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Subject:05-01265-s Order on Motion to Dismiss Adversary Proceeding

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**U.S. BANKRUPTCY COURT**

**New Mexico**

Notice of Electronic Filing

The following transaction was received from mgg entered on 6/22/2006 at 11:29 AM CDT and filed on 6/22/2006

**Case Name:** Ainsworth v. Corley et al

**Case Number:** [05-01265-s](#)

**Document Number:** [16](#)

**Docket Text:**

Order Granting Motion to Dismiss Adversary Proceeding (Related Doc # [6]) (mgg)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**K:\\_JSS-DOCS\00-34\Order.05-16827-Adv05-1265.pdf

**Electronic document Stamp:**

[STAMP bkecfStamp\_ID=1021991579 [Date=6/22/2006] [FileNumber=740596-0]

[0d0acfb691017b8d0407387a029c3d6823f3a28c016c97eb4deb7785e40349239658

7ce998814abe716456aed49713e3d3a1d090fbe14ccf0d91f94fee053226]]

**05-01265-s Notice will be electronically mailed to:**

William F Davis daviswf@nmbankruptcy.com

**05-01265-s Notice will not be electronically mailed to:**

Jason Bowles

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Albuquerque, NM 87102-3176

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:

GLENN NOLAN CORLEY and  
JANIE PHILLIPS CORLEY,  
Debtors.

No. 7-05-16827 SA

GARY AINSWORTH,  
Plaintiff,

v.

Adv. No. 05-1265 S

GLENN CORLEY, et al.,  
Defendants.

**ORDER DISMISSING ADVERSARY PROCEEDING**

This matter came before the Court for hearing on Debtors'/Defendants' Motion to Dismiss or Strike Creditors' Notice of Objection to Dischargeability of Debt and the Adversary Proceeding, and to Quash Summons and Notice of Pretrial Conference (doc 6). Counsel are listed in the service section below. This is a core proceeding. 28 U.S.C. § 157(b)(2)(I). Based on the discussion below, the Court finds that the case should be dismissed.

On the last day<sup>1</sup> to timely file complaints objecting to discharge or dischargeability pursuant to Fed.R.Bankr.P. 4007, Plaintiff filed a Creditor's Notice of Objection to Dischargeability of Debt under 11 USC 523 ("Notice") in Debtor's bankruptcy case, 7-05-16827 SA. It was not accompanied by the required filing fee. The Clerk's Office docketed the objection 2

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<sup>1</sup>The Notice was actually filed with the Court on the weekend, but under the Local "Drop Box" Rule, it is deemed to relate back to Friday. NM LBR 5005-1.

days later and also opened an adversary proceeding and filed the Notice as the initiating document<sup>2</sup>. The Notice is deficient as a complaint: it fails to identify the defendant or defendants, it does not contain a caption, it fails to allege jurisdiction, venue or core/non-core status, and does not demand that the Court declare the debt nondischargeable. It only gives notice that the creditor objects to the discharge of his debt. The Court finds it not relevant that, later, Creditor filed an amended complaint that cured defects. The amended complaint cannot make the original Notice timely filed if it were not.

The pleadings indicate that the attorney that filed the Notice is unfamiliar with bankruptcy law and practice, and was extremely busy the week before the complaint was due. Excusable neglect is not a ground for extending the deadline for filing dischargeability complaints. See *Themy v. Yu (In re Themy)*, 6 F.3d 688, 689 (10<sup>th</sup> Cir. 1993):

Rules 4004(a) and 4007(c) set a strict sixty-day time limit within which a creditor may dispute the discharge of the debtor and the dischargeability of debts. Rules 4004(b) and 4007(c) provide that this deadline may only be extended for cause, after a hearing, if a motion is made before expiration of the sixty days. Finally, Rule 9006(b)(3) provides that a "court may enlarge the time for taking action under Rules ... 4004(a) [and]

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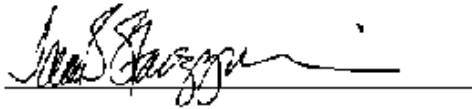
<sup>2</sup>Actions, authorized or unauthorized, taken by a Clerk's Office cannot validate a defective filing. Cf. *Themy v. Yu (In re Themy)*, 6 F.3d 688, 690 (10<sup>th</sup> Cir. 1993) (When the Court affirmatively misleads a creditor, the court bears responsibility for correcting the error.) In this case, the mistake was already made and it was not due to the Court.

4007(c) ... only to the extent and under the conditions stated in those rules." Together, these rules prohibit a court from sua sponte extending the time in which to file dischargeability complaints.

Therefore, the Court cannot permit a nunc-pro tunc extension of time for creditor to file the adversary complaint.

In sum, the document filed was inadequate to serve as a complaint, and there are no grounds for granting an extension of time in which to file a complaint, and the case should be dismissed.

IT IS ORDERED that this adversary proceeding is dismissed.

A handwritten signature in black ink, appearing to read 'James S. Starzynski', is written over a horizontal line.

Honorable James S. Starzynski  
United States Bankruptcy Judge

Copies to:

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