

Kontrick Vs. Ryan

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Appeal No. : 02-819

Appellant : Kontrick

Respondent : Ryan

Judgement :

Kontrick v. Ryan - 02-819 (2004)

SYLLABUS

OCTOBER TERM, 2003

KONTRICK V. RYAN

SUPREME COURT OF THE UNITED STATES

KONTRICK v. RYAN

certiorari to the united states court of appeals for the seventh circuit

No. 02-819. Argued November 3, 2003-Decided January 14, 2004

A creditor in Chapter 7 liquidation proceedings has 60 days after the first date set for the meeting of creditors to file a complaint objecting to the debtors discharge.

Fed. Rule Bkrtcy. Proc. 4004(a). The bankruptcy court may extend that period for cause on motion filed before the time has expired. Fed. Rule Bkrtcy. Proc. 4004(b). Reinforcing Rule 4004(b)s restriction on extension of the Rule 4004(a) deadline, Rule 9006(b)(3) allows enlargement of the time for taking action under Rule 4004(a) only to the extent and under the conditions stated in [that rule], *i.e.* , only as permitted by Rule 4004(b).

On April 4, 1997, petitioner Kontrick filed a Chapter 7 bankruptcy petition. After gaining three successive time extensions from the Bankruptcy Court, respondent Ryan, Kontricks creditor, filed a complaint on January 13, 1998, objecting to Kontricks discharge. Ryan alleged that Kontrick had transferred property, within one year of filing his petition, with the intent to defraud creditors, and therefore did not qualify for discharge under 11 U. S. C. 727(a)(2)-(5). Ryan filed an amended complaint on May 6, 1998, with leave of court, but without seeking or gaining a court-approved time extension. The amended complaint alleged with particularity that Kontrick had fraudulently transferred money to his wife, first by removing his own name from the familys once-joint checking account, then by continuing regularly to deposit his salary checks into the account, from which his wife routinely paid family expenses (the family-account claim). Kontricks June 10, 1998, answer to the amended complaint did not raise the untimeliness of the family-account claim; on the merits, the answer admitted the transfers to the family account but denied that Kontrick had violated 727(a)(2)(A). In response to Ryans summary judgment motion, which appended a statement of material facts, Kontrick cross-moved to strike portions of Ryans summary judgment filings, but did not ask the court to strike the amended complaints family-account allegations. On February 25, 2000, the Bankruptcy Court awarded Ryan summary judgment on the family-account claim, concluding that Kontrick was not entitled to discharge because his transfers to the family account were made with intent to defraud at least creditor Ryan. Kontrick then moved for reconsideration. For the first time, Kontrick urged that the court was powerless to adjudicate the family-account claim. The amended complaint containing that claim, Kontrick observed, was untimely under Rules 4004(a) and (b) and 9006(b)(3). Those rules, Kontrick maintained, establish a mandatory, unalterable time limit of the kind Kontrick called jurisdictional. The Bankruptcy Court denied reconsideration and entered

final judgment, holding that Rule 4004's complaint-filing time instructions are not jurisdictional, and that Kontrick had waived the right to assert the untimeliness of the amended complaint by failing squarely to raise the point before the court reached the merits of Ryans objections to discharge. The District Court sustained the denial of discharge, and the Seventh Circuit affirmed. Both courts relied on decisions of sister Circuits holding that the timeliness provisions at issue are not jurisdictional.

Held: A debtor forfeits the right to rely on Rule 4004 if the debtor does not raise the Rules time limitation before the bankruptcy court reaches the merits of the creditors objection to discharge. Pp. 8-15.

(a) Only Congress may determine a lower federal courts subject-matter jurisdiction. U. S. Const., Art. III, 1. Congress did so, as pertinent here, by instructing that objections to discharges are [c]ore proceedings within the bankruptcy courts jurisdiction. 28 U. S. C. 157(b)(2)(J). Congress did not build time constraints into that statutory authorization. Rather, the time constraints applicable to objections to discharge are contained in Bankruptcy Rules prescribed pursuant to 2075. Such rules do not create or withdraw federal jurisdiction. *Owen Equipment & Erection Co. v. Kroger*, [437 U. S. 365](#) , 370. As Bankruptcy Rule 9030 states, the Bankruptcy Rules shall not be construed to extend or limit the jurisdiction of the courts. The filing deadlines prescribed in Rules 4004 and 9006(b)(3) are claim-processing rules that do not delineate what cases bankruptcy courts are competent to adjudicate. Although Kontrick now concedes that those Rules are not properly labeled jurisdictional in the sense of describing a courts subject-matter jurisdiction, he maintains that the Rules have the same import as provisions governing subject-matter jurisdiction. A litigant generally may raise a courts lack of subject-matter jurisdiction at any time in the same civil action. *Mansfield, C. & L. M. R. Co. v. Swan*, [111 U. S. 379](#) , 382. Similarly, Kontrick urges, a debtor may challenge a creditors objection to discharge as untimely under Rules 4004 and 9006(b)(3) at any time in the proceedings, even initially on appeal or certiorari. The equation Kontrick advances overlooks the critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule. Characteristically, a courts subject-matter jurisdiction cannot be

expanded to account for the parties litigation conduct; a claim-processing rule, on the other hand, even if unalterable on a party's application, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point. Pp. 8-12.

