

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
HARTFORD DIVISION**

IN RE:	)	CASE No.	20-20172 (JJT)
	)		
Arthur B. Greene, Debtor.	)	CHAPTER	7
	)		
	)	RE: ECF Nos.	18, 20, 24

**ORDER GRANTING MOTION TO VACATE ORDER OF DISCHARGE**

I. INTRODUCTION

Dr. Leonard Berlin (“Dr. Berlin”), a creditor and party-in-interest in the above-captioned matter, moved to vacate the Court’s Order of Discharge (ECF No. 18, the “Discharge Order”) pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, arguing that the Discharge Order entered as a result of a clerical mistake, or, alternatively, that there are ample grounds to vacate the Discharge Order under Rule 60(b) due to “mistake, inadvertence, [or] surprise” or for “other reason[s] that justifies relief” (ECF No. 20, the “Motion to Vacate”). The debtor, Arthur B. Greene (the “Debtor”) opposed the Motion to Vacate (ECF No. 24, the “Objection”) arguing that Dr. Berlin’s failure to request an extension of time to file a motion to determine the dischargeability of certain debts was inexcusable and that vacating the Discharge Order “would be gravely inequitable to the Debtor.” Objection, pp. 3–4. The Court heard the parties’ respective arguments at a hearing on June 2, 2020. For the reasons that follow, Dr. Berlin’s Motion to Vacate is GRANTED and the Debtor’s Objection is OVERRULED.

II. BACKGROUND

On February 6, 2020 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code (ECF No. 1). The Court scheduled the initial Section

341 Meeting of Creditors (the “341 Meeting”) for March 11, 2020, with any objections to the Debtor’s discharge or the dischargeability of debt due by May 11, 2020 (ECF No. 2). On February 7, 2020, at the Debtor’s request, the 341 Meeting was continued to March 25, 2020 (ECF No. 5). Due to concerns surrounding the coronavirus pandemic, on March 16, 2020, the Office of the United States Trustee issued a notice (the “UST Notice”) continuing all in-person Chapter 7, 12, and 13 Section 341 Meetings that were scheduled to be held through April 10, 2020. In response to the UST Notice, the Chapter 7 Trustee again continued in advance the Debtor’s Section 341 Meeting, this time to May 8, 2020 (ECF No. 14).

On March 26, 2020, in connection with the UST Notice, the Chief Judge of the United States Bankruptcy Court for the District of Connecticut entered a General Order extending various deadlines associated with Section 341 Meetings. The General Order applied to “Chapter 7, 12 and 13 cases in which the first date set for the § 341 Meeting of creditors was set on a date during the period of March 16, 2020 through April 10, 2020.” Relevant to the issue at hand, the General Order extended certain deadlines to sixty (60) days after the date of the rescheduled 341 Meeting: (1) the Fed. R. Bankr. P. 4004(a) deadline for the filing of objections to the debtor’s discharge under 11 U.S.C. § 727; and (2) the Fed. R. Bankr. P. 4007(c) deadline for filing complaints to determine the dischargeability of certain debts under 11 U.S.C. § 523(c).

The first Section 341 Meeting in this case was held and closed on May 8, 2020. Five days thereafter, on May 13, 2020, the Court entered an Order Discharging the Debtor (ECF No. 18). Dr. Berlin filed this Motion to Vacate on May 26, 2020 (ECF No. 20), arguing that because the first Section 341 Meeting was not held until May 8, 2020, pursuant to the provisions set forth in the General Order, his deadline to object to the Debtor’s discharge under 11 U.S.C. § 727 or to file a motion challenging the dischargeability of any particular debts is July 7, 2020—60 days

from when the first Section 341 Meeting was ultimately held—has not passed, and, thus, the Discharge Order must have entered as result of a clerical mistake. The Debtor’s Objection followed on June 1, 2020 (ECF No. 24). The Court heard the parties’ arguments at a hearing on June 2, 2020, at which time the Court took the matter under advisement.

### III. DISCUSSION

Dr. Berlin argues that a fair reading of the General Order would have the provisions therein apply to all Section 341 Meetings that were continued as a result of the UST Notice, and by extension, apply to the instant case based on the Chapter 7 Trustee’s continuance docketed at ECF No. 14. In his Motion to Vacate, Dr. Berlin posits that “[i]t would be inconsistent with the intent and purpose of the General Order—[namely] to ensure creditors had 60 days to file a complaint under §§ 523 and 727 in cases where the first Section 341 meeting had to be continued due to the COVID-19 pandemic—to allow the Discharge Order to enter just five days after the conclusion of the first Section 341 meeting.” Motion to Vacate, ECF No. 20 at p. 4. On the other hand, the Debtor contends that the “first date set” for the Section 341 Meeting was March 11, 2020, and that the subsequent continuation to March 25 was not a result of the pandemic, but rather due to a scheduling conflict of counsel, and therefore the General Order and the related deadline extensions do not apply to the instant matter.

Section 343 provides that a “debtor shall appear and submit to examination under oath at the meeting of creditors under section 341(a).” 11 U.S.C. § 343. The primary purpose of the Section 341 Meeting is the examination of the debtor, whereat creditors may question the debtor as to issues of dischargeability, estate administration, and the debtor’s financial situation so as to ascertain whether there are grounds for filing a complaint or seeking an exception to discharge. *See In re Moore*, 309 B.R. 725, 726 (Bankr. N.D. Tex. 2002); *see also In re Vilt*, 56 B.R. 723,

724–25 (Bankr. N.D. Ill. 1986) (“[T]he 341 meeting allows the creditors to engage in free discovery of the debtor on issues such as the debtor’s discharge and the dischargeability of debts owed to creditors.”).

