the debtor’s claim of exemptions is untimely and must be dismissed.

Due to the scant caselaw directly on point, the Court turns to Rule 4004 and the cases interpreting it for further guidance and support since the language of Rule 4004 is very similar to that of Rule 4003. Rule 4004 sets the time for filing a complaint objecting to the debtor’s discharge. *See* Fed.R.Bankr.P. 4004. Rule 4004(b) governs the extension of time for objecting to discharge, and states “[o]n motion of any party in interest, after hearing on notice, the court may for cause extend the time to file a complaint objecting to discharge. The motion shall be filed before the time

has expired.” *Id.* at 4004(b). Like Rule 4003, the language of Rule 4004 provides little guidance on whether an extension to file an objection applies to only the movant or to other interested parties as well. However, the Advisory Committee Note to Rule 4004 states, “[a]n extension granted on a motion pursuant to subdivision (b) of the rule would ordinarily benefit only the movant, but its scope and effect would depend on the terms of the extension.” Fed.R.Bankr.P. 4004 advisory committee’s note.

Courts in other jurisdictions have consistently held that an extension of time under Rule 4004(b) only applies to the moving party. *U.S. Trustee v. Cooper (In re Cooper)*, 302 B.R. 633, 636 (Bankr. N.D. Iowa 2003); *see DRMC, Inc. (In re McCord)*, 184 B.R. 522, 525 (Bankr. E.D. Mich. 1995) (stating extension order applies only to trustee, despite trustee’s assurances to plaintiff it applied to all creditors); *U.S. v. Ortman (In re Ortman)*, 51 B.R. 7, 8 (Bankr. S.D. Ind. 1984) (concluding extension order applied only to trustee); *In re Floyd*, 37 B.R. 890, 893 (Bankr. N.D. Tex. 1984) (finding creditor not allowed to “piggy-back” on another creditor’s application for extension). The *McCord* court states that an order granting an extension under Rule 4004(b) shall apply only to the movant unless the terms of the extension convey a contrary intent. *McCord*, 184 B.R. at 525.

The Trustee’s motion for extension in the present case does not convey such a contrary intent. The Trustee’s motion states that “[t]he [T]rustee needs additional time . . .” and “the Trustee prays that the time for objecting . . . be extended . . . .” The motion does not mention or refer to any other party in interest, nor does it indicate in any way that it should extend to anyone other than the Trustee. The Court’s order extending the time to object states that the motion came before the court “on the Trustee’s Consent Motion for Extension of Time to Object to Exemptions . . . .” Even


though the order does not expressly limit the extension to only the Trustee, there is no indication the extension order applied to anyone other than the Trustee. *See McCord*, 184 B.R. at 524. Additionally, there is no unity of interests between the plaintiffs and the Trustee in this case that might allow the extension to benefit the plaintiffs. *See Cooper*, 302 B.R. at 637. Under the comparable guidelines for Rule 4004, the present motion would not extend to the plaintiffs under that rule.

One rationale for not allowing a Rule 4004(b) extension of one party in interest to apply to others, is because of the “for cause” requirement. Another rationale is based on due process. *McCord*, 184 B.R. at 525 (“as a matter of due process, the debtor is entitled to notice of the parties for whose benefit an extension is sought, so that the debtor can properly decide what position to take on the request as to each such party.”). Both rationales also apply to Rule 4003(b) extension motions. For all of the reasons indicated above, the Court concludes that the defendants’ motion is due to be granted.

THEREFORE, IT IS ORDERED that:

1. The defendants’ motion to dismiss is GRANTED.
2. The plaintiffs’ complaint in this adversary proceeding is DISMISSED, WITH PREJUDICE.

Dated: May 3, 2005

  
MARGARET A. MAHONEY  
U.S. BANKRUPTCY JUDGE