

FILED & ENTERED

FEB 03 2014

CLERK U.S. BANKRUPTCY COURT
Central District of California
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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

CATHERINE S. NOONAN,
Debtor.

Case No. 2:12-bk-18507-RK

Chapter 7

Adversary No. 2:13-ap-01782-RK

PAYNE & FEARS LLP,
Plaintiff,
vs.
CATHERINE S. NOONAN,
Defendant.

**MEMORANDUM DECISION AND
ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION FOR JUDGMENT ON THE
PLEADINGS, OR IN THE
ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT**

The motion of Catherine S. Noonan ("Defendant") for judgment on the pleadings, or in the alternative, motion for summary judgment (the "Motion"), came on for hearing on November 5, 2013 before the undersigned United States Bankruptcy Judge. Appearances were made as noted on the record.

1 Having considered the moving and opposing papers, the oral and written
2 arguments of the parties, and the other papers and pleadings in this adversary
3 proceeding, the court issues the following rulings on the Motion.

4 The court determines that it should grant Defendant's motion for judgment on the
5 pleadings on the claims under 11 U.S.C. § 727(a)(2), (3) and (4) in the adversary
6 complaint of Plaintiff Payne and Fears LLC ("Plaintiff") to revoke Defendant's discharge in
7 this bankruptcy case (1st, 2nd and 3rd claims for relief in the adversary complaint) on
8 grounds that these claims are time-barred as not being filed within the time period
9 permitted under 11 U.S.C. § 727(d)(1) and (e)(1) (i.e., the complaint was not filed within
10 one year of discharge). Equitable tolling does not apply to the limitations period
11 applicable to these claims. See, e.g., *In re Myler*, 477 B.R. 227, 232-233 (Bankr. D. Utah
12 2012); *In re Abdelmassia*, 362 B.R. 207, 211-214 (Bankr. D. N.J. 2007); *In re Bevis*, 242
13 B.R. 805, 809 (Bankr. D. N.H. 1999). The case cited by plaintiff, *In re Peebles*, 224 B.R.
14 519 (Bankr. D. Mass. 1998) relates to a different statute, 11 U.S.C. 727(e)(2), and
15 apparently reflects a minority view on equitable tolling of claims to revoke discharge. See
16 *In re Abdelmassia*, 362 B.R. at 212-213. As stated in *Abdelmassia*, citing *Bevis*, the
17 majority view is better reasoned since the circumstances for equitable tolling are
18 accounted for in 11 U.S.C. § 727(e)(1), allowing a claim to revoke a discharge by a party
19 who has not discovered fraud until some period after the discharge, which sets an
20 outside limit of one year after discharge. *Id.* at 213, citing *In re Bevis*, 242 B.R. at 809.
21 Thus, the one-year period was intended as a cutoff. *Id.* at 213-214, citing, *Lampf, Pleva,*
22 *Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991).

23 After reviewing the supplemental briefing of the parties, the court further
24 determines that Defendant's motion for judgment on the pleadings should be granted on
25 the claims under 11 U.S.C. § 727(a)(2), (3) and (4) (1st, 2nd and 3rd claims for relief)
26 despite Plaintiff's asserted defense of equitable estoppel. Although equitable estoppel
27 may apply to deadlines for filing debt dischargeability complaints and objections to
28 discharge, equitable estoppel requires reasonable reliance on a defendant's words or

1 conduct in forbearing suit within the applicable limitations period. , *In re Santos*, 112 B.R.
2 1001, 1007 (9th Cir. BAP 1990), *citing, Bomba v. W.L. Belvidere, Inc.*, 579 F.2d 1067,
3 1071 (7th Cir. 1978). In the papers filed by Plaintiff in support of its opposition to the
4 motion, Plaintiff stated September 6, 2012 was the date Plaintiff found out that Defendant
5 had destroyed documents. However, Plaintiff did not file its adversary complaint until
6 July 31, 2013. Taking into account the continued examination of Defendant under Rule
7 2004 of the Federal Rules of Bankruptcy Procedure (“FRBP”) on November 16, 2012,
8 Plaintiff still waited eight months to file its adversary complaint. Bringing suit eight
9 months later is not reasonable reliance on Defendant’s words or conduct in forbearing
10 suit, and equitable estoppel requires reasonable reliance on Defendant’s words or
11 conduct in forbearing suit. *See Bomba v. W.L. Belvidere, Inc.*, 579 F.2d at 1071; *In re*
12 *Santos*, 112 B.R. at 1007. There is no satisfactory explanation why Defendant’s words or
13 conduct caused Plaintiff not to file its complaint within the appropriate time limit, and
14 therefore, Defendant is not equitably estopped from arguing that Plaintiff’s claims are
15 time-barred.

