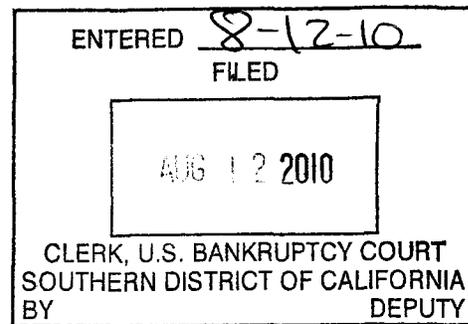


WRITTEN DECISION - FOR PUBLICATION



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

<p>11 In re:</p> <p>12 Tara Virginia Owen-Moore,</p> <p>13 Debtor.</p>	<p>} BK. No. 10-01714-LT7</p> <p>} MEMORANDUM DECISION</p>
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18 Dragicia Markovich asserts a significant claim against debtor Tara Virginia Owen-

19 Moore and alleges entitlement to a determination that her claim is not dischargeable in

20 Debtor's current bankruptcy. Ms. Markovich, however, did not file a complaint objecting to

21 dischargeability of her claim prior to the deadline established by Federal Rule of

22 Bankruptcy Procedure 4007(c)¹ and did not seek a timely extension of this deadline.

23 Instead, after the deadline, she filed a joinder in a timely extension motion filed by the

24 chapter 7 trustee under rules 4004(b) and 4007(c). Under these facts, the Court must

25 determine whether a chapter 7 trustee is a party in interest entitled to seek an extension of

26 _____

27 ¹ Hereinafter, references to code sections refer to Title 11 of the United States Code, also

28 referred to as the "Bankruptcy Code", unless otherwise specified. References to rules refer to the Federal Rules of Bankruptcy Procedure, unless otherwise specified.

1 the time limits established by rule 4007(c) for the filing of a complaint objecting to the
2 dischargeability of a creditor's claim.

3 Here the facts underlying Ms. Markovich's claim are compelling and suggest that an
4 objection to discharge of her claim may have merit. The Court, however, must evaluate this
5 matter without reference to such facts as the questions of the timeliness and appropriateness
6 of her actions must be determined based on a neutral analysis of the law. Based on such
7 analysis, the Court concludes that the chapter 7 trustee lacked party-in-interest status for the
8 purpose of rule 4007(c). Thus, the chapter 7 trustee's extension motion was not a proper
9 vehicle for an extension of the rule 4007(c) deadlines, and, further, Ms. Markovich's post-
10 deadline joinder therein was insufficient to extend the time for her to file a
11 nondischargeability complaint.

12 13 **FACTS**

14 Debtor initiated her chapter 7 case (the "Bankruptcy") on February 3, 2010 (the
15 "Petition Date").

16 Dragicia Markovich is a 77-year-old pre-petition creditor of Debtor. Ms. Markovich
17 alleges that she loaned Debtor virtually the entirety of her life savings, \$2.1 million, based
18 on fraudulent representations made by Debtor and a fraudulent financial statement provided
19 by Debtor.

20 The Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines filed
21 on the Petition Date (docket #5, hereinafter the "341a Notice") set March 10, 2010 as the
22 date of the initial 341a meeting of creditors and provided notice that the deadline to file a
23 complaint objecting to discharge of the Debtor or to determine dischargeability of claims
24 was May 10, 2010 (the "Complaint Bar Date"). The Bankruptcy docket contains a Court
25 Certificate of Mailing – BNC (the "Certificate") stating that Ms. Markovich received a copy
26 of the 341a Notice through delivery by first class mail sent on February 6, 2010 to
27 1500 Catherine St., #D210, Walla Walla, Washington 99362-4279.

28

1 The Debtor attended the initial meeting of creditors on March 10, 2010. At that time,
2 the chapter 7 trustee ("Trustee") questioned Debtor and requested significant additional
3 documentation. Thereafter, the Trustee received voluminous documentation and, as a result,
4 agreed to continue the 341a meeting to allow document review.

