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U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

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

7	In re:)	
8)	Chapter 7
9	PAULA QUINTANA CORNEJO,)	
10	Debtor.)	Case No. 4-04-bk-06129-EWH
11	_____)	
12	STREAMLIGHT, INC.,)	
13	Plaintiff,)	Adv. No. 05-0129
14	v.)	
15	PAULA QUINTANA CORNEJO)	MEMORANDUM DECISION
16	Defendants.)	
17	_____)	

INTRODUCTION

A hearing was held to consider the Debtor's Motion to Dismiss, asserting that the complaint was not timely filed under Rule 4007. After review of the pleadings and the law, I have concluded that an objection to discharge timely filed by the Plaintiff in the administrative case was sufficient to serve as a complaint in this adversary proceeding. Furthermore, the complaint can relate back to that objection. Therefore, the Debtor's Motion to Dismiss is denied. The reasons for my conclusion are set forth in more detail below.

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1 and Cross-Motion to Allow Complaint to Relate-Back. There was no additional response
2 filed by the Debtor. The matter is now ready for decision.
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5 **ISSUES**

- 6 A. Was the Complaint timely filed as required by Rule 4007(c)?
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8 B. Did the Objection, pursuant to Rule 7008(a), substantially comply with the
9 requirements of a complaint, by giving the Debtor fair notice of Streamlight's
10 claim and the basis for the claim?
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12 C. Does the Complaint as filed relate back to the Objection and serve as a properly
13 amended pleading under Rule 7015(c)?

14 **JURISDICTION**

15 The court has jurisdiction over the Complaint under 28 U.S.C. § 1334 and 28 U.S.C.
16 § 157(b)(2)(J). Venue is proper under 28 U.S.C. § 1409(a).
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18 **DISCUSSION**

19 A. Timeliness of Complaints under Rule 4004.

20 Filing of complaints seeking a denial of a discharge is governed by Rule 4004.
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22 Specifically, Rule 4004(a) provides that:
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24 In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under
25 § 727(a) of the Bankruptcy Code shall be filed no later than 60 days after the first date
26 set for the meeting of creditors under § 341(a).
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1 In the present case, the deadline for filing objections or exceptions to discharge was April 11,
2 2005. Streamlight filed its Complaint on April 15, four days after the deadline. Therefore, the
3 Complaint was not timely filed.
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5 B. Rule 7008 and General Rules of Pleading in Adversary Proceedings

6 Courts have closely examined whether pleadings in non-complaint form may
7 nevertheless be treated as a complaint in an adversary proceeding. Bankruptcy Rule 7008(a)
8 provides that FRCP 8(a) applies to adversary proceedings.¹ The 9th Circuit court has examined
9 the sufficiency of pleadings and held that “[i]n the bankruptcy context, we construe a deficient
10 pleading liberally, if the pleading substantially complies with the requirements of a complaint
11 by giving the debtor ‘fair notice of what the plaintiff’s claim is and the grounds upon which it
12 rests.’” In re Markus, 313 F.3d 1146, 1149-50, (9th Cir. BAP 2002) (quoting Dominguez v.
13 Miller, 51 F.3d 1502, 1508 (9th Cir. 1995).
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16 In the present case, Streamlight filed the Objection in the administrative case, citing
17 § 727 provisions as the basis for denying the discharge. Specifically, Streamlight claimed that
18 the Debtor kept little to no business records in violation of § 727(a)(2) and (3) , submitted
19 fraudulent information on an application to obtain credit under § 727(a)(4) , and failed to
20 satisfactorily show disposition of inventory that Streamlight had delivered to Debtor under
21 § 727(a)(5). The Objection was filed on April 7, 2005, and was therefore timely.
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25 ¹ Federal Rules of Civil Procedure (FRCP) 8a - General Rules of Pleading - Claims for Relief -
26 A pleading which sets forth a claim for relief...shall contain (1) a short and plain statement of the grounds
27 upon which the court’s jurisdiction depends...(2) a short and plain statement of the claim showing that the
28 pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks...

