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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN A. ARRANAGA,  
Debtor.

Case No. 92-54438  
Chapter 7

NOE REYES,  
Plaintiff,

Adversary No. 93-05616

vs.

**MEMORANDUM DECISION RE  
MOTION FOR LEAVE TO ALLOW  
LATE FILING OF  
NONDISCHARGEABILITY  
COMPLAINT**

JOHN A. ARRANAGA,  
Defendant.

**INTRODUCTION**

This matter is before the Court of the Motion for Leave to Allow Late Filing of Nondischargeability Complaint filed by Noe Reyes. The issue is whether 27 days' notice of the bankruptcy proceeding prior to the bar date constitutes sufficient time for the movant to file a dischargeability complaint or a request for an extension of time. For the reasons that follow, the motion is denied.

**FACTS**

Reyes is a former tenant of the debtor who made demand on the debtor and commenced an action in small claims court against the debtor prior to the petition date. The debtor filed his Chapter 11 petition on June 24, 1992. Although the debtor was aware of Reyes' claims, he did not list Reyes on his schedules

1 as is required under section 521(1); therefore, Reyes did not receive notice of the bankruptcy. Unaware  
2 of the bankruptcy filing, Reyes commenced an action against the debtor on August 25, 1992 for breach  
3 of contract, fraud, and negligent misrepresentation in the Superior Court for Santa Clara County. It was  
4 not until September 8, 1992 when counsel for Reyes contacted the debtor to discuss the state court suit  
5 that counsel for the debtor learned of the bankruptcy. The bar date was October 5, 1992. Counsel for  
6 Reyes acquired a copy of the Notice of Filing from the bankruptcy court on October 9, 1992 and learned  
7 that the bar date had expired. Reyes filed his motion on October 14, 1992.

### 8 DISCUSSION

9 This case presents the difficult question of determining how much time constitutes sufficient  
10 notice of a bankruptcy case to allow an unscheduled creditor to file a timely dischargeability complaint  
11 or motion for an extension of the bar date. In support of its motion, the movant cites In re Dewalt, in  
12 which the Ninth Circuit reversed the decision of the Bankruptcy Appellate Panel, which affirmed the  
13 Bankruptcy Court's dismissal of a dischargeability complaint for not having been timely filed. In Dewalt,  
14 a creditor received notice of the bankruptcy only 7 days before the bar date. The Ninth Circuit allowed  
15 the late-filed complaint, holding that the 30-day notice provision of rule 4007(c) provides a guide to the  
16 minimum time within which it is reasonable to expect a creditor to act at penalty of default.

17 The Ninth Circuit further noted:

18 Even 30 days notice may not be enough if truly extraordinary  
19 circumstances are presented, as when an unsophisticated creditor, not  
20 represented by counsel, receives only the most sketchy notice that a  
21 bankruptcy has been filed. On the other hand, a somewhat lesser  
22 period may be sufficient where there is clear evidence the creditor has  
23 enough advance knowledge of the bar date to file the complaint or  
24 request for an extension and has purposefully chosen to lie in wait  
25 rather than present its claim.

26 Dewalt, 961 F.2d at 851 (emphasis added).

27 However, the law is clear that the time limits of rule 4007(c) are to be strictly construed. In re  
28 Marino, 143 Bankr. 728, 732 (Bankr. 9th Cir. 1992). A statute should be read according to its plain  
meaning. Shumate v. Patterson, 112 S.Ct. 2242 (1992). Rule 4007(c) provides that a dischargeability  
complaint shall be filed within 60 days of the date first set for the meeting of creditors. It also provides  
that the Court shall give creditors at least 30 days notice of the bar date and that a motion for extension

1 shall be made before the expiration of the bar date.

2 A creditor's actual knowledge of a bankruptcy proceeding, whether or not the creditor received  
3 notice from the court, suffices to place that creditor on inquiry notice of the bar date for filing  
4 dischargeability complaints. In re Bucknum, 951 F.2d 204, 207-08 (9th Cir. 1991)(concurring opinion);  
5 In re Price, 79 Bankr. 888, 890 (Bankr. 9th Cir. 1987), aff'd, 871 F2d 97 (9th Cir. 1987).

6 The only exception to the rule of strict construction is when extraordinary circumstances are  
7 present in the case. In re Marino, 143 Bankr. at 732; In re Anwiler, 958 F.2d 925 (9th Cir. 1992), cert.  
8 denied, 1992 WL 171252 (1992). In Anwiler, the creditor was permitted to file a late dischargeability  
9 complaint because the Court had sent out two notices with different bar dates, creating confusion. No  
10 such extraordinary circumstances are present in this case.

11 This case is distinguishable from Dewalt in several respects. Reyes' counsel had actual notice of  
12 the bankruptcy filing 27 days, not merely 7 days, prior to the bar date. Counsel is sophisticated and  
13 knowledgeable in the practice of bankruptcy law and had conferred with debtor's counsel at some length  
14 regarding the case. Counsel had also conducted a sufficient investigation of Reyes' claims in preparation  
15 for filing the action in Superior Court; therefore, there should not have been a significant concern that  
16 filing a dischargeability action in the case would violate Rule 11. At a minimum, counsel should have,  
17 and had ample time to have, prepared a motion for an extension of the bar date during that 27 day period.

18 **CONCLUSION**

19 Therefore, the Motion for Leave to Allow Late Filing of Nondischargeability Complaint is denied.  
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