5 As a further result of the need to review additional documents, the Trustee requested
6 that the Debtor agree to an extension of the time for any party to object to Debtor's
7 discharge. The Debtor agreed to extend the Complaint Bar Date as to the Trustee and the
8 United States Trustee, but would not agree to extend it as to creditors. It is unclear whether
9 the Trustee requested an extension of the deadline for filing objections to the
10 dischargeability of individual claims, but it is certain that the Debtor did not agree to such
11 an extension as to creditors. Therefore, on May 7, 2010, a date prior to the Complaint Bar
12 Date, the Trustee filed her motion requesting an extension of the deadlines for filing a
13 complaint objecting to the Debtor's discharge and for filing a complaint objecting to the
14 dischargeability of creditor claims (the "Extension Motion").

15 Thereafter, on May 14, 2010, and after the Complaint Bar Date, Ms. Markovich filed
16 her motion to join in the Extension Motion (the "Joinder").

17 The Debtor opposed the Extension Motion in part; she acknowledged that it was
18 timely and appropriate as to the Trustee and the United States Trustee in connection with
19 objections to discharge, but argued that the Extension Motion otherwise must be denied. In
20 particular, the Debtor argued that the Joinder was late and that the Court should deny the
21 Extension Motion to the extent it sought any relief on behalf of creditors.

22 The Court held an initial hearing on this matter on June 17, 2010. At that time, the
23 Court concluded that the Trustee was a party in interest for purposes of rule 4004(b) with
24 standing to bring the Extension Motion on behalf of all creditors as it related to the
25 Complaint Bar Date for the filing of complaints objecting to discharge under section 727.
26 The Court, however, required additional briefing in connection with the Trustee's assertion
27 of standing under rule 4007(c) to seek an extension of the Complaint Bar Date as to
28

1 complaints objecting to the dischargeability of individual creditors' claims. As a result, the
2 Court ordered additional briefing and held a continued hearing on July 20, 2010.

3 The Court has now reviewed all documents filed by the parties and carefully
4 considered the arguments of counsel at the various hearings.

6 DISCUSSION

7 Rule 4007 governs the time for filing a complaint objecting to the dischargeability of
8 a debt under section 523(c). Generally, a creditor must file such a complaint: ". . . no later
9 than 60 days after the first date set for the meeting of creditors under § 341(a)." Fed. R.
10 Bankr. Proc. 4007(c). In this case, the 60 day date was May 10, 2010, the Complaint Bar
11 Date. The Certificate provided Ms. Markovich and other creditors with notice of the
12 Complaint Bar Date and did so promptly after the Petition Date.

13 Rule 4007(c) also allows for an extension of the Complaint Bar Date as it states that:
14 "[o]n motion of a party in interest, . . . the court may for cause extend the time fixed under
15 this subdivision. The motion shall be filed before the time has expired." *Id.*

16 Here, Ms. Markovich did not file any document until after the Complaint Bar Date.
17 On May 14, 2010, however, she filed the Joinder. Thus, her request for an extension of the
18 Complaint Bar Date is untimely unless she can rely on the Extension Motion. And in order
19 for Ms. Markovich to rely on the Extension Motion, the Trustee must be a party in interest
20 with standing to seek an extension of the Complaint Bar Date as it relates to objections to
21 dischargeability of individual creditor claims.

22 The Ninth Circuit has not yet considered this issue, but other circuit courts have done
23 so – albeit with widely divergent results.

25 **A. The Fourth Circuit Concludes That The Trustee Is Not A Party In Interest For** 26 **Purposes of Rule 4007 (c).**

27 The Fourth Circuit, the first circuit court to consider this issue, held that a chapter 7
28 trustee is not a party in interest entitled to bring a motion under rule 4007(c). *In re Farmer*,

1 786 F.2d 618 (4th Cir. 1986). In *Farmer*, the chapter 7 trustee sought and obtained an initial
2 extension of the time for objections to discharge and the dischargeability of debts. *Id.* at
3 619. The *Farmer* trustee then sought a second extension of these deadlines, the debtors
4 objected, and the bankruptcy court granted the trustee's motion, holding that the trustee was
5 a party in interest entitled to seek an extension under both rule 4004(b) and rule 4007(c). *Id.*
6 After the district court affirmed this decision, the debtors appealed as to the rule 4007(c)
7 extension, and the Fourth Circuit reversed.