16 The court determines that it should deny Defendant’s motion for judgment on the
17 pleadings and/or for summary judgment on the claims under 11 U.S.C. § 727(a)(6) (4th
18 and 5th claims for relief in the adversary complaint) on grounds that they are time-barred
19 (i.e., the claims are not time-barred because the claims were filed before the deadline of
20 the later of one year after discharge or the closing of the bankruptcy case pursuant to 11
21 U.S.C. § 727(d)(3) and (e)(2)). The case docket for the bankruptcy case indicates that
22 the bankruptcy case is not closed.¹ Summary judgment is not appropriate because
23 movant has not shown that there are no genuine issues of material fact and that she is
24 entitled to judgment as a matter of law as required by FRBP 7056 and Rule 56 of the
25 Federal Rules of Civil Procedure (“FRCP”) and on procedural grounds since she did not

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27 ¹ The case docket reflects that the case was inadvertently closed on September 20, 2012, but the order
28 closing the case was set aside as inadvertent on September 25, 2012 by order of that date.

1 submit the required statement of uncontroverted facts and conclusions of law as required
2 by Local Bankruptcy Rule ("LBR") 7056-1 and FRCP 56(c)(1).

3 The court determines that it should grant Defendant's motion for judgment on the
4 pleadings on the claim under 11 U.S.C. § 523(a)(2)(A) (6th claim for relief in the
5 adversary complaint) on grounds that it is time-barred as not being filed within the time
6 period permitted under FRBP 4007(c) (i.e., not filed within 60 days of the first date set for
7 the meeting of creditors) and for lack of timely written opposition pursuant to LBR 9013-
8 1(h) (i.e., Plaintiff stated it does not oppose the granting of the motion on this ground in its
9 Opposition at 6 n.2).

10 The court determines that it should grant Defendant's motion for "nominal"
11 attorneys' fees of \$300.00 pursuant to 11 U.S.C. § 523(d) on the granting of the motion
12 for judgment on the pleadings on the claim under 11 U.S.C. § 523(a)(2)(A) on grounds
13 that the debt owed by Defendant to Plaintiff is discharged and Plaintiff has not offered
14 any substantial justification for asserting a claim under 11 U.S.C. § 523(a)(2) and for lack
15 of timely written opposition pursuant to LBR 9013-1(h) (i.e., Plaintiff stated it does not
16 oppose the granting of the motion on this ground in its Opposition at 6 n.2). Based on the
17 record before the court, the court finds that the "nominal" fees of \$300.00 requested by
18 Defendant is reasonable in light of the work done for the briefing by counsel for
19 Defendant on the motion for judgment on the pleadings as to the claim under 11 U.S.C.
20 § 523(a)(2)(A).

21 This order adopts and incorporates the tentative rulings issued by the court
22 before the hearings as well as supplements the court's reasons for its decision.

23 For the foregoing reasons, the Motion is granted in part and denied in part
24 as follows:

- 25 1. Defendant's motion for judgment on the pleadings is granted as to the
26 1st, 2nd, 3rd and 6th claims for relief in Plaintiff's adversary complaint.

- 1 2. Defendant's motion for judgment on the pleadings and/or for summary
2 judgment is denied as to the 4th and 5th claims for relief in Plaintiff's
3 adversary complaint.
- 4 3. Defendant's motion for award of attorneys' fees pursuant to 11 U.S.C.
5 § 523(d) is granted, and Plaintiff is ordered to pay an award of attorneys'
6 fees in the amount of \$300.00 to counsel for Defendant within 30 days of
7 entry of this memorandum decision and order.

8 IT IS SO ORDERED.

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23 Date: February 3, 2014



Robert Kwan
United States Bankruptcy Judge