(b) No reasonable construction of complaint-processing rules would allow a litigant situated as Kontrick is to defeat a claim, as filed too late, after the party has litigated and lost the case on the merits. The relevant claim-processing rules in this case, Bankruptcy Rules 4004(a) and (b) and 9006(b)(3), include, among their primary purposes, affording the debtor an affirmative defense to a complaint filed outside the Rules 4004(a) and (b) time limits. It is uncontested that Ryan filed his complaint objecting to Kontrick's discharge outside those limits. Kontrick urges that nothing occurring thereafter counts, for the Rules time prescriptions are unalterable, allowing no recourse to equitable exceptions. This case, however, involves no issue of equitable tolling or any other equity-based exception. Neither at the time Ryan filed the amended complaint containing the family-account claim nor anytime thereafter did he assert circumstances-equitable or otherwise-qualifying him for a time extension. The sole question is whether Kontrick forfeited his right to assert the untimeliness of Ryan's amended complaint by failing to raise the issue until after that complaint was adjudicated on the merits. In other words, how long did the affirmative defense Rules 4004(a) and (b) and 9006(b)(3) afforded Kontrick linger in the proceedings? The Seventh Circuit followed the proper path on this key question. It noted that time bars generally must be raised in an answer or responsive pleading. See Fed. Rule Civ. Proc. 8(c) (made applicable to bankruptcy court adversary proceedings by Fed. Rule Bkrcty. Proc. 7008(a)). An answer may be amended to include an inadvertently omitted affirmative defense, and even after the time to amend of course has passed, leave [to amend] shall be freely given when justice so requires. Fed. Rule Civ. Proc. 15(a) (made applicable to adversary proceedings by Fed. Rule Bkrcty. Proc. 7015). Kontrick not only failed to assert the time constraints of Rules 4004(a) and (b) and 9006(b)(3) in a pleading or amended pleading responsive to Ryan's amended complaint. In addition, Kontrick moved to delete certain items from Ryan's summary judgment filings, but, even that far into the litigation, he did not ask the Bankruptcy Court to strike the family-account claim. Ordinarily, a defense is lost if it is not included in the answer or amended answer. See Fed. Rule Bkrcty.

Proc. 7012(b) (Fed. Rules Civ. Proc. 12(b)-(h) apply in adversary proceedings). Rules 12(h)(2) and (3) prolong the life of certain defenses, but time prescriptions are not among them. Even if a defense based on Bankruptcy Rule 4004 could be equated to failure to state a claim upon which relief can be granted, the issue could be raised, at the latest, at the trial on the merits. Fed. Rule Civ. Proc. 12(h)(2). Only lack of subject-matter jurisdiction is preserved post-trial. Fed. Rule Civ. Proc. 12(h)(3). Kontricks resistance to the family-account claim is not of that order. Pp. 12-15.

295 F. 3d 724, affirmed.

Ginsburg, J., delivered the opinion for a unanimous Court.

Kontrick v. Ryan - 02-819 (2004)

OPINION OF THE COURT

KONTRICK V. RYAN

540 U. S. ____ (2004)

SUPREME COURT OF THE UNITED STATES

NO. 02-819

ANDREW J. KONTRICK, PETITIONER *v.* ROBERT A. RYAN

on writ of certiorari to the united states court of appeals for the seventh circuit

[January 14, 2004]

Justice Ginsburg delivered the opinion of the Court.

This case concerns the duration of a right to object to a pleading on the ground that it was filed out of time. Under the Bankruptcy Rules governing Chapter 7 liquidation proceedings, a creditor has 60 days after the first date set for the

meeting of creditors to file a complaint objecting to the debtors discharge. Fed. Rule Bkrcty. Proc. 4004(a). That period may be extended for cause on motion filed before the time has expired. Fed. Rule Bkrcty. Proc. 4004(b). In the matter before us a creditor, in an untimely pleading, objected to the debtors discharge. The debtor, however, did not promptly move to dismiss the creditors plea as impermissibly late. Only after the Bankruptcy Court decided, on the merits, that the discharge should be refused did the debtor, in a motion for reconsideration, urge the untimeliness of the creditors plea.