8 First, the Fourth Circuit noted the most relevant difference between a section 727
9 objection to discharge and a section 523 objection to the dischargeability of a claim; the
10 chapter 7 trustee can bring an objection to discharge for the benefit of all creditors, but he
11 cannot bring an action objecting to the discharge of an individual creditor's claim. *See*,
12 11 U.S.C. § 704(a)(6); Fed. R. Bankr. Proc. 4007(a); *Farmer*, 786 F.2d at 620. Thus, the
13 Fourth Circuit found no statutory basis for a chapter 7 trustee's assertion of an interest in the
14 extension of time for asserting such nondischargeability complaints.² *Farmer*, 786 F.2d at
15 620.

16 The Fourth Circuit also determined that a chapter 7 trustee has no economic interest
17 in obtaining an extension of time for creditors to pursue nondischargeability actions. *Id.* at
18 620-621. It emphasized that the chapter 7 trustee acts for all creditors in liquidating assets
19 of the estate and then makes appropriate distributions under section 726. *Id.* at 621. And, it
20 then distinguished cases involving nondischargeable debt, by noting that such claims would
21 be paid from post-petition assets which are of no interest to the chapter 7 trustee.³ *Id.*

22
23 ² The Fourth Circuit relied on the difference between the statutes to explain why,
24 notwithstanding the use of the term "party in interest" in both rule 4004(b) and rule 4007(c), the
term should be construed differently.

25 ³ The Fourth Circuit's language could be clearer as to its economic interest analysis. Another
26 circuit court claims that the *Farmer* decision is flawed because the Fourth Circuit relied on an
27 incorrect determination that nondischargeable claims must be paid exclusively from non-estate
28 assets. *In re Brady*, 101 F.3d 1165, 1170 (6th Cir. 1996). This Court, after carefully reading
Farmer, finds such error unlikely, and, instead, concludes that the Fourth Circuit was correctly
referring to the portion of a nondischargeable claim paid exclusively from non-estate assets after the
chapter 7 trustee fulfills his statutory obligations to liquidate and distribute estate assets to creditors
under section 726.

1 Thus, the Fourth Circuit concluded that a chapter 7 trustee is not a party in interest
2 for purposes of rule 4007(c), as he has neither a duty imposed by statute to bring or
3 otherwise be involved in a nondischargeability action nor a financial interest in the outcome
4 of the nondischargeability action. *Id.* at 621. The Fourth Circuit expressly found that the
5 chapter 7 trustee's general duty to investigate the financial affairs of the debtor did not
6 require a different result. *Id.*

7
8 **B. The Sixth Circuit Concludes That A Chapter 7 Trustee Is A Party In Interest**
9 **Entitled To Seek An Extension Under Rule 4007(c).**

10 The Sixth Circuit reached exactly the opposite conclusion on this issue and
11 concluded that a chapter 7 trustee is a party in interest within the meaning of rule 4007(c).
12 *See, Brady v. McAllister (In re Brady)*, 101 F.3d 1165, 1169-1171 (6th Cir. 1996). In
13 *Brady*, the chapter 7 trustee obtained an order that provided : "...the Trustee in bankruptcy
14 for James A. Brady shall, on behalf of the estate and all secured and unsecured creditors of
15 the estate, have through and including October 21, 1992 in which to file non-
16 dischargeability complaints in the aforesaid case." *Id.* at 1167. A creditor relied on this
17 order and filed a complaint on October 20, 1992 and an amended complaint on October 21,
18 1992. *Id.* The debtor moved to dismiss the amended complaint on grounds of untimeliness,
19 but the bankruptcy court interpreted its prior order as extending the time for creditor
20 complaints based on nondischargeability under section 523 and denied the motion. *Id.* The
21 bankruptcy court eventually tried the matter and found for the creditor on the merits. *Id.* at
22 1168. The debtor appealed on the timeliness issue as well as the merits, the district court
23 affirmed, and the debtor again appealed on the same grounds. *Id.*

