


ORDERED.

Dated: October 05, 2015


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

JOHN T. CARTER,

Debtor.

THEY MIGHT BE, INC.,

Plaintiff,

v.

JOHN T. CARTER,

Defendant.

Chapter 7

Case No.: 6:14-bk-07895-CCJ

Adv. Pro. No. 6:15-ap-00018-CCJ

ORDER GRANTING MOTION TO RE-OPEN ADVERSARIAL CASE

This case came before the Court on September 2, 2015, for consideration of the Motion to Re-Open Adversarial Case and Incorporated Memorandum of Law¹ (Doc. No. 9; the “Motion”) filed by They Might Be, Inc. (“Plaintiff”). By the Motion, Plaintiff seeks to re-open

¹ Doc. No. 9.

the Adversary Case, arguing that its failure to timely file the First Amended Adversarial Complaint² (the “Amended Complaint”), which was the result of an administrative calendaring error, constituted excusable neglect. For the reasons set forth below, the Motion is granted.

Background

The Debtor filed his Chapter 7 case on July 10, 2014. The first date set for the meeting of creditors was August 20, 2014. Under Federal Rule of Bankruptcy Procedure 4007(c), the deadline for a creditor to file a dischargeability action or to object to the debtor’s discharge was, therefore, October 20, 2014.

On October 17, 2014, Plaintiff filed—in the main case, rather than as a separate adversary proceeding—a “Petition to Exempt Debt from Discharge/Adversarial Complaint” (the “Main Case Complaint”).³ Because the Main Case Complaint was not properly filed as a separate adversary proceeding, the Clerk’s Office issued a deficiency notice, directing Plaintiff to re-file the document in the correct case and warning that the Court would take no further action on the misfiled document.⁴ The Plaintiff did not take any action on the notice for over three months. The Court therefore did not act on the Main Case Complaint, the Debtor received a discharge, and the Court closed the case.

In February, 2015, the Plaintiff filed a motion to reopen the case to pursue the adversary proceeding. Because the Plaintiff timely, albeit incorrectly, filed the Main Case Complaint, and in the interests of hearing the case on the merits, the Court granted the motion over the Debtor’s objection at a March 4, 2015, hearing.⁵ At that hearing, the Court also ruled that the Adversary Complaint would relate back to the Main Case Complaint. The Plaintiff then properly filed the

² Doc. No. 10.

³ Main Case Doc. No. 11.

⁴ Main Case Docket Entry Oct. 20, 2014.

⁵ Hr’g Audio Recording, at 2:09:03–:19:06, Mar. 4, 2015.

Adversary Complaint, alleging that the Plaintiff's judgment debt is nondischargeable because of fraud arising out of the Debtor's misrepresentations and a bounced check.

On April 8, 2015, the Debtor moved to dismiss the Adversary Complaint,⁶ arguing that the Adversary Complaint was untimely and that it failed to state a claim upon which relief can be granted. On June 23, 2015, the Court entered an Order granting in part and denying in part the Debtor's Motion to Dismiss, striking the Adversary Complaint (which the Court acknowledged was confusing), and directing the Plaintiff to file a more definite statement within 28 days of the entry of the Order.⁷ The deadline by which Plaintiff was required to file the Amended Complaint was July 21, 2015.

Plaintiff filed the Amended Complaint on July 28, 2015—7 days past the filing deadline. Because Plaintiff failed to file the Amended Complaint by July 21, 2015, the Adversary Case was administratively closed on July 22, 2015. Plaintiff now seeks to re-open the case, stating that, as a result of Counsel's calendaring error, Counsel had incorrectly calendared the deadline. By the Motion, Plaintiff argues that the calendaring error constituted excusable neglect.

Discussion

Federal Rule of Bankruptcy Procedure 9006(b)(1) authorizes bankruptcy courts to accept late filings where failure to act was the result of "excusable neglect." The Rule provides, in relevant part, the following:

[W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion... on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.⁸

⁶ Doc. No. 4.

⁷ Doc. No. 8.

⁸ Fed. R. Bankr. P. 9006(b)(1).

The United States Supreme Court has held that Rule 9006(b)(1) contemplates that courts are permitted, where appropriate, to accept late filings caused by “inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond party's control.”⁹ In arriving at its “flexible understanding” of excusable neglect, the Court reviewed the meaning of the term in the context of analogous rules that allow for late filings.¹⁰ With respect to Federal Rule of Civil Procedure 60(b), the Court stated that “excusable neglect is understood to encompass situations in which the failure to comply with a filing deadline is attributable to negligence.”¹¹ The Court concluded that whether a party's neglect of a deadline may be excused is an equitable decision turning on “all relevant circumstances surrounding the party's omission.”¹² The factors the court must weigh include “the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.”

The calendaring error in the present case was “simply an innocent oversight by counsel.”¹³ Counsel stated that he incorrectly calendared the filing deadline for the Amended Complaint as July 28, 2015, instead of the actual deadline, which was July 21, 2015. Counsel filed this Motion on July 27, 2015—six days after the actual deadline—and filed the Amended complaint the next day. Therefore, the delay was brief, and the danger of prejudice to the Debtor is minimal. Though Counsel's ability to maintain his own schedule is certainly within his control, the calendaring error at issue here qualifies as the kind of inadvertence, mistake, or carelessness encompassed by Rule 9006(b)(1). After weighing these factors, and finding no bad

⁹ *Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380, 388 (1993).

¹⁰ *Cheney v. Anchor Glass Container Corp.*, 71 F.3d 848, 850 (11th Cir. 1996) (discussing *Pioneer Inv. Servs. Co. v. Brunswick Associates Ltd. P'ship*, 507 U.S. 380 (1993)).

¹¹ *Id.*

¹² *Id.*

¹³ *In re Olympia Holding Corp.*, 226 B.R. 705, 709 (Bankr. M.D. Fla. 1998) (quoting *Cheney*, 71 F.3d at 850).

faith on the part of Plaintiff, the Court determines that Plaintiff's failure to timely file the Amended Complaint constitutes excusable neglect.

Conclusion

For the reasons set forth above, it is ORDERED that:

1. The Motion is granted.
2. The Adversarial Case is reopened.

Attorney Alex Finch is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.