Bankruptcy Rule 4004s time prescription, the debtor maintains, is jurisdictional, *i.e.* , dispositive whenever raised in the proceedings. Rejecting the debtors jurisdictional characterization, the courts below held that Rule 4004s time prescription could not be invoked to upset an adjudication on the merits. We agree that Rule 4004 is not jurisdictional. Affirming the judgment of the Court of Appeals for the Seventh Circuit, we hold that a debtor forfeits the right to rely on Rule 4004 if the debtor does not raise the Rules time limitation before the bankruptcy court reaches the merits of the creditors objection to discharge.

I

A debtor in a Chapter 7 liquidation case qualifies for an order discharging his debts if he satisfies the conditions stated in 727(a) of the Bankruptcy Code. 11 U. S. C. 727(a).[[Footnote 1](#)] A discharge granted under 727(a) frees the debtor from all debts existing at the commencement of the bankruptcy proceeding other than obligations 523 of the Code excepts from discharge. 727(b).[[Footnote 2](#)]

A debtors discharge may be opposed by the trustee, the United States trustee, or any creditor. 727(c)(1). Adjudication of objections to discharg[e], Congress provided, is a [c]ore proceedin[g] within the jurisdiction of the bankruptcy courts. 28 U. S. C. 157(b)(2)(J). No statute, however, specifies a time limit for filing a complaint objecting to the debtors discharge. Instead, the controlling time prescriptions are contained in the Federal Rules of Bankruptcy Procedure, specifically, Rules 4004(a) and (b) and 9006(b)(3).

In relevant part, Bankruptcy Rule 4004(a) states: [A] complaint objecting to the debtors discharge under 727(a) of the Code shall be filed no later than 60 days after the first date set for the meeting of creditors. Rule 4004(b), governing extensions of the Rule 4004(a) filing deadline, provides: [T]he court may for cause extend the time [Rule 4004(a) allows] to file a complaint objecting to discharge if the motion is filed before the time has expired. Reinforcing Rule 4004(b)s restriction on extension of the Rule 4004(a) deadline, Rule 9006(b)(3) allows enlargement of the time for taking action under Rule 4004(a) only to the extent and under the conditions stated in [that rule], *i.e.* , only as permitted by Rule 4004(b).[

[Footnote 3](#)]

II

On April 4, 1997, petitioner, Dr. Andrew J. Kontrick, filed a Chapter 7 bankruptcy petition. Respondent, Dr. Robert A. Ryan, a major creditor and Kontricks former associate in a cosmetic and plastic surgery practice, opposed Kontricks discharge. After gaining three successive time extensions from the Bankruptcy Court, Ryan filed an original complaint on January 13, 1998, in which he objected to the discharge of any of Kontricks debts. Ryan alleged that Kontrick had transferred property, within one year of filing the bankruptcy petition, with intent to defraud creditors, and therefore did not qualify for a discharge under 11 U. S. C. 727(a)(2)-(5). App. to Pet. for Cert. 40.

Ryan filed an amended complaint on May 6, 1998, with leave of court, *ibid* ., but without seeking or gaining a court-approved time extension. The amended complaint particularized for the first time the debtors violation of 727(a)(2)(A) in this regard: Debtor Kontrick, creditor Ryan alleged, had fraudulently transferred money to Kontricks wife, first by removing Kontricks own name from the familys once-joint checking account, then by continuing regularly to deposit his salary checks into the account, from which his wife routinely paid family expenses (the family-account claim). *Id.*, at 52-53.[[Footnote 4](#)]

Kontrick answered Ryans amended complaint on June 10, 1998. His answer did not raise the untimeliness of [the family-account] claim, Brief for Petitioner 4; on

the merits, he admitted the transfers to the family account but denied violating 727(a)(2)(A). In March 1999, after the parties engaged in acrimonious discovery, Ryan moved for summary judgment. As Local Bankruptcy Rule 402(M) (Bkrctcy. Ct. ND Ill. 1994) instructs, Ryan appended to his motion a statement of material facts as to which [he] contend[ed] there [was] no genuine issue. Kontrick cross-moved, in August 1999, to strike portions of Ryans summary judgment filings.