24 When considering the timeliness of the creditor's complaint,⁴ the Sixth Circuit
25 focused first on wording differences between rule 4007(a), which provides that debtors and

26
27 ⁴ The Sixth Circuit previously disposed of the debtor's argument that the order did not grant
28 an extension to creditors because its plain intent granted an extension only to the trustee. The
circuit court acknowledged that the order's language was somewhat ambiguous, but declined to
contradict the bankruptcy court's interpretation of its own order. *Brady*, 101 F.3d at 1169.

1 creditors may file complaints objecting to the discharge of a creditor's claim, and 4007(c),
2 which allows any party in interest to seek an extension of the time to file the complaint. The
3 Sixth Circuit concluded that the chapter 7 trustee's inability to file a nondischargeability
4 complaint was not dispositive of the issue, as rule 4007(c) expressly provides for potential
5 extension motions by parties not entitled to file such a complaint. *Id.* at 1170.

6 The Sixth Circuit next read the *Farmer* decision as stating that a trustee lacks an
7 economic interest because nondischargeable debt is paid exclusively from non-estate assets.
8 *Id.* As noted above in footnote 3, this Court does not believe that the *Farmer* court based its
9 economic interest analysis on this erroneous assumption, but, in any event, the *Brady* court
10 correctly stated that a creditor holding a nondischargeable claim receives a pro rata
11 distribution through the chapter 7 trustee and from estate assets to the extent available. *Id.*

12 Finally, the Sixth Circuit noted that administrative problems could arise if a chapter 7
13 trustee does not have party-in-interest standing to seek extensions under rule 4007(c) for the
14 benefit of all creditors. *Id.* at 1170-1171. It focused on the hypothetical situation where
15 hundreds or even thousands of creditors have been defrauded and speculated that extension
16 requests would present an unreasonably time-consuming and confusing burden for all unless
17 a chapter 7 trustee can seek an extension on behalf of all creditors. *Id.* at 1171. It concluded
18 by noting that standing is suggested by the trustee's duty under section 704(a)(4) to
19 investigate the financial affairs of the debtor. *Id.*

20
21 **C. Party In Interest Status For Rule 4007(c) Purposes Correctly Requires An**
22 **Ability To File A Complaint Objecting To Discharge Of The Claim At Issue, An**
23 **Economic Interest In The Outcome Of The Nondischargeability Action, Or Other**
24 **Evidence That A Party Will Be Affected By The Nondischargeability Action.**

25 The Bankruptcy Code utilizes the term "party in interest" in multiple places, but
26 never provides a precise definition. This lack of precision is intentional as indicated by the
27 legislative history: "Rules of bankruptcy procedure or court decisions will determine who is
28 a party in interest for the particular purposes of the provision in question." *In re River*

1 *Bend-Oxford Assoc.*, 114 B.R. 111, 113 (Bankr. D. Md. 1990) [quoting Senator DeConcini,
2 124 Cong. Rec. S17407 (daily ed. Oct. 6, 1978); and see 124 Cong. Rec. H11090 (daily ed.
3 Sept. 28, 1979)]. Thus, in the context of a bankruptcy, "party in interest" is: "an expandable
4 concept depending on the particular factual context in which it is applied. The purpose is to
5 permit the involvement of those persons in interest which will be affected by the
6 reorganization process." *In re River Bend-Oxford Assoc.*, 114 B.R. at 113 (internal citations
7 omitted).

