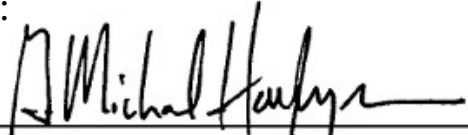




THE FOLLOWING ORDER
IS APPROVED AND ENTERED
AS THE ORDER OF THIS COURT:

DATED: June 5, 2017


G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In Re:

Brian Kropp and Virginia Kropp,

Case No. 16-29342-GMH

Debtors.

Chapter 7

**ORDER DENYING THIRD REQUEST TO DELAY DISCHARGE AND
EXPANDING TIME TO FILE REAFFIRMATION AGREEMENT**

The debtors filed this chapter 7 case in September 2016. They stated that they intended to reaffirm a debt to Bank of America that is secured by their home. CM-ECF Doc. No. 1 at 48. The deadline for filing a reaffirmation agreement and for objecting to discharge was December 27, 2016. In the absence of a timely objection, the court could have granted a discharge on December 28, 2016.

On October 31, 2016, the debtors moved to expand the date to file a reaffirmation agreement. They also moved to delay the discharge. The debtors' request to delay the discharge implicitly recognizes that if part of the consideration for the debtors' contemplated agreement is a dischargeable debt, then the agreement will only be effective if the parties enter into it before the court grants a discharge. See 11 U.S.C. §524(c)(1).

Rule 4004(c) requires the court to grant a discharge “forthwith” to an individual chapter 7 debtor if the discharge-objection deadline passes without objection, the debtor has paid the filing fee and completed the financial management course, and there is no pending motion relating to dismissal, discharge, or reaffirmation. See Fed. R. Bankr. P. 4004(c)(1). Rule 4004(c)(2) allows debtors to seek a delay of the discharge: “Notwithstanding Rule 4004(c)(1), on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within that period, the court may defer entry of the order to a date certain.” Fed. R. Bankr. P. 4004(c)(2).

Rule 4004(c)(2) thus allows the debtor to move twice to defer the discharge. On the debtor’s first motion, the court may defer the discharge order for 30 days. On November 1, 2016, the court delayed the discharge for 30 days and extended the time to file a reaffirmation agreement.

The debtors reportedly encountered delays in reaching a reaffirmation with agreement with Bank of America. On January 18, 2017, the debtors filed a second ex parte “motion to extend the discharge date and the time to file reaffirmation agreement”. CM-ECF Doc. 19 (internal capitalization altered from original). The debtors also filed a proposed order that delayed the discharge until after March 27, 2017, and extended the time to file a reaffirmation agreement to that date. The court entered the proposed order on January 20, 2017, and extended the deadlines to March 27, 2017, as requested. CM-ECF Doc. No. 21.

The debtors’ attempt to reach an agreement apparently encountered further delays. On March 24, 2017, the debtors filed a third “ex parte motion to extend the discharge date and the time to file reaffirmation agreement”. CM-ECF Doc. 23 (internal capitalization altered from original). They also filed a proposed order purporting to delay the discharge to May 26, 2017, and extend the time for filing reaffirmation agreements to the same date. CM-ECF Doc. 24.

This third request to delay discharge is unauthorized. Rule 4004(c)(2) directs that the court may “defer the entry of an order granting a discharge for 30 days and, on motion *within that period*, the court may defer entry of the order to a date certain.” Fed. R. Bankr. P. 4004(c)(2)(emphasis added). The “period” within which Rule 4004(c)(2) allowed the debtors to make an additional request to delay the discharge to a date certain expired on January 26, 2017. The debtors did make an additional request on January 18, 2017, and, as a result of that request, the debtors obtained a second delay of the discharge until after March 27, 2017—a date certain. Because the debtors made their

March 24 request to delay the discharge after the original 30-day deferral period expired, the request seeks an order exceeding the authority provided in Rule 4004(c)(2).

The debtors had completed the discharge requirements before they filed their third request to delay discharge. Thus, absent application of one of Rule 4004(c)(1)'s exceptions to the rule's command that the court grant the discharge "forthwith," the court would have been required to grant the discharge, which would have extinguished the debtors' opportunity to enter into an effective reaffirmation agreement.

Rule 4004(c)(1)(J), however, provides that the court "shall not grant a discharge if . . . a motion to enlarge the time to file a reaffirmation agreement under Rule 4008(a) is pending." Fed. R. Bankr. P. 4004(c)(1)(J). The debtors' third ex parte motion included a request to enlarge the time to file a reaffirmation agreement until May 26. And Rule 4008(a) is less exacting than Rule 4004(c)(2), stating, the "court may, *at any time* and in its discretion, enlarge the time to file a reaffirmation agreement." Fed. R. Bankr. P. 4008(a) (emphasis added).

The court held the motion.

On June 1 the debtors filed a reaffirmation agreement with Bank of America. The creditor's agent executed the agreement on May 31. The court reviewed the agreement on June 2 and concluded that there was no need to hold a hearing on the agreement. The court made a docket notation to that effect on June 2.

Counsel for the debtors also filed a letter on June 1. CM-ECF Doc. No. 26. The letter observes that the court has not decided the debtors' third ex parte motion to extend the discharge date and expand the time to file a reaffirmation agreement. The letter notes, "the extended deadline requested in the Motion, May 26, 2017, has passed" — indeed, that deadline passed before the debtors filed the reaffirmation agreement and even before the creditor executed it. *Id.* The letter "request[s] that the Court review this matter" because "the Debtors wish to obtain a discharge in their case." *Id.*

The court has (again) reviewed the matter, including the debtors' June 1 filings. Based on that review:

1. The debtors' March 24 request to delay the discharge beyond March 27, 2017, is denied.
2. The time by which the debtors may file a reaffirmation agreement is expanded to and including June 1, 2017.

3. The court will process the debtors' case for discharge forthwith.

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