UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

HEIDI ANN SWANSON,

Debtor.

BKY 99-45243

ORDER DENYING MOTION FOR EXTENSION OF TIME

At Minneapolis, Minnesota, February 14, 2000.

The above-entitled matter came on before the undersigned on February 8, 2000, on the motion of Martin L. Garden Law Offices for an extension of time to further investigate and file an adversary proceeding. The appearances were noted in the record. Based upon all of the files and proceedings herein and the arguments of counsel, the court makes the following findings and conclusions.

Debtor Heidi Ann Swanson filed her petition in bankruptcy on September 30, 1999. Thereafter, the § 341 meeting of creditors was scheduled for October 22, 1999. Pursuant to Fed. R. Bankr. P. 4004(a) and 4007(c), complaints under § 727 or § 523 were required to be filed within 60 days thereafter, or December 21, 1999. These Rules also require that any motion for an extension of time to file a complaint be made before the deadline expires. Fed. R. Bankr. P. 4004(b) ("[T]he court may extend for cause the time for filing a complaint objecting to discharge. The motion shall be made before such time has expired."); Fed. R. Bankr. P. 4007(c) ("[T]he court may for cause extend the time fixed under

this subdivision. The motion shall be made before the time has expired.").

On December 21, 1999, the last day on which to file a complaint or move for an extension of time, Martin L. Garden Law Offices ("Movant"), a judgment creditor of the Debtor, served on the Debtor a document entitled "Request for An Extension of Time." The Movant never filed this document with the court. Unable to persuade the Debtor to stipulate to the extension of time, Movant then filed the present motion with the court on January 14, 2000. By that time, Debtor had already received her discharge.

It is undisputed that the Movant failed to file its motion in a timely manner pursuant to Rules 4004(b) and 4007(c). This court is bound by the terms of the Rules and does not have discretion to grant an untimely motion under these circumstances.[1] E.g., KWHK Broadcasting Co., v. Sanders (In re Bozeman), 219 B.R. 253, 255 (Bankr. W.D. Ark. 1998). Although the Movant appears to argue that the delay was the result of excusable neglect, excusable neglect does not provide a basis for granting an untimely motion to extend time. Fed. R. Bankr. P. 9006(b)(3); see, e.g., In re Lee, 238 B.R. 906, 908 (Bankr. S.D. Fla. 1999).

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[1]The Movant argues that this court has discretion to grant an untimely motion based upon the opinion in Industrial Fin. Corp. v. Falk (In re Falk), 96 B.R. 901 (Bankr. D. Minn. 1989). That case, however, considered the effect of a misleading Local Rule and is inapposite with the case at bar.

Furthermore, a motion to extend time is not "made" until it is filed with the court, regardless of whether it has been served on the debtor. Lee, 238 B.R. at 908-09; Bozeman, 219 B.R. at 255. Thus, the attempt by the Movant to serve the “Request for An Extension of Time” on the Debtor did not satisfy its obligation to make a motion prior to the expiration of the deadline.

ACCORDINGLY, IT IS HEREBY ORDERED THAT the Motion of Martin L. Garden Law Offices for an Extension of Time to Investigate and File an Adversary Proceeding is DENIED.

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Nancy C. Dreher
United States Bankruptcy Judge