8 Consistently, the concept of party in interest in connection with a bankruptcy has also
9 been described as: "an elastic and broad one designed to give a Court great latitude to
10 insure fair representation of all constituencies impacted in any significant way by [a
11 bankruptcy]." *In re Johns-Manville Corp.*, 36 B.R. 743, 754 (Bankr. S.D.N.Y. 1984); and
12 see, *Public Service Co. of New Hampshire*, 88 B.R. 546, 550-51, 555-57 (D.N.H. 1988).
13 The flexibility inherent in the legislative history of the Bankruptcy Code and cases
14 interpreting the Bankruptcy Code is echoed by Black's Law Dictionary which defines
15 "party" and concludes that: "all [non-parties] who may be affected by the suit, indirectly or
16 consequently, are persons interested but not parties." Black's Law Dictionary 1010 (5th ed.
17 1979).

18 Thus, courts considering party-in-interest status in connection with various
19 bankruptcy related issues have identified relevant factors as: a practical stake in the outcome
20 [*In re Amatex Corp.*, 755 F.2d 1034, 1041-42 (3rd Cir. 1985)]; an actual pecuniary interest
21 in the case [*Kapp v. Naturelle, Inc. (In re Kapp)*, 611 F.2d 703, 706 (8th Cir. 1979) (an Act
22 case)]; a pecuniary interest and practical stake [*Brown v. Sobczak (In re Sobczak)*, 369 B.R.
23 512, 518 (9th Cir. BAP 2007)]; and impact in any significant way [*In re Johns-Manville*
24 *Corp.*, 36 B.R. 743, 754 (Bankr. S.D.N.Y. 1984)]. And this finding may be situational and
25 decided on a case-by-cases basis. See *In re DeLash*, 260 B.R. 4, 8 (Bankr. E.D. Cal. 2000)
26 (former trustee has party-in-interest status in connection with motion seeking to reopen case
27 only if he has a personal stake in the relief to be sought once case is reopened).

28

1 While the lack of a precise definition of party in interest provides the Court with
2 some latitude, this latitude is far from unlimited. The Court must still find that the
3 nondischargeability complaint has an effect on the chapter 7 trustee or the chapter 7 estate.
4 Here, the Court concludes, as did the *Farmer* Court, that the definition of party in interest
5 generally cannot be expanded to include a chapter 7 trustee in the context of a
6 nondischargeability action under section 523 and the related extension of time to file such
7 an action under rule 4007(c). The Court also determines that the unique facts of this case do
8 not require a different result.

9
10 **1. A Chapter 7 Trustee Is Not Empowered To Initiate An Objection To The**
11 **Dischargeability Of A Creditor's Claim.**

12 Section 704 authorizes a chapter 7 trustee to take numerous actions, but it does not
13 authorize a trustee to bring a nondischargeability action on behalf of an individual creditor.
14 Rule 4007(a) is consistent and allows the filing of such complaints only by a debtor or a
15 creditor. In contrast, the Bankruptcy Code specifically authorizes a chapter 7 trustee to file
16 an action opposing the discharge of the debtor. 11 U.S.C. § 704(a)(6). This authorization is
17 entirely consistent with the chapter 7 trustee's fiduciary duty to all creditors, as all creditors
18 benefit equally from a discharge denial. In contrast, the initiation of a nondischargeability
19 action usually benefits only the creditor holding the allegedly nondischargeable claim.
20 Thus, the chapter 7 trustee is not a party in interest within the meaning of rule 4007(c) based
21 on an ability to initiate an action under section 523.

22 The Court acknowledges, however, that the inability to file a complaint is not
23 dispositive as to party-in-interest status. As a result, the Court must determine whether a
24 nondischargeability action as a general matter will have an effect on all chapter 7 trustees
25 and/or chapter 7 estates or whether, under the unique facts of this case, Ms. Markovich's
26 nondischargeability action will have an effect on the Trustee or this chapter 7 estate.

