

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:)
)
David Andrew Hansen, and) **Bky. No. 04-31635**
Kathleen Greenlee Hansen,) Chapter 7
)
) **DEBTORS' SUPPLEMENTARY**
) **RESPONSE TO MOTION FOR**
) **EXTENSION OF TIME**
Debtors.)

TO: U.S. Bankruptcy Court; Habbo G. Fokkena, U.S. Trustee; Patti J. Sullivan,
Chapter 7 Trustee; and any other party entitled to notice.

1. The debtors, David and Kathleen Hansen, through their attorney, Craig W. Andresen, hereby submit the following supplementary response to the U.S. Trustee's motion seeking an extension of time to file a 707(b) motion.

2. The court will hold a hearing on this motion at **3:15 p.m.** on **September 20, 2004**, in Courtroom No. 228B, U.S. Bankruptcy Court, 316 North Robert Street, St. Paul, Minnesota.

3. As noted in the debtors' original Response, Rule 1017's official comment states that a motion brought under Rule 1017 is analogous to a motion objecting to the debtors' discharge, filed pursuant to Rule 4004. Therefore, any case law or other authority setting forth the standards for allowing or disallowing motions for an extension of time under Rule 4004(b) is persuasive for determining motions pursuant to Rule 1017.

4. Regarding Rule 4004(b), it has been observed that "[i]f the party has sufficient notice and information to file an objection in time, no extension of time is appropriate." 9 Collier on Bankruptcy, 15th Ed., at 4004.15.

5. In re Nowinski, 291 B.R. 302 (Bky. S.D.N.Y. 2003), interpreted Rule

4004(b), and set forth what constitutes “cause” for an extension of time. The court held that “cause” is “narrowly construed to promote the prompt resolution of the case and the implementation of the debtor’s fresh start.” Id. at 305. Nowinski further observed that numerous cases have held that there are five factors in determining whether cause exists for an extension of time: (1) whether the creditor had sufficient notice of the deadline and the information to file an objection; (2) the complexity of the case; (3) whether the creditor exercised diligence; (4) whether the debtor refused in bad faith to cooperate with the creditor; and (5) the possibility that proceedings pending in another forum will result in collateral estoppel on the relevant issues. Id. at 305 - 306. In denying the motion to extend the deadline to object to discharge under Rule 4004(b), the court in Nowinski held there was no “cause” where the creditor had notice of the deadline to object to discharge, failed to attend the creditors’ meeting, as in the instant case, and did not allege facts indicating bad faith on the debtor’s part. The court stated that “knowledge of the deadline coupled with the failure to diligently seek discovery is, absent unusual circumstances, fatal to an extension motion.” Id. at 306.

6. Other cases have been denied extensions of time in circumstances similar to those present in this case. See In re Farhid, 171 B.R. 94, 97 (no cause where creditor failed to attend creditors meeting or seek necessary information from the debtor); In re Woods, 260 B.R. 41, 45 (Bky. N.D. Fla. 2001) (no cause where creditor failed to attend section 341(a) meeting or take any steps during the 110 days between the notice of the commencement of the case and the objection deadline, and filed the extension motion on the date of the deadline); In re Grillo, 212 B.R. 744, 747 (no cause where, except for filing a Rule 2004 motion five days before the deadline, creditors sat on its

rights and made no effort to obtain information); In re Dekelata, 149 B.R. 115, 117 (Bky. E.D. Mich. 1993) (no cause where creditor sought Rule 2004 examination only eleven days prior to expiration of the deadline).

7. Under the five part test expressed in Nowinski, no extension of time should be granted here. The U.S. Trustee had sufficient notice of the deadline for objecting under section 707(b); there would be nothing unusually complex about such a motion in the circumstances of this case; the U.S. Trustee did request information from the debtors informally by letter, to which request the debtors promptly and completely complied, but the U.S. Trustee did not exercise diligence in requesting a Rule 2004 examination or any other formal discovery; it is undisputed that the debtors cooperated fully and completely with the U.S. Trustee; and there are no proceedings in other forums which are relevant here.

8. The debtors request that the court consider the authorities cited, and that the court deny the U.S. Trustee's motion for extension of time.

Respectfully submitted,

September 17, 2004
Date

/e/ Craig W. Andresen
Craig W. Andresen, #186557
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(952) 831-1995

In re:

U.S. Bankruptcy Court
District of Minnesota

**David Andrew Hansen, and
Kathleen Greenlee Hansen**

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Debtor(s):

Case No. 04-31635

I, Catherine E. Clausen, employed by Craig W. Andresen, attorney licensed to practice law in this court, with office address of 2001 Killebrew Dr., Suite 330, Bloomington, Minnesota 55425, declare that on September 17, 2004, I served the annexed Debtors' Supplementary Response to Motion for Extension of Time upon each of the entities named below by facsimile transmission.

Habbo G. Fokkena, U.S. Trustee
(612) 664-5516

Patti J. Sullivan, Trustee
(651) 699-4831

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: September 17, 2004. Signed: Catherine E Clausen