Kontricks motion to strike sought deletion of new allegations, *i.e.* , allegations making their first appearance in the litigation in Ryans summary judgment submissions-Ryans statement of facts pursuant to Local Rule 402(M), accompanying exhibits, and corresponding portions of the summary judgment motion and memorandum. Motion to Strike and Response to [Ryans] Statement of Facts Under Local Rule 402 N in No. 97 B 10353 (Bkrctcy. Ct. ND Ill.), pp. 2, 5, 26. Although Kontrick noted that the family-account allegations were stated only in the amended complaint and were absent from the original complaint, *id.* , at 3-4, he did not ask the court to strike those allegations. His response, instead, and in line with Local Rule 402(N), addressed the substance of the family-account claim. He admitted taking his name off the account, but observed that he did so over four years before bankruptcy. *Id.* , at 13. He also acknowledged that, thereafter, he deposited his paycheck into the account the same way he had always done. *Ibid* .

On February 25, 2000, the Bankruptcy Court ruled on the cross-motions, granting in part Kontricks motion to strike, awarding summary judgment to Ryan on the family-account claim, and dismissing the remaining claims. The court used the amended complaint as its baseline; it struck as untimely allegations not included in [that] complaint. App. to Pet. for Cert. 47; see *id.* , at 48-50. Homing in on Kontricks continuing deposits into the account from which he had removed his name, the court concluded that Kontrick had transferred property with intent to hinder, delay or defraud at least [creditor] Ryan. *Id.* , at 55. That course of conduct, coupled with Kontricks testimony,[[Footnote 5](#)] the court concluded, sufficed to prove a violation of 727(a)(2) (described *supra* , at 2, n. 1). App. to Pet. for Cert. 55, 64. Accordingly, the court held, Kontrick was not entitled to a

discharge of his debts.

Kontrick moved for reconsideration. He argued that the Bankruptcy Court lacked jurisdiction over the sole claim on which the court had granted summary judgment, the family-account claim. See *id.*, at 71. The court was powerless to adjudicate the claim, Kontrick insisted, because the amended complaint containing the claim was untimely. Governing Rules 4004(a) and (b) and 9006(b)(3), see *supra*, at 3, Kontrick maintained, establish a mandatory, unalterable time limit of the kind he then called jurisdictional. App. to Pet. for Cert. 71. It was the first time Kontrick appended a jurisdictional label to any pleading he filed relating to the family-account claim.

The Bankruptcy Court denied the reconsideration motion on June 8, 2000, and entered final judgment five days later. The court held that Rule 4004's complaint-filing time instructions are not jurisdictional, and that Kontrick had waived the right to assert the untimeliness of the amended complaint by failing squarely to raise the point before the court reached the merits of Ryans objections to discharge.

The District Court sustained the Bankruptcy Courts decision denying Kontricks discharge. App. to Pet. for Cert. 25-38. The Court of Appeals for the Seventh Circuit, in turn, affirmed the judgment of the District Court. *In re Kontrick*, 295 F. 3d 724 (CA7 2002). Both courts relied on decisions of sister Circuits holding that the timeliness provisions at issue here are not jurisdictional. *Id.*, at 733 (citing *In re Benedict*, 90 F. 3d 50, 54-55 (CA2 1996), and *Farouki v. Emirates Bank Intl Ltd.*, 14 F. 3d 244, 248 (CA4 1994)); accord, App. to Pet. for Cert. 31-32. Both courts also agreed with the Bankruptcy Court that Kontrick had waived the right to challenge Ryans amended complaint as impermissibly late.

The Seventh Circuit found in Kontricks papers opposing summary judgment nothing that placed in issue the timeliness of allegations in the amended complaint. 295 F. 3d, at 735. Instead, according to the Court of Appeals, Kontrick apparently accepted creditor Ryans amended complaint as properly filed; Kontrick used that complaint, not the original complaint, as a baseline to object to new allegations Ryan made for the first time in his statement of facts supporting

summary judgment. *Ibid.* The Seventh Circuit further commented that [t]he policy concerns of expeditious administration of bankruptcy matters and the finality of the bankruptcy courts decision hardly are fostered by requiring the bankruptcy court to consider the timeliness of an issue that it already has adjudicated. *Ibid.*

We granted certiorari in view of the division of opinion on whether Rule 4004 is jurisdictional, [[Footnote 6](#)] 538 U. S. 998 (2003), and we now affirm the judgment of the Seventh Circuit.[[Footnote 7](#)]

III

Only Congress may determine a lower federal courts subject-matter jurisdiction. U. S. Const., Art. III, 1. Congress did so with respect to bankruptcy courts in Title 28 (Judiciary and Judicial Procedure); in cataloging core bankruptcy proceedings, Congress authorized bankruptcy courts to adjudicate, *inter alia*, objections to discharge. See 28 U. S. C. 157(b)(1) and (b)(2)(I) and (J). Certain statutory provisions governing bankruptcy courts contain built-in time constraints. For example, 157(c)(1) addresses *de novo* district court review of bankruptcy court findings and conclusions in noncore proceedings; that provision confines review to matters to which any party has timely and specifically objected.[[Footnote 8](#)] The provision conferring jurisdiction over objections to discharge, however, contains no timeliness condition. Section 157(b)(2)(J) instructs only that objections to discharges are [c]ore proceedings within the jurisdiction of the bankruptcy courts.