1 **2. A Chapter 7 Trustee's Duties Under Section 704 Do Not Establish Party-In-**
2 **Interest Standing Under Rule 4007(c) As A General Matter.**

3 Section 704 sets forth the duties of a chapter 7 trustee and also limits his powers. *In*
4 *re Benny*, 29 B.R. 754, 760 (N.D. Cal. 1983). As discussed above, these duties include the
5 initiation of objections to discharge. In addition, the chapter 7 trustee has a duty to collect
6 and reduce to money property of the estate and to close such estate as expeditiously as
7 possible. 11 U.S.C. § 704(a)(1). Property of the estate is defined in section 541 and, with
8 narrow exception, consists of assets that exist as of the commencement of the bankruptcy.
9 Thus, the chapter 7 trustee's duties and his powers do not extend to collection and
10 liquidation of non-estate assets. Finally, among other things, a chapter 7 trustee has a duty
11 to investigate the financial affairs of the debtor. And similarly, the chapter 7 trustee's duty
12 and power to investigate post-bankruptcy financial matters is limited. At least one treatise
13 describes the investigation as to financial affairs as being limited to: ". . . the extent
14 necessary to determine whether the debtor has accurately completed the schedules and
15 statement of financial affairs." 6 Collier on Bankruptcy ¶ 704.01 (15th ed. rev.).

16 In contrast, a creditor holding a nondischargeable claim may recover payment from
17 two sources. First, the creditor is entitled to a pro rata payment from estate assets
18 notwithstanding the nondischargeable nature of the claim. *See* 11 U.S.C. § 726(a). As to
19 this payment, the interests of the creditor and the chapter 7 trustee are in concert. And this
20 payment will be neither increased nor decreased as the result of the nondischargeability
21 action. In addition, this creditor, unlike those creditors whose claims are subject to
22 discharge, may seek to recover the claim from non-estate assets. And, the chapter 7 trustee
23 typically takes no part in this portion of a creditor's collection actions.

24 The *Brady* court suggests that the chapter 7 trustee's general obligation to investigate
25 the debtor's financial affairs is sufficient to establish party-in-interest status. This Court
26 disagrees. First, the general purpose of such investigation is to amass information helpful to
27 all creditors. The chapter 7 trustee has neither the duty nor the right to conduct an
28 investigation designed only to aid a creditor in its individual nondischargeability action.

1 True, a chapter 7 trustee's investigation may uncover information helpful to such a creditor's
2 action. But this is incidental to the proper purpose of the chapter 7 trustee's investigatory
3 efforts and falls short of the joint interest necessary to create party-in-interest status. Indeed,
4 litigation involving a party in one action often may yield information through discovery,
5 testimony, or judicial determination that is critical to a party pursuing a separate action, but
6 this does not make the party obtaining the discovery, testimony, or judgment in the first
7 action a "party in interest" in connection with the second action (or *vice versa*).

8 Even where section 704 expressly provides the chapter 7 trustee with the duty and
9 power to take an action, he must exercise his power and fulfill his duties with an eye toward
10 the best interest of all creditors. And where he fails to do so, he correctly may be criticized.
11 *In re Riverside-Linden Inv. Co.*, 925 F.2d 320, 322 (9th Cir. 1991) (notwithstanding that
12 section 704(a)(5) allows trustee to object to claims, compensation for investigation properly
13 denied where debtor solvent, creditors will not benefit, and debtor's owners do not support
14 the action).

15 Thus, the power to investigate must be undertaken with a view towards the trustee's
16 paramount responsibility – to close the estate as expeditiously as possible and with the best
17 interest of all creditors in mind. *In re Riverside-Linden Inv. Co.*, 85 B.R. 107, 111 (Bankr.
18 S.D. Cal. 1988), *aff'd* 925 F.2d 320 (9th Cir. 1991). This duty does not allow for a sidetrip
19 to investigate matters that concern only a creditor holding an allegedly nondischargeable
20 claim; and a chapter 7 trustee who undertakes such investigation is subject to question and
21 possible compensation denial.

22 Similarly, the suggestion of the *Brady* court that the trustee's general obligation to
23 maximize value for creditors makes it a party in interest in connection with
24 nondischargeability actions ignores the specific limiting language of section 704 and
25 suggests a role for a chapter 7 trustee not contemplated by the Bankruptcy Code. A chapter
26 7 trustee has neither the obligation nor the right to seek recovery on such claims from non-
27 estate assets or with preference to other creditors as to estate assets.

