

**Dated: January 11, 2018**  
**The following is ORDERED:**



*Jennie D. Latta*

**Jennie D. Latta**  
**UNITED STATES BANKRUPTCY JUDGE**

---

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT TENNESSEE  
WESTERN DIVISION**

---

In re  
MARY ANNE JOHNSON,  
Debtor.

Case No. 17-28874-L  
Chapter 7

---

**ORDER GRANTING MOTION TO VACATE ORDER OF DISMISSAL  
AND EXTENDING THE TIME TO FILE MOTIONS OR COMPLAINTS**

---

THIS MATTER is before the court upon the “Motion to Reinstate Case and to Reset the First Meeting of Creditors,” filed on behalf of the Debtor, Mary Anne Johnson. Samuel K. Crocker, United States Trustee for Region 8 (the “UST”), filed a limited objection to the motion citing concern that the deadline for filing a motion to dismiss the case pursuant to 11 U.S.C. § 707(b) or to object to discharge pursuant to 11 U.S.C. § 727 is set to expire on January 12, 2018, prior to any possible rescheduled meeting of creditors. At the hearing on January 11, 2018, counsel for the parties announced that they would consent to an extension of the deadline to file a motion or complaint. Rather than simply enter their consent order, the court takes this opportunity to

discuss the provisions of the Bankruptcy Code and Rules concerning the extension of those deadlines.

### **BACKGROUND FACTS**

The Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on October 6, 2017. The Bankruptcy Court Clerk set the first date for the meeting of creditors for November 13, 2017, which meant that the deadline for filing motions to dismiss and complaints or motions objecting to discharge was established as January 12, 2018. The case was dismissed on December 16, 2017, because the Debtor failed to appear at the meeting of creditors. The Debtor timely filed the Motion to Reinstate, (which is in effect a motion under Rule 9023 to alter or amend a judgment), on December 19, 2017. The UST filed his limited objection on January 2, 2018, and the contested matter came on for hearing on January 11. As things now stand, the sixty-day deadline has not expired, but will expire tomorrow. The UST did not file a motion to extend the deadline, but referred to the impending deadline in his limited objection to the motion. No one other than the UST objects to vacating the prior order of dismissal on any ground.

### **LAW AND ANALYSIS**

The deadlines for filing a motion to dismiss or a complaint or motion to deny discharge are established by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

#### **Motions to Dismiss**

Federal Rule of Bankruptcy Procedure 1017(e) permits the court to dismiss or convert a case for abuse under Bankruptcy Code section 707(b) only on motion and after a hearing. That rule specifies that the motion to dismiss for abuse under section 707(b) or (c):

may be filed **only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired**, the court for cause extends the time for filing the motion to dismiss.

Fed. R. Bankr. P. 1017(e)(1) (emphasis added). An exception is provided under section 704(b)(2), which directs the United States trustee (or bankruptcy administrator) to file a motion to dismiss or convert under section 707(b) within thirty days after the filing of a statement required to be filed by the United States trustee (or bankruptcy administrator) under section 704(b)(1). That statement is to be filed not later than 10 days after the date of the first meeting of creditors. Section 704(b)(1) refers to the *actual* date of the meeting of creditors, not the first date set for that meeting as is the case in Rule 1017(e). In other words, the United States trustee is permitted to file a motion to dismiss during a period that could easily extend beyond 60 days after the first date set for the meeting of creditors, and that period cannot elapse before the meeting of creditors is actually held.

### **Objections to Discharge**

Federal Rule of Bankruptcy Procedure 4004(a) permits the court to deny discharge to a debtor under section 727(a) based upon a complaint (or motion in the case of section 727(a)(8) and (9)) filed **no later than 60 days after the first date set for the meeting of creditors**. The time period provided under Rule 4004(a) may be extended for cause based upon a motion filed **within the sixty-day period**, or after the expiration of the 60-day period if the objection is based on facts that would support revocation of the discharge pursuant to section 727(d) of the Code that were not known by the movant in time to permit a timely objection. Fed. R. Bankr. P. 4004(b). No other exception is provided with respect to this sixty-day deadline, but the fact that a case has been dismissed for an extended period would prevent the United States trustee (or any other party not otherwise familiar with the case) from obtaining facts supporting revocation of discharge, thus satisfying the requirements for extension.