The time constraints applicable to objections to discharge are contained in Bankruptcy Rules prescribed by this Court for the practice and procedure in cases under title 11. 28 U. S. C. 2075; cf. 2072 (similarly providing for Court-prescribed rules of practice and procedure for cases in the federal district courts and courts of appeals). [I]t is axiomatic that such rules do not create or withdraw federal jurisdiction. *Owen Equipment & Erection Co. v. Kroger*, [437 U. S. 365](#), 370 (1978). As Bankruptcy Rule 9030 states, the Bankruptcy Rules shall not be construed to extend or limit the jurisdiction of the courts. Rule 9030s forerunner-its counterpart in the Federal Rules of Civil Procedure, Rule 82-similarly states: These rules shall not be construed to extend or limit the jurisdiction of the United

States district courts See 12 C. Wright, A. Miller, & R. Marcus, *Federal Practice and Procedure* 3141, pp. 484-485 (2d ed. 1997) (Rule 82 states [the] important principle that [t]he rules merely prescribe the method by which the jurisdiction granted the courts by Congress is to be exercised.); *Schacht v. United States*, [398 U. S. 58](#) , 64 (1970) (The procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional). In short, the filing deadlines prescribed in Bankruptcy Rules 4004 and 9006(b)(3) are claim-processing rules that do not delineate what cases bankruptcy courts are competent to adjudicate.

This much is common ground. Kontrick does not contend in this Court that the timing rules in question affect the subject-matter jurisdiction of the bankruptcy courts. See Tr. of Oral Arg. 9 (acknowledging that [t]his case does not deal with subject matter jurisdiction); *id.* , at 9-10 (explaining that counsel for Kontrick used the word jurisdiction as a shorthand to indicate a nonextendable time limit).

Courts, including this Court, it is true, have been less than meticulous in this regard; they have more than occasionally used the term jurisdictional to describe emphatic time prescriptions in rules of court. Jurisdiction, the Court has aptly observed, is a word of many, too many, meanings. *Steel Co. v. Citizens for Better Environment*, [523 U. S. 83](#) , 90 (1998) (internal quotation marks omitted). For example, we have described Federal Rule of Civil Procedure 6(b), on time enlargement, and correspondingly, Federal Rule of Criminal Procedure 45(b), on extending time, as mandatory and jurisdictional. *United States v. Robinson*, [361 U. S. 220](#) , 228-229 (1960). But see *Carlisle v. United States*, [517 U. S. 416](#) , 419-433 (1996) (holding that, over the prosecutors objection, a court may not grant a postverdict motion for a judgment of acquittal filed one day outside the time limit allowed by Fed. Rule Crim. Proc. 29(c); this Court did not characterize the Rule as jurisdictional); *Taylor v. Freeland & Kronz*, [503 U. S. 638](#) , 642-646 (1992) (similar ruling regarding Fed. Rule Bkrctcy. Proc. 4003(b)). [C]lassify[ing] time prescriptions, even rigid ones, under the heading subject matter jurisdiction can be confounding. *Carlisle* , 517 U. S., at 434 (Ginsburg, J., concurring). Clarity would be facilitated if courts and litigants used the label jurisdictional not for claim-

processing rules, but only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a courts adjudicatory authority.

Though Kontrick concedes that Rules 4004 and 9006(b)(3) are not properly labeled jurisdictional in the sense of describing a courts subject-matter jurisdiction, he maintains that the Rules have the same import as provisions governing subject-matter jurisdiction. A litigant generally may raise a courts lack of subject-matter jurisdiction at any time in the same civil action, even initially at the highest appellate instance. *Mansfield, C. & L. M. R. Co. v. Swan*, [111 U. S. 379](#) , 382 (1884) (challenge to a federal courts subject-matter jurisdiction may be made at any stage of the proceedings, and the court should raise the question *sua sponte*); *Capron v. Van Noorden*, 2 Cranch 126, 127 (1804) (judgment loser successfully raised lack of diversity jurisdiction for the first time before the Supreme Court); Fed. Rule Civ. Proc. 12(h)(3) (Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.).[[Footnote 9](#)] Just so, Kontrick urges, a debtor may challenge a creditors objection to discharge as untimely under Rules 4004 and 9006(b)(3) any time in the proceedings, even initially on appeal or certiorari. Tr. of Oral Arg. 10-11 (a debtor may object after final judgment or on appeal so long as its within the same proceeding); Brief for Petitioner 25, and n. 7 (same); Reply Brief 16, and n. 7 (citing lower court decisions supporting Kontricks argument on the longevity of time limits stated in Rules 4004 and 9006(b)(3), e.g. , *In re Poskanzer* , 146 B. R. 125, 131 (DNJ 1992); *In re Rinde* , 276 B. R. 330, 333 (Bkrtcy. Ct. RI 2002); *In re Barley* , 130 B. R. 66, 69 (Bkrtcy. Ct. ND Ind. 1991); *In re Kirsch* , 65 B. R. 297, 300, 302 (Bkrtcy. Ct. ND Ill. 1986)).