28

1 Here, there is no evidence that the Trustee's general duties under section 704 make
2 her a party in interest as to Ms. Markovich's nondischargeability action. The Trustee had a
3 reasonable concern that all creditors were negatively impacted by the delay in the
4 341a process. This concern well justified her motion seeking an extension of the deadline
5 for objecting to discharge on behalf of all creditors. But this concern does not make her a
6 party in interest as to Ms. Markovich's nondischargeability action as there is no evidence
7 that it will have any affect whatsoever on the Trustee, the Debtor's estate, or other creditors.⁵

8
9 **3. A Chapter 7 Trustee Generally Lacks An Economic Interest In**
10 **Nondischargeability Actions, And The Trustee, Similarly, Lacks An Economic Interest**
11 **Under The Facts Of This Case.**

12 This Court does not read *Farmer* as narrowly as did the Sixth Circuit. To the extent
13 the *Farmer* court found that a creditor holding a claim successfully excepted from discharge
14 on the basis of a section 523 nondischargeability challenge is paid exclusively from non-
15 estate assets, the *Farmer* court was clearly incorrect. The Court concludes, however, that
16 *Farmer* can easily be read as correctly stating the law. To the extent the *Farmer* court
17 concluded that the benefit of a nondischargeability finding is that the claim can be paid from
18 non-estate assets, the Fourth Circuit was entirely correct. Indeed, it is this benefit that
19 distinguishes a nondischargeable claim from all others.

20 As discussed above, the chapter 7 trustee has a duty to muster estate assets, to
21 liquidate the same, and to distribute them on behalf of all creditors including those holding
22 nondischargeable claims. The chapter 7 trustee, however, has no obligation whatsoever to
23 assist a creditor holding a nondischargeable claim in collecting this claim from non-estate
24 assets. Put another way, a finding on nondischargeability does not enhance the rights of a
25 creditor vis-a-vis the estate and its assets, but does provide the creditor with an opportunity

26
27 ⁵ And, indeed, it is not clear that the Trustee's generalized delay-based concern is even
28 relevant to Ms. Markovich's nondischargeability claim. There is no evidence that this delay in any
way impeded Ms. Markovich's ability to initiate a nondischargeability action or to appropriately
prosecute her nondischargeability claim.

1 to proceed against assets not available to the chapter 7 trustee. And this distinction is
2 critical here, as it makes clear that the chapter 7 trustee as a general matter lacks an
3 economic interest in a creditor's nondischargeability action. Thus, a chapter 7 trustee
4 generally is not a party in interest in connection with each individual creditor's objection to
5 dischargeability of its particular claim based on a shared economic interest.

6 A review of the specific facts of this case does not yield a different result. There is
7 no evidence that either the Trustee or this estate will be impacted or affected in any way,
8 economic or otherwise, if Ms. Markovich brings her nondischargeability action.

9
10 **D. The Use Of Different Language In Rule 4007(a) And 4007(c) Does Not Suggest**
11 **A Different Result As A General Matter Or Under The Facts Of This Case.**

12 The Court also finds that the language differences between subsections (a) and (c) of
13 rule 4007 do not justify a general finding of party-in-interest standing by a chapter 7 trustee.
14 It is possible that under a unique set of facts a chapter 7 trustee or other third party could
15 have the requisite financial or other interest making it a party in interest as to a specific
16 creditor's claim and supporting it in seeking an extension of time for an individual creditor.
17 *See, In re Overmyer*, 24 B.R. 437, 440-441 (Bankr. S.D.N.Y. 1982) (parent has party-in-
18 interest status as to nondischargeability claim of its wholly owned subsidiary based on a
19 shared economic interest). For example, if a creditor agreed to share the proceeds of
20 collections on account of a nondischargeable claim from post-petition collections the
21 requisite standing could exist.

