

FEB 15 2005

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

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In re:) Chapter 7
JILL McCracken,) No. 4-04-BK-05026-JMM
) **MEMORANDUM DECISION RE:**
) **EXTENSION OF §§ 523 AND 727 DEADLINES**

Debtor.)

The Debtor filed a Chapter 7 petition on October 5, 2004. In her schedules, she listed Christopher R. Richied as a disputed creditor for \$50,000.

The standard notice was sent to creditors, advising that general objections to discharge, or non-dischargeability claims, were to be filed by January 24, 2005. On January 20, 2005, creditor Richied filed a motion seeking an extension of ninety days. No explanation was given as to the reason why this could not have been accomplished earlier, and no affidavit of Mr. Richied was attached.

The Debtor has opposed the extension, citing FED.R.BANKR.P. 4007 and numerous cases which require a showing of at least some "cause" as to why the action could not have been investigated and filed within the timelines set forth under bankruptcy law.

After oral argument, the court granted Mr. Richied a short period of time to file a reply and an affidavit. Mr. Richied has now done so. In his supplemental papers, Mr. Richied explained that he had filed a state court breach of contract action prior to the bankruptcy filing, but with the intervening bankruptcy, needed to investigate if he had grounds for a § 523 action or a § 727 objection to discharge. He further noted that he had encountered some health problems that affected his ability to move on this legal matter more quickly.

The court finds that cause has been demonstrated to allow a short extension for discovery and, if deemed appropriate, challenges to either discharge in general or the non-dischargeability of a particular debt. The Debtor's argument that Mr. Richied had only filed a breach of contract action in state

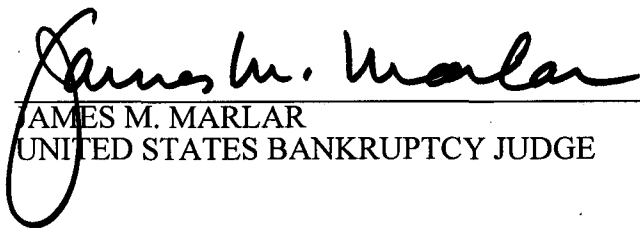
1 court is not persuasive, because as the Supreme Court noted in *Brown v. Felsen*, 442 U.S. 127, 138-39,
2 99 S.Ct. 2205, 2212-13 (1979), a creditor suing in state court is not required to try fraud and related cases
3 "to the hilt" if judgment can be obtained on a more easily-proven theory. However, once bankruptcy
4 intervenes, a creditor must be able to articulate more extreme conduct to defeat a debtor's right to
5 discharge.

6 Here, the creditor's request for additional time is not unreasonable. Accordingly, Richied
7 shall be allowed thirty days from the date of the order entered herein within which to file any § 523 or
8 § 727 action which is appropriate.

9 A separate order will enter.

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DATED: February 15, 2005.



JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

1 COPIES served as indicated below this 15
day of February, 2005, upon:

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