

Bankruptcy Discharge Objections

The bankruptcy circuits were split as to whether the protection afforded to a debtor concerning time limits for creditors to object to a bankruptcy discharge may be forfeited, if a debtor waits too long a period of time to assert that an objection was not made within the stated time limits. In January, the Supreme Court held that this form of debtor protection may be forfeited if the debtor waits too long to assert it. *Kontrick v. Ryan*, 16 BBLR 51 (1/15/04).

In *Kontrick*, the debtor filed a Chapter 7 petition on April 4, 1997. A major creditor opposed the discharge, and after requesting three time extensions, filed a complaint on January 13, 1998. It alleged that the debtor had attempted to defraud its creditors. The creditor next filed an amended complaint on May 6, 1998, which laid out the specific allegations. On June 10, 1998, the debtor answered the complaint, but did not raise the timeliness issue of the amended complaint. In March of 1999, the creditor moved for summary judgment, and the debtor cross moved in August of that year. The debtor's motion to strike the allegation did not mention the timing of the creditor's filing. The court awarded summary judgment to the creditor, and when the debtor moved for reconsideration, he first raised the timeliness of the creditor's filing. The lower courts ruled that the debtor had waived his right to challenge the creditor's complaint as impermissibly late.

In a unanimous opinion, the Supreme Court affirmed, and stated that the time prescription is not a jurisdictional requirement, but a "claim-processing rule," that may be waived if not asserted in a timely fashion. The court went on to say that "A court's subject matter jurisdiction cannot be expanded to account for the parties' litigation conduct; a claim-processing rule, on the other hand, ... can nonetheless be forfeited if the party asserting the rule waits too long to raise the point."