

Dated: July 13, 2021
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
JOHNNIE RAYMOND CANDY,
Debtor.

Case No. 19-27019-L
Chapter 7

BEALE STREET DEVELOPMENT
CORPORATION,
Plaintiff,
v.
JOHNNIE RAYMOND CANDY,
Defendant.

Adv. Proc. No. 21-00063

ORDER GRANTING MOTION TO DISMISS

BEFORE THE COURT is the *Motion to Dismiss Adversary Complaint* filed by the Defendant, Johnnie Raymond Candy, on June 7, 2021 (ECF No. 3) (the “Motion”). The Motion asserts that the *Complaint Under Section 523(a)(4)* (ECF No. 1) is untimely because it was filed 668 days after the date of the meeting of creditors. The Court gave notice of the filing of the Motion and set a deadline of July 8, 2021, for filing any response to the Motion. *See Order and Notice of Defendant’s Motion to Dismiss Complaint*, ECF No. 4. The Plaintiff, Beale Street Development Corporation (“BSDC”), filed a timely *Response in Opposition to Defendant’s*

Motion to Dismiss on July 7, 2021 (ECF No. 6). The Response argues that the Complaint was timely-filed pursuant to section 523(a)(3) of the Bankruptcy Code. Unfortunately, the Complaint was not made pursuant to section 523(a)(3), but pursuant to section 523(a)(4), as its very title indicates. I have carefully reviewed the Complaint and find no reference to section 523(a)(3) anywhere in it. The Defendant is correct in stating that complaints pursuant to section 523(c), which includes debts of a kind specified in section 523(a)(4), must be filed within 60 days after the first date set for the meeting of creditors under section 341(a). Fed. R. Bankr. P. 4007(c). The first date set for the meeting of creditors in the Defendant's bankruptcy case was October 16, 2019, and the deadline for filing complaints pursuant to section 523(c) was December 2, 2019. *See Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline, In re Johnnie Raymond Candy*, No. 19-27019-L, ECF No. 3. The Complaint was not filed until May 31, 2021. Therefore, it was untimely and should be dismissed. The Court expresses no opinion, however, concerning the factual statements made by the Plaintiff in its Response concerning the failure to schedule its debt or of the consequences of such failure if indeed there was one.

ACCORDINGLY, the *Motion to Dismiss Adversary Complaint* is GRANTED because the Complaint was not timely filed. The Complaint is DISMISSED without prejudice to the filing of an amended complaint.

cc: Debtor/Defendant
Attorney for Debtor/Defendant
Plaintiff
Attorney for Plaintiff
Chapter 7 Trustee
United States Trustee