

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

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| In re: Francisco Lugo Abundis, Debtor. | Case No.: 2:20-bk-18276-ER Adv. No.: 2:20-ap-01686-ER |
| Carla Shaw Deheras, Plaintiff, v. Francisco Lugo Abundis, Defendant. | MEMORANDUM OF DECISION GRANTING MOTION TO DISMISS COMPLAINT AS UNTIMELY [RELATES TO DOC. NO. 8] [No hearing required pursuant to Federal Rule of Civil Procedure 78(b) and Local Bankruptcy Rule 9013-1(j)(3)] |

Before the Court is Defendant's motion to dismiss (the "Motion")¹ as time-barred the above-captioned adversary proceeding, in which Plaintiff asserts claims under §§ 523 and 727. Plaintiff has not filed a timely opposition to the Motion. On February 23, 2021, Defendant filed a Status Report containing e-mail correspondence from Plaintiff, in which Plaintiff stated that she did not intend to oppose the Motion.²

Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),³ this matter is appropriate for disposition without a hearing. For the reasons set forth below, the Court will (1) grant the Motion and

¹ Adv. Doc. Nos. 8 and 11.

² Adv. Doc. No. 12, Ex. A.

³ Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of

dismiss this action and (2) vacate the hearing on the Motion that is set for March 9, 2021 at 10:00 a.m.

I. Background

On September 11, 2020, Defendant filed a voluntary Chapter 7 petition. On September 13, 2020, a *Notice of Chapter 7 Bankruptcy Case* (the “Notice”) was mailed by the Bankruptcy Noticing Center to both Plaintiff and Plaintiff’s counsel of record in this action.⁴ The Notice advised Plaintiff that the deadline to file a complaint asserting claims under § 523 or § 727 was December 4, 2020 (sixty days after the first meeting of creditors). Plaintiff and her counsel attended the first meeting of creditors, which occurred on October 5, 2020. Plaintiff filed the complaint commencing the instant adversary proceeding (the “Complaint”) on December 11, 2020—one week after the December 4, 2020 deadline.

II. Findings of Fact and Conclusions of Law

Creditors, such as Plaintiff, who receive notice of the petition are required to file a non-dischargeability complaint under § 523 within sixty days after the first date set for the meeting of creditors. Bankruptcy Rule 4007(c). The same deadline applies to a complaint objecting to discharge under § 727. Bankruptcy Rule 4004(a). The deadline for filing a dischargeability complaint or a complaint objecting to discharge may be extended for cause, but only if a motion seeking an extension is filed before the deadline have expired. Bankruptcy Rules 4007(c) and 4004(b).⁵

The Ninth Circuit has “repeatedly held that the sixty-day time limit for filing nondischargeability complaints under ... is ‘strict’ and, without qualification, ‘cannot be extended unless a motion is made before the 60–day limit expires.’” *Anwar v. Johnson*, 720 F.3d 1183, 1187 (9th Cir. 2013) (citing *In re Kennerley*, 995 F.2d at 146).⁶ As explained by the *Anwar* court:

[B]y its terms, the rule requires creditors such as Anwar to file nondischargeability complaints within sixty days of the creditors’ meeting. A creditor may move to extend the deadline for cause—as Anwar successfully did once—but “[t]he motion shall be filed before the time has expired.” [Rule 4007(c).] Reinforcing the statement that creditors must move for extensions of FRBP 4007(c)’s filing deadline before the time for filing has expired, FRBP 9006(b)(3) states that bankruptcy courts may extend this deadline “only to

Evidence, Rules 101–1103; all “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

⁴ Bankr. Doc. No. 7.

⁵ A motion to extend the deadline fixed by Bankruptcy Rule 4004(b) may be filed after the deadline has elapsed, but only if the “movant did not have knowledge” of the facts upon which the complaint objecting to discharge is based prior to expiration of the deadline. Bankruptcy Rule 4004(b)(2)(B). Bankruptcy Rule 4004(b)’s exception does not apply here, because all of the Complaint’s allegations pertain to facts that Plaintiff learned prior to expiration of the deadline.

⁶ Although *Anwar* dealt with the deadline to file a non-dischargeability complaint set forth in Bankruptcy Rule 4007(c), its reasoning applies with equal force to the comparable deadline to file a complaint objecting to discharge set forth in Bankruptcy Rule 4004(a).

the extent and under the conditions stated in” FRBP 4007(c) itself. Fed. R. Bankr.P. 9006(b)(3). This requirement distinguishes FRBP 4007(c)’s deadline from most others set by the bankruptcy rules, which bankruptcy courts may extend at any time upon a showing of good cause or excusable neglect.

Anwar, 720 F.3d at 1186–87.

In *Anwar*, the creditor missed the dischargeability deadline by approximately forty minutes as a result of technical problems with creditor’s counsel’s computer. *Id.* at 1185. In upholding the dismissal of the complaint as untimely, the court stated that “deadlines are often the terrible anvil on which a legal result is forged.” *Id.* at 1184. The court found that dismissal was required by the plain language of Bankruptcy Rule 4007(c) even though the complaint had been filed only approximately forty minutes late, and even though the debtor was not prejudiced by the delay. *Id.* at 1188. The court held that “under the plain language of the rules and our controlling precedent,” there is not “an equitable exception from FRBP 4007(c)’s filing deadline.” *Id.*

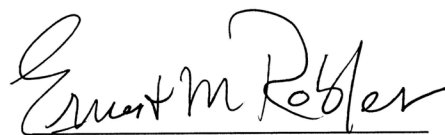
Here, the Complaint was filed seven days after the deadlines set forth in Bankruptcy Rules 4004(a) and 4007(c) had elapsed. Plaintiff did not obtain an extension of either of these deadlines. Pursuant to *Anwar*, dismissal of the Complaint with prejudice is required.

III. Conclusion

Based upon the foregoing, the Court will prepare and enter an order (1) dismissing this action with prejudice and (2) vacating the hearing on the Motion that is set for March 9, 2021 at 10:00 a.m.

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Date: March 8, 2021

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is fluid and cursive, with the first name "Ernest" and last name "Robles" clearly legible. The signature is positioned above a horizontal line.

Ernest M. Robles
United States Bankruptcy Judge