1 Furthermore, the Objection was properly served on the Debtor. The Debtor responded by
2 filing its own objection, arguing that because the Objection was filed in the administrative case
3 it was procedurally improper. Thereafter, Streamlight's counsel attempted to remedy the
4 situation and filed its Complaint on April 15, 2005, four days after the deadline.
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6 Although a chapter 11 case, the 9th Circuit has dealt with similar issues as found in the
7 present case. See In re Dominguez, 51 F.3d 1502 (9th Cir. 1995). In Dominguez, creditors
8 submitted a discharge memorandum challenging the dischargeability of their claim, citing the
9 findings in an examiner's report, and proposed that the debtor's plan should not be confirmed.
10 Id. at 1505. The Dominguez court held found that the discharge memorandum, although a
11 procedurally deficient pleading, was sufficient to place the debtor on notice of the allegations
12 against him and substantially complied with Rule 7008 notice pleading requirements. Id. at
13 1509.
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16 In the present case, the Objection filed in the administrative case prompted Debtor's
17 counsel to object, therefore the Debtor had notice of Streamlight's claims. Further, the
18 Objection is almost identical to the Complaint filed a few days later - it contains the same
19 claims, and cites to the same § 727 provisions. Therefore, Streamlight's Complaint was a
20 sufficient pleading under Rule 7008.
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23 Additionally, the 9th Circuit in Dominguez was persuaded by decisions in other
24 bankruptcy courts, including one chapter 7 case, where the court found "technical details
25 insufficient to prevent a party's deficient pleading from serving as a complaint." 51 F.3d at
26 1509. See also In re Rand, 144 B.R. 253, Bankr. S.D.N.Y. 1992 (finding that creditor's pro
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1 se complaint, which consisted of a letter to the judge objecting to dischargeability, timely
2 commenced an adversary proceeding because it met the notice pleading requirements).

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4 C. Relation-back of a Complaint under Rule 7015(c)

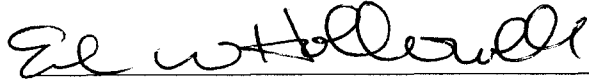
5 Streamlight also asked the court to allow its Complaint as timely filed pursuant to Rule
6 7015(c), arguing that it relates back to the Objection. Rule 7015(c) allows amendment of a
7 pleading to relate back to the date of the original pleading when the law or rule that sets the
8 statute of limitations allows relation back or the claim asserted in the amended pleading arose
9 out of the same conduct, transaction or occurrence set forth in the original pleading. The 9th
10 Circuit in Dominguez also examined the relation back doctrine. The court found that a
11 complaint would be allowed to relate back when it would likely have to be proved by the same
12 kind of evidence offered in support of the original pleading. 51 F.3d at 1510. In the present
13 case, the Complaint filed by Streamlight, is essentially identical in form and substance to the
14 Objection. Therefore, the Complaint may relate back to the Objection.
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19 **CONCLUSION**

20 Streamlight filed the Objection in the administrative case, and a few days later, a
21 Complaint was filed initiating this adversary proceeding. Although the Complaint was
22 untimely filed, the timely filed Objection contained sufficient notice to the Debtor that
23 Streamlight had objections under § 727 to the Debtor's discharge. Further, the Complaint
24 can relate back to the Objection filed in the administrative case. Therefore, the Motion to
25 Dismiss is denied. The foregoing constitute findings of fact and conclusions of law
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1 required under Fed. R. Bankr. P. 7052. A separate order will be entered this date denying
2 Debtor's Motion to Dismiss.

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4 DATED this 21st day of November, 2005.

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7 EILEEN W. HOLLOWELL
8 United States Bankruptcy Judge

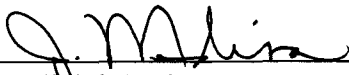
9 Copy of the foregoing mailed this
10 21 day of November, 2005, to:

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