

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 04-30395-WRS
Chapter 7

TERRY H. CRAFT
TERESA R. CRAFT,

Debtors

ROBERT TATE AND
JACKIE TATE,

Plaintiffs

Adv. Pro. No. 04-3034-WRS

v.

TERRY H. CRAFT and CRAFT
BUILDERS INC.,

Defendants

MEMORANDUM DECISION

This Adversary Proceeding came before the Court for hearing on June 15, 2004, upon the Defendant's Motion to Dismiss. (Doc. 8). Plaintiff Robert Tate was present by counsel Brantley W. Lyons and Defendant Terry H. Craft was present by counsel Lewis B. Hickman, Jr. For the reasons set forth below, the motion is GRANTED and this Adversary Proceeding is DISMISSED.

I. FACTS

Defendant Terry Craft (Debtor) filed a petition in bankruptcy in this Court on February 12, 2004. A meeting of creditors was scheduled for February 13, 2004, and a bar date for complaints filed was set 60 days thereafter, which was May 11, 2004. (Case No. 04-30395, Doc.

3). On May 13, 2004, Robert Tate filed a complaint seeking a determination that the indebtedness owed him by the Debtor was excepted from discharge pursuant to 11 U.S.C. § 523(a)(2). The Debtor has moved to dismiss the complaint on the grounds that it is time barred. (Doc. 8).

II. ISSUE

Complaints filed pursuant to 11 U.S.C. § 523(c), must be filed within 60 days of the first date set for the meeting of creditors. Rule 4007(c), Fed. R. Bankr. P. As the complaint in question here is one filed pursuant to § 523(a)(2), it is governed by the provisions of § 523(c). Therefore, it appears that the complaint was not filed until after the bar date.

Plaintiff's counsel explained that the delay was attributable to communications difficulties caused by the Plaintiff's travel schedule. The Court notes that a timely motion to extend the bar date had not been filed and that the proffered explanation is not sufficient as a matter of law.

III. CONCLUSION

As the complaint was not timely filed, it should be dismissed. The Court will dismiss this Adversary Proceeding by way of a separate order.

Done this 23rd day of June, 2004.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Brantley W. Lyons, Attorney for Plaintiff
Lewis B. Hickman Jr., Attorney for Defendant