The equation Kontrick advances overlooks a critical difference between a rule governing subject-matter jurisdiction and an inflexible claim-processing rule. Characteristically, a courts subject-matter jurisdiction cannot be expanded to account for the parties litigation conduct; a claim-processing rule, on the other hand, even if unalterable on a partys application, can nonetheless be forfeited if the party asserting the rule waits too long to raise the point.

IV

We turn back now to the relevant claim-processing rules in this case. Bankruptcy Rules 4004(a) and (b) and 9006(b)(3), governing proceedings over which bankruptcy courts have subject-matter jurisdiction,[[Footnote 10](#)] serve three primary purposes. First, they inform the pleader, *i.e.* , the objecting creditor, of the time he has to file a complaint. Second, they instruct the court on the limits of its discretion to grant motions for complaint-filing-time enlargements. Third, they afford the debtor an affirmative defense to a complaint filed outside the Rules 4004(a) and (b) limits. This case involves the third office of the Rules.

It is uncontested that creditor Ryan filed his complaint objecting to debtor Kontricks discharge outside the Rules time limits. Kontrick urges that nothing occurring thereafter counts, for the Rules time prescriptions are unalterable, allowing no recourse to equitable exceptions. Brief for Petitioner 13, n. 4; see *id.* , at 8, 16-18. This case, however, involves no issue of equitable tolling or any other equity-based exception. Neither at the time creditor Ryan filed the amended complaint containing the family-account claim nor anytime thereafter did he assert circumstances-equitable or otherwise-qualifying him for a time extension. Whether the Rules, despite their strict limitations, could be softened on equitable grounds [[Footnote 11](#)] is therefore a question we do not reach.[[Footnote 12](#)] See Brief for United States as *Amicus Curiae* 16 ([M]uch of [Kontricks] argument is actually directed to an issue that is not presented in this case, *i.e.* , whether the timing rules here in question are alterable by recourse to equitable exceptions imported from outside the rules.) (quoting Brief for Petitioner 13); Tr. of Oral Arg. 40 (Whether [the bankruptcy court] would have had discretion to allow a late complaint . . . isnt before the Court, because [Ryan has not] claimed that [in this case] there is any equitable groun[d] for enlarging or extending the deadline, so that question isnt presented.).

We can assume, *arguendo* , that had Kontrick timely asserted the untimeliness of Ryans amended complaint, Kontrick would have prevailed in the litigation. The question, in that event, would have been whether the time restrictions in th[e] Rules are in such emphatic form as to preclude equitable exceptions. Brief for

United States as *Amicus Curiae* 16 (citation omitted). See, e.g. , *Carlisle* , 517 U. S., at 419-433 (upholding timely challenge to one-day-late filing under Fed. Rule Crim. Proc. 29(c)); *Taylor* , 503 U. S., at 642-646 (similar ruling regarding Fed. Rule Bkrtcy. Proc. 4003(b)); *Robinson*, 361 U. S., at 222-230 (similar ruling regarding Fed. Rule Crim. Proc. 45(b)). Here, however, the sole question is whether Kontrick forfeited his right to assert the untimeliness of Ryans amended complaint by failing to raise the issue until after that complaint was adjudicated on the merits.[[Footnote 13](#)] In other words, how long did the affirmative defense Rules 4004(a) and (b) and 9006(b)(3) afforded Kontrick linger in the proceedings?

The Court of Appeals, we agree, followed the proper path on this key question. See 295 F. 3d, at 734-735. Time bars, that court noted, generally must be raised in an answer or responsive pleading. See Fed. Rule Civ. Proc. 8(c) (made applicable to adversary proceedings in bankruptcy courts by Fed. Rule Bkrtcy. Proc. 7008(a)).[[Footnote 14](#)] An answer may be amended to include an inadvertently omitted affirmative defense, and even after the time to amend of course has passed, leave [to amend] shall be freely given when justice so requires. Fed. Rule Civ. Proc. 15(a); see Fed. Rule Bkrtcy. Proc. 7015 (Rule 15 F.R.Civ.P. applies in adversary proceedings.).