22 The Sixth Circuit suggests that the difference in language is rendered inapposite
23 unless chapter 7 trustees have party-in-interest standing, but this reasoning ignores the fact
24 that a chapter 7 trustee is not the only potential "other party in interest." Thus, the broader
25 language of rule 4007(c) is not rendered mere surplusage if chapter 7 trustees generally do
26 not have party-in-interest status in such cases. Under the unique facts of a specific case a
27 party other than a debtor or a creditor may be a party in interest for purposes of rule 4007(c)
28 based on shared economic interest or other evidence that the nondischargeability action will

1 have impact on its rights and interests. The facts of a specific case may make a chapter 7
2 trustee a party in interest; but this possibility does not make a chapter 7 trustee a party in
3 interest in all cases. And there is no evidence that the Trustee is a party in interest for
4 rule 4007(c) purposes under the unique facts of this case.

5
6 **E. The Policy Concerns Raised By The *Brady* Court Do Not Justify A Different**
7 **Result Generally Or In This Case.**

8 The Sixth Circuit raises the legitimate point that allowing the chapter 7 trustee to
9 seek an extension of the rule 4007(c) deadline would be beneficial to creditors – particularly
10 in cases involving debtors who perpetrated massive frauds. This Court agrees.

11 Rule 4007(c), however, does not expressly allow chapter 7 trustees to file rule 4007(c)
12 extension requests and limits the right to seek an extension to "parties in interest." The
13 convenience to the estate does not justify an extension of rule 4007(c) beyond its clear
14 language. In any event, even if in a mass fraud case the specific facts could render a
15 chapter 7 trustee a party in interest within the meaning of rule 4007(c), this is not generally
16 true of all chapter 7 cases, and, again, it certainly is not true under the facts of this case.

17
18 **F. The More Limited Interpretation Of Party-In-Interest Status For Rule 4007**
19 **Purposes Is Consistent With An Appropriately Strict Interpretation Of Rule 4007**
20 **Deadlines.**

21 The limitations period as to section 523(c) actions is strictly construed. *Herndon v.*
22 *De La Cruz (In re De La Cruz)*, 176 B.R. 19, 22 (9th Cir. BAP 1994). Thus, the burden on
23 the creditor under rule 4007 is a heavy one and excusable neglect does not justify
24 enlargement of the time to file an action and allow recourse to the more general and flexible
25 enlargement standards of rule 9006. *Id.*; see also, *Jones v. Hill (In re Hill)*, 811 F.2d 484,
26 487 (9th Cir. 1987); and *Schunck v. Santos (In re Santos)*, 112 B.R. 1001, 1008-1009
27 (9th Cir. BAP 1990). Here, the Court's analysis of party-in-interest status under
28 rule 4007(c) is consistent with the long standing view in this Circuit that the enlargement of

1 the time to file a nondischargeability action should not be allowed absent strict compliance
2 with this rule. Thus, as Ms. Markovich received prompt and appropriate notice of the
3 Complaint Bar Date, it would be inappropriate to allow her an extension not justified by a
4 timely extension request.

5
6 **CONCLUSION**

7 The Court is well aware that under the facts of this particular case Ms. Markovich
8 may lose a right to bring a meritorious objection to dischargeability of her claim. The Court
9 acknowledges the potentially compelling nature of her case. However, the deadlines set
10 forth in rule 4007 must be appropriately applied. And further, the existence of these facts,
11 compelling though they might well be, does not justify the Court from deviating from what
12 it believes to be sound statutory analysis.⁶ Therefore, based on the foregoing, the Court
13 concludes that the Extension Motion must be denied to the extent it seeks to extend the
14 rule 4007(c) deadline.

15 The Trustee must promptly submit an order consistent with this ruling.

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17 DATED: August 12, 2010

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19 LAURA S. TAYLOR, JUDGE
20 United States Bankruptcy Court
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27 ⁶ The Court notes that the Trustee and all creditors have retained the right to object to
28 discharge. If a discharge objection is successful, then the need to separately seek dischargeability of
individual debt is, of course, moot.