

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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In re  
DALE THOMAS INGRAM,  
Debtor.

Case No. 02-22773-L  
Chapter 7

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Jane Ingram,  
Plaintiff,

v.

Adv. Proc. No. 02-0472

Dale Thomas Ingram,  
Defendant.

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**ORDER GRANTING MOTION TO DISMISS**

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BEFORE THE COURT is the Defendant's motion to dismiss complaint as to §523(a)(15) objecting to the dischargeability of debt. The Defendant asserts that the Plaintiff's complaint objecting to dischargeability of debt should be dismissed as to Plaintiff's §523(a)(15) allegations because Plaintiff did not timely file a motion seeking to extend the time within which to file such a complaint. For the reasons stated below, the motion will be granted. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I)and(J).

Debtor filed his voluntary petition on February 13, 2002. The court's deadline for filing complaints objecting to dischargeability of certain indebtedness was May 17, 2002. On May 9, 2002, Plaintiff filed a motion to extend deadline for complaint objecting to discharge, which resulted in a consent order, entered on May 21, 2002, which allowed "the extension of the deadline for filing a complaint objecting to discharge." Plaintiff filed a complaint objecting to dischargeability of debt based on 11 U.S.C. §523(a)(15) and objecting to the Debtor's discharge pursuant to §727(a)(5) on June 4, 2002.

Debtor filed a motion to dismiss the complaint as to Plaintiff's §523(a)(15) allegations based on the fact that Plaintiff had not filed a motion seeking to extend the time within which to file a complaint objecting to the dischargeability of any indebtedness pursuant to §523.

Plaintiff's response to the Debtor's motion alleged that "despite the language employed, Plaintiff asserts that the intention was to extend the time in which to also file a §523 objection herein by the filing of the motion..."

Plaintiff also filed an affidavit of James R. Becker, Jr., stating that it was his belief and intention in entering the consent order to extend the deadline either "objecting to discharge or dischargeability". It should be noted that the Plaintiff substituted Ivan Harris for James R. Becker, Jr. as her counsel of record on September 13, 2002.

While the Plaintiff's affidavit of James Becker, Esq. indicates that it was Plaintiff's intention to extend the deadline for both complaints objecting to the Debtor's general discharge as well as complaints objecting to the dischargeability of a particular debt, Plaintiff's lack of specificity in drafting the motion and consent order extending the deadline fails to provide notice of the Plaintiff's intention. Further, the affidavit of Plaintiff's counsel does not indicate if he ever communicated his intention to extend both deadlines to Debtor's counsel, whose name he signed to the consent order with permission.

Regardless of Plaintiff's intention, the Court's equitable powers to accept untimely filed complaints are limited. *See Nardei v. Maughan (In re Maughan)*, 268 B.R. 128 (6<sup>th</sup> Cir. B.A.P. 2001). The case at bar can be distinguished from other cases wherein the plaintiff failed to meet the deadline requirements for filing a complaint because the bankruptcy clerk's office misled the plaintiff as to the

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deadline, either verbally or by sending out notices of deadlines in error. *E.g., Nicholson v. Isaacman (In re Isaacman)*, 26 F.3d 629 (6<sup>th</sup> Cir. 1994). Without such an error, the bankruptcy court should follow the strict time limits that apply to complaints to determine dischargeability. *See Peerless Ins. Co. v. Miller (In re Miller)*, 228 B.R. 399, 401 (6<sup>th</sup> Cir. B.A.P. 1999).

Accordingly, it is ORDERED that the motion to dismiss is GRANTED as to the claim under 11 U.S.C. § 523(a)(15).

BY THE COURT,

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JENNIE D. LATTA  
United States Bankruptcy Judge

Date: \_\_\_\_\_

cc: Plaintiff  
Plaintiff's Attorney  
Defendant  
Defendant's Attorney

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