Kontrick not only failed to assert the time constraints of Rules 4004(a) and (b) and 9006(b)(3) in a pleading or amended pleading responsive to Ryans amended complaint. As earlier recounted, see *supra* , at 4-5, Kontrick moved to delete certain items from Ryans summary judgment filings, but, even that far into the litigation, he did not ask the Bankruptcy Court to strike the family- account claim.

Ordinarily, under the Bankruptcy Rules as under the Civil Rules, a defense is lost if it is not included in the answer or amended answer. See Fed. Rule Bkrtcy. Proc. 7012(b) (Rule 12(b)-(h) F.R.Civ.P. applies in adversary proceedings.); 5A C. Wright & A. Miller, *Federal Practice and Procedure* 1347, p. 184 (2d ed. 1990) (A defense or objection that is not raised by motion or in the responsive pleading is waived unless it is protected by Rules 12(h)(2) or 12(h)(3) or by the successful invocation of the liberal amendment policy of Rule 15.). Rules 12(h)(2) and (3) prolong the life of certain defenses, but time prescriptions are not among those

provisions. Even if a defense based on Bankruptcy Rule 4004 could be equated to failure to state a claim upon which relief can be granted, the issue could be raised, at the latest, at the trial on the merits. Fed. Rule Civ. Proc. 12(h)(2). Only lack of subject-matter jurisdiction is preserved post-trial. Fed. Rule Civ. Proc. 12(h)(3). And, as we earlier explained, see *supra* , at 8-12, Kontricks resistance to the family-account claim is not of that order. No reasonable construction of complaint-processing rules, in sum, would allow a litigant situated as Kontrick is to defeat a claim, as filed too late, after the party has litigated and lost the case on the merits.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Seventh Circuit is

Affirmed.

[Footnote 1](#)

Under 727(a), the court may not grant a discharge of any debts if the debtor, *inter alia* : (1) is not an individual; (2) has, with intent to defraud a creditor, concealed, transferred, or destroyed property of the estate (A) in the year preceding bankruptcy or (B) during the bankruptcy case; (3) has destroyed books or records; (4) has knowingly (A) given a false oath or account, (B) presented or used a false claim, (C) attempted to obtain money by acting or forbearing to act, or (D) withheld documents relating to the debtors property or financial affairs; or (5) has failed to explain a loss or deficiency of assets. 11 U. S. C. 727(a)(1)-(5).

[Footnote 2](#)

Section 523 categorizes debts that are nondischargeable. See , e.g. , 11 U. S. C. 523(a)(1) (certain debts for a tax or a customs duty); 523(a)(2)(A) (certain debts for money obtained by false pretenses, a false representation, or actual fraud); 523(a)(5) (certain debts to a spouse, former spouse, or child of the debtor for support of such spouse or child); 523(a)(6) (debts for willful and malicious injury by the debtor).

[Footnote 3](#)

Under Bankruptcy Rule 4007(c), essentially the same time prescriptions apply to complaints targeting the discharge of a particular debt pursuant to 11 U. S. C. 523(c). See *supra* , at 2, n. 2. Rule 4007(c) tracks Rules 4004(a) and (b), and Rule 9006(b)(3) lists Rule 4007(c) as well as Rule 4004(a) among time prescriptions bankruptcy courts may enlarge only to the extent and under the conditions stated [in the rules themselves]. Because of the practical identity of the time prescriptions for objections to the discharge of any debts under 727(a) and for objections to the discharge of particular debts under 523(c), courts have considered decisions construing Rule 4007(c) in determining whether the time limits delineated in Rules 4004(a) and (b) may be forfeited. See, *e.g.* , *In re Kontrick* , 295 F. 3d 724, 730, n. 3 (CA7 2002) (citing *In re Santos* , 112 B. R. 1001, 1004, n. 2 (BAP CA9 1990)).

[Footnote 4](#)

Although Kontrick took his name off the family bank account some four years prior to his bankruptcy petition, his salary check deposits continued into the one-year period preceding bankruptcy specified in 11 U. S. C. 727(a)(2)(A) (described *supra* , at 2, n. 1). See App. to Pet. for Cert. 33, 52-53.

[Footnote 5](#)

In a pre-bankruptcy deposition, Kontrick admitted he transferred the once-joint bank account to his wife to prevent his creditors from attaching the funds. See App. to Pet. for Cert. 53; 295 F. 3d, at 727-728.

