

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re: Case No. 8:11-bk-01927-CED
Chapter 7

Frank M. Mongelluzzi,

Debtor.

**ORDER DEEMING NOTICE OF
APPEAL TIMELY FILED (Doc. No. 1636)**

THIS CASE came on for consideration without a hearing on the Court's own motion to consider whether the Notice of Appeal filed by Frank Mongelluzzi and Anne Mongelluzzi (Doc. No. 1636) (the "Notice of Appeal") of the Court's *Order Granting Trustees' Verified Motion to Approve Compromise of Controversy with MDT Personnel, LLC, MDT Personnel Contracts, LLC, MDT Staffing, LLC, Disaster Recovery Support, LLC, Michael D. Traina, Labor Ready Holdings, Inc. and Trueblue, Inc. and Sales of Estates' Claims against MDT Personnel, LLC (Doc. 1585)* (the "Compromise Order") (Doc. No. 1611) was timely filed.¹

The record reflects that the Compromise Order was entered on May 22, 2014. Accordingly, the deadline for filing a notice of appeal from the Compromise Order was June 5, 2014. On June 5, 2014, Mr. Mongelluzzi timely filed a motion for extension of time to file a notice of appeal. (Doc. No. 1623.)² The motion for extension of time was granted, and the time for filing a notice of appeal

¹ The Court has the authority to determine on its own motion whether an appeal has been timely filed. M.D. Fla. General Order No. 96-118-MISC-T (General Order Establishing Protocol for Processing Untimely Bankruptcy Appeals) ("[w]henver an appellant files in the bankruptcy court a notice of appeal that is untimely on its face pursuant to the time provisions of F.R.B.P. 8002(a) or (b), the presiding bankruptcy judge may enter an order dismissing the appeal for untimeliness.").

² The Court deems Mr. Mongelluzzi's request for an extension of time to have been filed on behalf of both him and Mrs. Mongelluzzi.

was extended to June 26, 2014. (Doc. No. 1626.) On June 25, 2014, at 10:33 p.m., the Clerk's Office received the Notice of Appeal by facsimile transmission, a copy of which is attached as Exhibit "A." Thereafter, the original Notice of Appeal was received and docketed by the Court on June 27, 2014 (Doc. No. 1636).

Although Local Rule 5001-2 permits after-hours filing by facsimile transmission, the rule requires that the original document be received by the Court by 12:00 p.m. (noon) on the following business day. In this case, although the Notice of Appeal was received by facsimile prior to 12:00 a.m. (midnight) on June 25, 2014, the original Notice of Appeal was not received by the Court until June 27, 2014, two business days later.

Despite the technical non-compliance with Local Rule 5001-2, the Court finds that the underlying purpose of the rule was satisfied by the Court's receipt of the original Notice of Appeal on the first business day following the June 26, 2014 deadline for filing the Notice of Appeal. If the Mongelluzzis had faxed the Notice of Appeal to the Court on June 26, 2014—the actual deadline for filing the appeal—then the Court's receipt of the original Notice of Appeal on June 27, 2014, would have rendered June 26, 2014 as the effective filing date. Thus, notwithstanding the technical non-compliance with Local Rule 5001-2(b)(4), the Court deems the Mongelluzzis' appeal to be timely filed. Accordingly, it is

ORDERED:

1. The Notice of Appeal (Doc. No. 1636) is deemed timely filed.

2. The Clerk's office shall transmit the record on appeal, including this Order, to the District Court.

Dated: August 5, 2014.

/s/
Caryl E. Delano
United States Bankruptcy Judge

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

APPEAL COVER SHEET

Appellant	Appellee
FRANK M MONGELLUZZI ANNE MONGELLUZZI	FRANK M MONGELLUZZI
Bankruptcy Case No. <u>8:11-bk-01927-CED</u>	Adversary Case No. _____
Attorney: (Name, Address and Telephone Number)	Attorney: (Name, Address and Telephone Number)
Debtor Pro Se 1978 Lynnwood Ct Dunedin FL 34698 701-651-6013	Robert F Elgidely, Esquire 200 East Broward Blvd Fort Lauderdale, FL 33301 954-453-8022

NATURE OF PROCEEDING

Check appropriate item

☒ Appeal pursuant to 28 USC §158

Notice of Appeal filed: _____

June 26, 2014

Date of Order Appealed: _____

May 22, 2014

Title of Order Appealed: _____

Order Granting Motion to Approve Compromise of Controversy after Negative Notice

Debtor's County of Residence: _____

Pinellas

☐ Motion to Withdraw Reference

Filed: _____

By: _____

☐ Interlocutory Appeal


Title of Interlocutory Order or Decree: _____

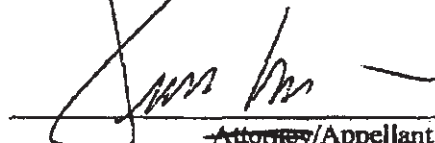
Date of Order or Decree: _____

Brief Description of Matter Appealed: _____

☐ Motion for Leave to Appeal

Date Filed: _____

☐ Other _____☒ Designation in AppealHave arrangements been made with a Court Reporter for Transcript? ☐ Yes ☒ NoIf not, do you intend to do so? ☐ Yes ☒ No If ordered, on what date? _____

 ANNE Mongelluzzi


 Attorney/Appellant
 Frank Mongelluzzi

 NOT FILED IN
 1389-2014 WITH
 SOCIAL PROCEEDINGS

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

In re:

FRANK MICHAEL MONGELLUZZI

Case No.: 8:11-bk-01927-CED

Debtor.

_____ /

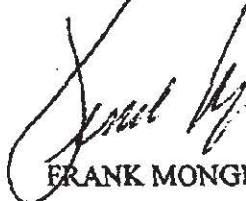
NOTICE OF APPEAL

Notice is hereby given that pro se debtor, FRANK MONGELLUZZI and his spouse ANNE MONGELLUZZI, in the above named case, hereby appeal to the United States District Court for the Middle District of Florida from the Bankruptcy Courts's Order Granting Motion to Approve Compromise of Controversy after Negative Notice (Docs. 1611), entered in this action on May 22, 2014, (a copy of which is attached).

The names of all parties to the orders, appealed from ant the names, addresses, telephone numbers of their respective attorneys are as provided in the attached service list.

Dated: June 26, 2014

Respectively submitted,



FRANK MONGELLUZZI

Debtor Pro Se



ANNE MONGELLUZZI

1978 Lynnwood Ct
Dunedin FL 34698
701-651-6013