

When is it Due: A Cautionary Tale for Business and Legal Professionals

July 20, 2018

Few take more seriously the importance of being on time than the Courts of the United States of America. When something is due to be done, it must be done by that time, no excuses.

Only in the most exceptional circumstances will Courts veer away from the strict construction of deadlines set forth by the Federal Rules of Civil Procedure, or its various incorporations in the Federal Rules of Bankruptcy Procedure and elsewhere.

The bottom line is that when a Court sets a specific date for something to be done, it must be done by that date and there are no extensions just because that date may be a Saturday, Sunday or legal holiday.

However, if the date by when something must be done requires computation by counting days, and otherwise no specific date has been set, then, and only then does Federal Rule of Bankruptcy Procedure 9006(a)(1) apply, and if the final day so computed is a Saturday or Sunday or federal holiday, the deadline is deemed extended to the next regular business day.

In his very well written decision, Bankruptcy Judge H. Christopher Mott of the Western District of Texas explains all this in the context of a creditor who wished to file non-dischargability actions against a Chapter 7 Debtor. The rules apply broadly in all actions in the Federal Court system and should be considered as well when the State Court rules apply.

In *Smart-Fill Management Group Inc v. Froiland* the Creditor had a certain number of days by which to file its actions. Within the deadline it requested an extension of time twice and was finally ordered to file its complaints by a date certain that did not require it to count days: January 15, which happened to be a federal holiday.

The Creditor's lawyers apparently assumed that since the Courts were closed on January 15 for the federal holiday it could file the very next day, January 16, based on the general idea that dates are extended if the due date is a federal holiday.

In this case, relying on a decision by the Fifth Circuit, and finding no decisions to the contrary elsewhere, the Court read the language of the Rule, compared it to the previous version of the same rule and took note of the advisory committee comments.

Why parties ever wait for the last day is beyond the scope of this note. But that one should be very careful when deadlines are set is a given. The Court granted the Debtor's motion to dismiss and the creditor was out of luck. The Court did not address what harm was done because of the delay of one day.

Please note that this is a general overview of developments in the law, and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding these provisions, or any other aspect of employment law, please contact Michael H. Traison at (312) 860-4230 or mtraison@cullenanddykman.com.

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