### **Enlargement of Time**

The time limits provided in Rule 1017(e) and 4004(a) may not be enlarged except as provided in those rules. Federal Rule of Bankruptcy Procedure 9006(b)(3) specifically states: “The court may enlarge the time for taking action under Rules 1006(b)(2), 1017(e), 3002(c), 4003(b), 4004(a), 4007(c), 4008(a), 8002, and 9033, only to the extent and under the conditions stated in those rules.” Both rules require motions to enlarge time to be filed within the original periods set for taking action (with the exceptions noted above).

### **Remedies**

The case of the present Debtor was dismissed before the meeting of creditors was held (because she failed to attend) and before the sixty-day deadlines had passed. Therefore, the time for the UST to file a motion to dismiss under section 707(b) has not begun to run. The time for other parties to file a motion to dismiss, and the time for all parties to file complaints or motions objecting to discharge, will expire on January 12, the day after the entry of this order. The UST has time now to timely file a motion to extend the time to file a complaint or motion. Cause for the extension would consist in the fact that the case has been dismissed since December 16, 2017, and thus the Debtor has not been available for questioning during the better part of the sixty-day period provided for that purpose.

In a hypothetical case not before the court, a debtor could seek to vacate an order of dismissal after the sixty-day periods provided in Rules 1017(e) and 4004(a) have expired. This could happen either before or after the meeting of creditors was actually held. If it were to happen before the meeting of creditors was held, the United States trustee would retain the right to file a motion to dismiss the case as an abuse until 30 days after the statement required by section

704(b)(1) was filed. Other creditors would have had the full sixty days to request an enlargement of time under Rules 1017(e) and 4004(b).

If a case is dismissed after the meeting of creditors is actually held but before the sixty-day periods have run, and the debtor later seeks to vacate the order of dismissal after the sixty-day periods have passed (and perhaps after the United States trustee's thirty-day deadline has passed), the court should consider that cause for sustaining an objection to any motion to vacate the order of dismissal. In that event, the substantive rights of the non-debtor parties would have been altered as the result of the passage of time. Requiring a creditor or interested party to actually object to the vacating of an order of dismissal on that basis would permit the party to decide whether there actually was need for an extended period to determine whether to file a motion to dismiss for abuse or an objection to discharge. If such facts were raised in objection to a motion to vacate an order of dismissal, the court should simply let the order of dismissal stand. Requiring a debtor to start again by filing a new petition, thus establishing new deadlines for filing motions and complaints, would better accord with the provisions of the Bankruptcy Code and Rules than establishing new deadlines in contravention of Rule 9006(b)(3).

When a case is dismissed after the sixty-day periods have expired, the Code provides no means to resurrect them except as noted with respect to Rule 4004(b). When the granting of a retroactive extension of a deadline would conflict with the plain language of the Federal Rules of Bankruptcy Procedure, the bankruptcy court may not rely on its equitable powers to do so. *See Anwar v. Johnson*, 720 F.3d 1183 (9th Cir. 2013), *citing Childress v. Middleton Arms, L.P. (In re Middleton Arms, L.P.)*, 934 F.2d 723 (6th Cir. 1991).

## CONCLUSION

The Debtor's motion to vacate the prior order of dismissal is **GRANTED**. The prior order dismissing this bankruptcy case, and any order administratively closing this case is vacated, and the United States trustee shall proceed with further administration of this case. The Bankruptcy Court Clerk shall reset the section 341(a) meeting of creditors and/or the confirmation hearing.

The UST's limited objection to the Debtor's motion will be treated as a timely motion to extend the time to file motions or complaints under Rules 1017(e) and 4004(b), which is **GRANTED**. Those deadlines are extended to March 13, 2018.

cc: Debtor  
Attorney for Debtor  
Chapter 7 Trustee  
United States Trustee  
Attorney for United States Trustee  
Matrix