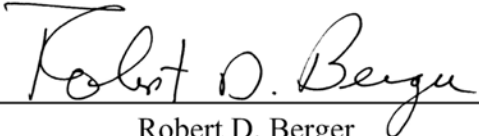


The relief described hereinbelow is **SO ORDERED**.

**SIGNED** this 4th day of November, 2024.



  
Robert D. Berger  
United States Bankruptcy Judge

---

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

In re:

**SEAN KRISTIAN TARPENNING,**

Debtor.

Case No. 23-21455

Chapter 7

---

**ORDER GRANTING MOTION FOR EXTENSION**

This matter comes before the Court on a motion by creditors Trevor Tsuchikawa and Taylor Strategic Investments (“Movants”) to extend their deadline for filing a motion to dismiss under § 707, or a complaint under 11 U.S.C. § 523 and/or § 727, to December 10, 2024.<sup>1</sup> Fed. Rs. Bankr. P. 1017(e), 4004(b)(1), and

---

<sup>1</sup> ECF 320. The motion was timely because it was filed on September 3, 2024, before the previous deadline expired. *Cf.* ECF 266 (extending previous deadline to September 10, 2024).

4007(c) provide that a court may extend those deadlines “for cause.” Movants argue that cause exists here because “Debtor’s 341 Meeting has been continued multiple times due to Debtor failing to appear and testify” and “Debtor has filed some supplemental Schedules but they remain incomplete.”<sup>2</sup>

Citing *In re Schepmann*, Case No. 18-11877 (Bankr. D. Kan. Mar. 7, 2019), Tarpenning responds that Movants have not demonstrated cause to extend the deadlines because they “ha[ve] not presented new evidence or changes in circumstances that would justify another extension, and their lack of due diligence throughout this case does not merit further delay.”<sup>3</sup> However, in *Schepmann*, the moving creditor cited its own last-minute discovery request as cause to extend the deadlines under Rules 4004(b) and 4007(c). *See In re Schepmann*, 2019 WL 1090138, at \*4. The lack of diligence (and therefore “cause”) in that case came from the creditor’s failure to show why it had not pursued discovery earlier. *Id.* In contrast, Movants here cite Tarpenning’s failure to comply with his duties under 11 U.S.C. §§ 343 and 521<sup>4</sup> as cause to extend the deadlines—duties that arose when he filed this case and that are unrelated to any diligence on Movants’ part. Moreover, Movants cannot determine whether to file a motion to dismiss under § 707, or whether to file an action under § 523 or § 727, until Tarpenning fully complies with

---

<sup>2</sup> ECF 320 ¶ 5.

<sup>3</sup> ECF 322 at 2.

<sup>4</sup> Section 343 requires a debtor to testify under oath at the meeting of creditors under § 341; § 521 requires full disclosure of the debtor’s assets and financial affairs.

those duties.<sup>5</sup> The lack of “new evidence or changes in circumstances” thus supports Movants’ position, not Tarpenning’s: his continued failures to file complete and accurate schedules,<sup>6</sup> and to complete his testimony at the meeting of creditors,<sup>7</sup> continue to justify extension of Movants’ deadlines under the applicable rules.

Tarpenning objects to Movants’ request for extension on four additional grounds: (1) abuse of process, citing *Nienstedt v. Wetzel*, 651 P.2d 876 (Ariz. Ct. App. 1982); (2) failure to confer under D. Kan. Rule 37.2; (3) prejudice to the debtor, citing *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), and *In re Hunter*, 552 B.R. 864 (Bankr. D. Kan. 2016); and (4) Movants’ counsel’s representation of Taylor

---

<sup>5</sup> Full compliance with the duty of disclosure requires a debtor to correct or amend inaccurate or incomplete information. *See The Shack, LLC v. Hickman (In re Hickman)*, 616 B.R. 815, 823 (W.D. Okla. 2020) (observing that “duty of disclosure continues beyond the initial filings in the case” and that “[a] ‘statement’ includes not just positive assertions, but also omissions”).