Here, Dr. Berlin’s first opportunity to examine the Debtor at a Section 341 Meeting took place on Friday, May 8, 2020. The Debtor’s position is that, even though the Section 341 Meeting was first scheduled for March 11, 2020, the Debtor’s own request for continuance and the subsequent UST Notice and General Order further continuing the initial Meeting due to concerns over a global pandemic, had no effect on the “first date set” of the Section 341 Meeting,<sup>1</sup> and thus, this Court should provide Dr. Berlin (and any other creditor for that matter) with less than one business day after the Section 341 Meeting to object to the Debtor’s discharge or to file motions challenging dischargeability because Monday, May 11, was the proper deadline. The Court declines to support such a notion. Rather, this Court agrees with Dr. Berlin that the relief sought in his Motion to Vacate is warranted and appropriate under both Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, and the inherent equitable powers of this Court under 11 U.S.C. § 105(a).

Federal Rule of Civil Procedure 60(a), made applicable to the instant proceeding by Fed. R. Bankr. P. 9024, provides that a “court may correct a clerical mistake or a mistake arising from oversight or omissions whenever one is found in a judgment, order, or other part of the record.”

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<sup>1</sup> The Debtor argues that, “[n]otwithstanding the continuance to March 25<sup>th</sup> . . . the ‘first date set’ for the meeting in this case **remains March 11, 2020** [and that] [t]he continuance of the meeting has no effect on the ‘first date set.’” ECF No. 24. While a number of courts have held that the 60-day time limit to object to a debtor’s discharge runs from the first date set for the meeting of creditors, regardless of whether the meeting is actually held on that date, courts in this District have stated otherwise. *See In re Dinardo*, 559 B.R. 32, 36–37 (Bankr. D. Conn. 2016) (“[T]he Bankruptcy Rules also use the phrase ‘first date set for the meeting of creditors under § 341(a)’ when a time period is to be measured from the commencement of the meeting. *See, e.g.,* Fed. R. Bankr. P. . . . 4004(a); 4007(c).”); *see also In re Persaud*, 486 B.R. 251, 256 (Bankr. E.D. N.Y. 2013) (“[T]he Bankruptcy Rules consistently use the words ‘first date set for the meeting of creditors under § 341(a)’ when measuring time periods from the commencement of the § 341 meeting, *see* Fed. R. Bankr. P. . . . 4004(a); 4007(c).”).

Additionally, Fed. R. Civ. P. 60(b) provides that a “court may relieve a party or its legal representative from a final judgment, order or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect,” or for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(1), (b)(6). While “clerical error” and “mistake” are not grounds for revoking a discharge as set forth in 11 U.S.C. § 727(d), courts have found that 11 U.S.C. § 105(a)<sup>2</sup> provides a bankruptcy court with adequate statutory authority to revoke a discharge pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024. *See In re Ali*, 219 B.R. 653, 654–55 (Bankr. E.D. N.Y. 1998) (*citing In re Mann*, 197 B.R. 634, 635 (Bankr. W.D. Tenn. 1996)).

Given the unique circumstances present here, this Court finds that the use of its equitable powers to vacate the Debtor’s discharge is necessitated by the ostensible confusion caused by the issuance of the General Order and the UST Notice, the Chapter 7 Trustee’s continuance of the Section 341 Meeting, the Court’s initial deadline for filing objections to dischargeability, and the exigent circumstances created by COVID-19. Dr. Berlin could have reasonably believed the General Order and the extension of deadlines therein was operative based upon the various continuances of the Section 341 Meeting and the truncated timeframe it would have ultimately provided creditors to bring a complaint. The intent of the General Order was to provide to creditors, whose Section 341 Meeting was continued as a result of the UST Notice, the same 60 days to file a complaint under Sections 523 and 727 as they would have had their Section 341 Meetings not been continued. This is the very scenario present here—one in which the equities favor Dr. Berlin.

Any prejudice to the Debtor in vacating the Discharge Order is far outweighed by the prejudice that would occur to Dr. Berlin if he did not have a fair opportunity to present his

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<sup>2</sup> 11 U.S.C. § 105(a) provides that a “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

claims. Further, it would be an injustice if Dr. Berlin lost his right to object to the Debtor's discharge or the dischargeability of debt based on any ostensible confusion resulting from the Court's General Order. Accordingly, Dr. Berlin's Motion to Vacate is hereby GRANTED.

IV. CONCLUSION

The Court having determined that good and sufficient cause exists for granting the relief requested, and under the unique circumstances presented in this case, Dr. Berlin's Motion to Vacate is hereby GRANTED, the Debtor's Objection is hereby OVERRULED, and the Debtor's Discharge Order is hereby VACATED. Pursuant to the Court's General Order, Dr. Berlin's deadline to object to the Debtor's discharge under 11 U.S.C. § 727 and to the dischargeability of debt under 11 U.S.C. § 523(c) is set for July 7, 2020.

**IT IS SO ORDERED** at Hartford, Connecticut this 30th day of June 2020.

*James J. Tancredi*  
United States Bankruptcy Judge  
District of Connecticut