

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Case No. 9:08-bk-16204-FMD
Chapter 7

LAWRENCE N. PETRICCA, SR.,

Debtor.

**ORDER DENYING FREDERICK HUTCHINGS'
MOTION TO STRIKE THE APPEAL FILED BY
ARA ERESIAN, JR., DATED JULY 6, 2012**

THIS CASE came on for consideration, without a hearing, of *Frederick Hutchings' Motion to Strike the Appeal Filed by Ara Eresian, Jr., Dated July 6, 2012* (Doc. No. 368) (the "Motion to Strike"). The Court has reviewed the Motion to Strike and the record in this case. On May 17, 2012, the Court entered its *Order Imposing Sanctions and Prohibiting Ara Eresian, Jr., from Filing Further Pleadings in this Case* (Doc. No. 342) (the "Injunction Order"). Mr. Eresian timely filed a motion to alter or amend the Injunction Order pursuant to Fed. R. Bankr. P. 7052 (Doc. No. 344). By order entered on June 22, 2012, the Court denied this motion. (Doc. No. 353.) On July 5, 2012, Mr. Eresian timely filed a Notice of Appeal, appealing both the Injunction Order and the order denying his Rule 7052 motion to alter or amend. (Doc. No. 358.) Mr. Eresian did not accompany the Notice of Appeal with the prescribed filing fee as required by Fed. R. Bankr. P. 8001(a).

Because the filing fee did not accompany the Notice of Appeal, on July 11, 2012, the Court entered a Conditional Order of Dismissal (Doc. No. 359) (the "Dismissal Order"). The Dismissal Order directed Mr. Eresian to pay the required filing fee within 14 days of the entry of the Order, or the appeal would be taken as dismissed without further order of the Court. The 14-day period for paying the filing fee expired on July 25, 2012. On July 26, 2012, the Clerk of Court received the filing fee. On August 6, 2012, Mr. Hutchings filed the Motion to Strike, seeking an order striking the Notice of Appeal on two grounds: (1) because the filing fee was not timely paid; and (2) because the Injunction Order barred Mr. Eresian from filing any further pleadings in this case without having received

prior leave of Court.¹ The Court will address each argument in turn.

First, although Fed. R. Bank. P. 8001(a) requires that a notice of appeal be accompanied by the prescribed fee, the Rule specifically states that "[a]n appellant's failure to take any step other than timely filing a notice of the appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal." The untimely payment of the fee does not vitiate the validity of the notice of appeal.²

Second, the Court is satisfied that the Injunction Order is reviewable on appeal without Mr. Eresian's having first obtained leave of this Court to file the Notice of Appeal. Courts routinely review orders enjoining a party from filing further pleadings.³

Accordingly, for the foregoing reasons, it is

ORDERED that the Motion to Strike is **DENIED**.

DONE and **ORDERED** in Chambers at Tampa, Florida, on August 16, 2012.

/s/
Caryl E. Delano
United States Bankruptcy Judge

¹ The Court notes that the Debtor also filed a Motion to Dismiss the Appeal filed by Ara Eresian, Jr., due to the Mr. Eresian's failure to pay the filing fee. (Doc. No. 367.) The Debtor's motion was denied. (Doc. No. 371.)

² See *Parissi v. Telechron, Inc.*, 349 U.S. 46, 75 S. Ct. 577, 99 L. Ed. 867 (1955); *Lowe's of Virginia, Inc. v. Thomas*, 60 B.R. 418, 420 (W.D. Va. 1986); *In re Winner Corp.*, 632 F.2d 658, 660 (6th Cir. 1980).

³ "See, e.g. *Kaempfer v. Brown*, 872 F.2d 496, 496 (D.C.Cir.1989); *Richardson v. District of Columbia*, 2008 WL 2396186, at *1 (D.C. Cir. February 13, 2008) (injunction vacated because district court had not made "substantive findings as to the frivolous ... nature of the litigant's actions"); *Dua v. United States*, 1996 WL 310158, at *1 (D.C. Cir. May 24, 1996) (injunction vacated because district court failed to give filer chance to oppose motion); *Pryor v. Barry*, 1996 WL 393472, at *1 (D.C. Cir. June 21, 1996) (injunction vacated because district court failed to give filer chance to oppose motion and because it was not supported by substantive findings)." *Rodriguez v. Shulman*, 844 F. Supp. 2d 15 (D.C. Cir. 2012).