[Footnote 6](#)

Compare, *e.g.* , *In re Coggin* , 30 F. 3d 1443, 1450-1451 (CA11 1994) (referring to Rule 4004(b) as a jurisdictional requirement and a jurisdictional bar), with, *e.g.* , *In re Benedict* , 90 F. 3d 50, 54 (CA2 1996) (time period imposed by Rule 4007(c) is not jurisdictional).

[Footnote 7](#)

On brief and at oral argument, counsel for Kontrick suggested that, by noting that the family-account claim was not stated in the original complaint, Kontrick had implicitly invited dismissal of the claim. See Tr. of Oral Arg. 5; Brief for Petitioner 5

(Kontrick . . . argued that in opposing Ryans many other allegations as untimely, he had also sufficiently raised the untimeliness of the family account claim.). Kontricks notation that the family-account claim was absent from the original complaint, the courts below agreed, fell short of an argument that the claim was untimely. 295 F. 3d, at 735; App. to Pet. for Cert. 72. We have no cause to disturb that determination. In any event, we train our attention on the question Kontrick here presented: [W]hether the deadline set by Rule 4004 is mandatory and jurisdictional and thus cannot be waived. Brief for Petitioner i. See also Pet. for Cert. i. We note, too, that the question whether the family-account claim could properly relate back to the original complaint was neither raised in the Seventh Circuit, 295 F. 3d, at 729, n. 2, nor aired in this Court, see Tr. of Oral Arg. 33.

[Footnote 8](#)

Provisions of a similar order, with built-in time constraints, include 28 U. S. C. 2401(b) (tort claim against United States shall be forever barred unless presented to the appropriate Federal agency within two years after [the] claim accrues or civil action is begun within six months after . . . notice of final denial of the claim by the agency to which it was presented); and 2107(a) (Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.).

[Footnote 9](#)

Even subject-matter jurisdiction, however, may not be attacked collaterally. *Des Moines Nav. & R. Co. v. Iowa Homestead Co.*, [123 U. S. 552](#) (1887); see Restatement (Second) of Judgments 12 (1982).

[Footnote 10](#)

Like Federal Rule of Criminal Procedure 45(b) and Federal Rule of Appellate Procedure 26(b), Bankruptcy Rule 9006(b) is modeled on Federal Rule of Civil Procedure 6(b). See Advisory Committees Note accompanying Rule 9006 (*Subdivision (b)* is patterned after Rule 6(b) F.R.Civ.P. and Rule 26(b) F.R.App.P. (emphasis in original)).

[Footnote 11](#)

Lower courts have divided on the question whether Bankruptcy Rules 4004 and 4007(c) allow equitable exceptions. Compare, e.g. , 295 F. 3d, at 733 (Rules 4004 and 4007(c) are subject to equitable defenses); *In re Benedict* , 90 F. 3d, at 54 (same conclusion regarding Rule 4007(c)); *Farouki v. Emirates Bank Intl, Ltd.* , 14 F. 3d 244, 248 (CA4 1994) (same conclusion regarding Rule 4004), with, e.g. , *In re Alton* , 837 F. 2d 457, 459 (CA11 1988) (Rule 4007(c) confers no discretion to grant an untimely motion to extend the time to object, even if the creditor lacked notice of the bar date); *Neely v. Murchisen* , 815 F. 2d 345, 346-347 (CA5 1987) (same).

[Footnote 12](#)

Nor should anything in this opinion be read to suggest that a debtor and creditor may stipulate to the assertion of time-barred claims when such an accommodation would operate to the detriment of other creditors. See, e.g. , *In re Dollar* , 257 B. R. 364, 366 (Bkrcty. Ct. SD Ga. 2001) (Although the defendant debtor would significantly benefit by the allowance of the amended complaint [reflecting the parties pre-trial agreement to substitute an untimely 523(a)(6) cause of action for a timely 727(a)(2) claim,] the defendants other creditors would be significantly harmed.).

[Footnote 13](#)

As the Government notes, [t]he issue in this case is more accurately described as one of forfeiture rather than waiver. Brief for United States as *Amicus Curiae* 7, n. 5. Although jurists often use the words interchangeably, forfeiture is the failure to make the timely assertion of a right[;] waiver is the intentional relinquishment or abandonment of a known right. *United States v. Olano* , [507 U. S. 725](#) , 733 (1993) (quoting *Johnson v. Zerbst* , [304 U. S. 458](#) , 464 (1938)). Brief for United States as *Amicus Curiae* 7, n. 5 (some internal quotation marks omitted).

[Footnote 14](#)

In fuller detail, Bankruptcy Rule 4004(d) provides that [a] proceeding commenced by a complaint objecting to discharge is governed by Part VII of these rules. Part

VII includes Bankruptcy Rule 7008(a), which states that Rule 8 F.R.Civ.P. applies in adversary proceedings.

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