<sup>6</sup> *See* ECF 149 (ordering Tarpenning to file amended schedules and SOFA by February 19, 2024); ECF 235 (extending deadline to May 17, 2024); ECF 239 (extending deadline to May 27, 2024); ECF 338 (ordering Tarpenning to file amended schedules and SOFA within 15 days).

<sup>7</sup> After this case was transferred from Ohio to Kansas, a meeting of creditors was scheduled for January 5, 2024. *See* ECF 97. The meeting was continued multiple times to allow Tarpenning time to retain counsel and amend his incomplete and inaccurate schedules and SOFA. *See* ECF 141 (continuing meeting to January 18, 2024); ECF 147 (continuing meeting to February 22, 2024); ECF 180 (continuing meeting to April 4, 2024); ECF 223 (continuing meeting to April 29, 2024); ECF 233 (continuing meeting to May 13, 2024); ECF 240 (continuing meeting to June 6, 2024). When Tarpenning finally appeared for examination on June 6, 2024, he admitted to being under the influence of medication that impaired his thoughts and memory; his failure to produce certain documents caused the meeting to be continued once again. *See* ECF 254 (continuing meeting to July 23, 2024). His subsequent refusal to answer questions at the continued meeting without “effective counsel” has caused further delay. *See* ECF 288 (continuing meeting to August 23, 2024); ECF 311 (continuing meeting to September 23, 2024); ECF 331 (continuing meeting to October 30, 2024); ECF 337 (continuing meeting to December 5, 2024).

Strategic Loan and the unsecured creditors' committee in *In re U.S. Real Estate Equity Builder, LLC*, Case No. 20-21358. However, (1) unlike the *Nienstedt* defendants' unjustified actions, Movants' request for an extension is justified by Tarpenning's failure to comply with his duties under §§ 343 and 521;<sup>8</sup> (2) Rule 37.2 does not apply to Movants' motion because this is not a discovery dispute or a motion to quash/modify a subpoena;<sup>9</sup> and (3) unlike the trustee in *Taylor* and the KDOL in *Hunter*, Movants timely requested an extension pursuant to the applicable rules, and any "prejudice" (i.e., delay) here is a result of Tarpenning's own conduct (see notes 6 & 7 *supra*).

As to item (4), Tarpenning argues that Movants "have had nearly four years to gather and present any necessary information related to this case" due to their attorney's participation in the *USREEB* case.<sup>10</sup> However, Tarpenning and USREEB

---

<sup>8</sup> The *Nienstedt* court stated that liability "should result only when . . . the utilization of the procedure for the purposes for which it was designed becomes *so lacking in justification* as to lose its legitimate function as a reasonably justifiable litigation procedure." 651 P.2d at 882 (emphasis added). The plaintiffs in that case had alleged that the defendants had "sought recovery of punitive damages in a contract action; filed a motion to continue by reason of another pending action in which [a defendant] did not appear as attorney of record; entered default on an improper pleading; entered a second default and scheduled a hearing before a court commissioner when the appellants knew that the trial judge had set aside an identical default and contemplated realignment of the parties; and failed to act in good faith in discovery proceedings." *Id.* at 880.

<sup>9</sup> D. Kan. Rule 37.2 provides (in relevant part, emphasis added): "The court will not entertain *any motion to resolve a discovery dispute pursuant to Fed. R. Civ. P. 26 through 37, or a motion to quash or modify a subpoena pursuant to Fed. R. Civ. P. 45(c)*, unless the attorney for the moving party has conferred or has made reasonable effort to confer with opposing counsel concerning the matter in dispute prior to the filing of the motion."

<sup>10</sup> See ECF 322 at 4.

are separate legal entities with separate assets, liabilities, bankruptcy cases, and duties under the Bankruptcy Code. Their cases involve different legal issues. That Movants' attorney participated in the *USREEB* case does not obviate Tarpenning's duty of full disclosure in his own case.

For these reasons, the Court finds that Movants have demonstrated cause to extend their deadlines under Fed. Rs. Civ. P. 1017(e), 4004(b)(1), and 4007(c) to December 10, 2024. Their motion is hereby granted.

IT IS SO ORDERED.

###