

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
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In re: Case No. 2:15-bk-04241-FMD
Chapter 7

Benjamin H. Yormak,

Debtor.

**ORDER (1) GRANTING
DEBTOR'S MOTION FOR ENTRY OF
DISCHARGE, AND (2) DENYING
STEVEN YORMAK'S MOTION TO EXTEND
TIME TO OBJECT TO DISCHARGE ON
BASIS OF PENDING APPEAL(S)**

THIS CASE came before the Court without a hearing on Debtor's *Motion for Entry of Discharge* (the "Motion for Discharge"),¹ the response to the Motion for Discharge, combined with the *Motion to Extend Time to Object to Discharge on Basis of Pending Appeal(s)* (together, the "Third Extension Motion") filed by Steven Yormak ("Claimant"),² Debtor's reply to the Third Extension Motion (the "Reply"),³ Claimant's sur-reply (the "Sur-Reply"),⁴ and Debtor's Response to the Sur-Reply.⁵ For the reasons discussed in this Order, Debtor's Motion for Discharge is granted and Claimant's Third Extension Motion is denied.

¹ Doc. No. 868.

² Doc. No. 869. In his sur-reply (Doc. No. 871), Claimant objects to Debtor's reference to Claimant as "Dad" and to Debtor himself as "Son." The Court identified the parties by "Dad" and "Son" in its Summary Judgment Order (Doc. No. 851) for two reasons: first, for clarity because Debtor and Claimant have the same surname; and, second, because the father-son relationship between Debtor and Claimant and the disparity in their ages and years of experience as attorneys were relevant to the Court's ruling on the issue of whether Claimant engaged in the unlicensed practice of law. The parties' father-son relationship is not relevant to the Court's consideration of the pending

A. Background

On April 24, 2015, Debtor filed a Chapter 13 bankruptcy petition. Shortly thereafter, Claimant filed Proof of Claim No. 4-1 (the "Claim") in Debtor's bankruptcy case. The Claim stated that it was for "services performed" by Claimant under oral and written "consulting agreements" with Debtor (the "Consulting Agreements"). Debtor filed an objection to Claimant's Claim (the "Objection to Claim").⁶ In the five and one-half years since Debtor filed the Objection to Claim, Debtor and Claimant have engaged in extensive litigation, including on the issue of whether the Consulting Agreements are void and unenforceable because they provide for Claimant's unlicensed practice of law.⁷

On September 1, 2016, while Claimant and Debtor were litigating the Objection to Claim, Debtor converted his Chapter 13 case to a case under Chapter 7. The Court fixed December 5, 2016, as the initial deadline to file a complaint objecting to Debtor's discharge under 11 U.S.C. § 727 or a complaint to determine the dischargeability of a particular debt under § 523(c).⁸ Claimant and the Chapter 7 Trustee (the "Trustee") each filed a timely motion to extend the deadline; the motions were granted and the deadline for filing complaints to object to discharge *and* complaints to object to the dischargeability of a debt was extended to February 3, 2017.⁹

On February 1 and 2, 2017, Claimant and the Trustee filed timely motions to further extend the time to object to Debtor's discharge (the "Second Extension Motions").¹⁰ The Trustee's Second

motions. Accordingly, in this Order, the Court refers to the parties as "Debtor" and "Claimant."

³ Doc. No. 870.

⁴ Doc. No. 871.

⁵ Doc. No. 872.

⁶ Doc. No. 36.

⁷ For a detailed history of the litigation between the parties, *see* Doc. No. 851.

⁸ Doc. No. 138. (Unless otherwise stated, all statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*)

⁹ Doc. Nos. 175, 176, 177, 179.

¹⁰ Doc. Nos. 223, 230.

Extension Motion requested an extension of time for 90 days to provide the Trustee and creditors sufficient time to complete an investigation and file an appropriate objection. In contrast, Claimant's Second Extension Motion stated:

[Claimant], like the trustee continues to investigate whether there are grounds to object to [Debtor's] discharge, including the concealment of assets, and requires additional time to conduct his investigation. [Claimant's] efforts include, but are not limited to, the ongoing discovery in connection with *[Claimant's] Joinder to Trustee's Motion to Determine that Property Received Post-Petition is Property of the Bankruptcy Estate*.¹¹

Claimant concluded his Second Extension Motion as follows:

WHEREFORE, [Claimant] requests that the Court enter an Order extending the deadline for him to file an objection to [Debtor's] discharge to 14 days following the entry of the court order regarding the *Trustee Motion to Determine that Property Received Post-Petition is Property of the Bankruptcy Estate*.¹²

In other words, in his Second Extension Motion, Claimant only requested that the Court extend the deadline to file a complaint objecting to Debtor's discharge; Claimant *did not* request an extension of the deadline to file a complaint objecting to the dischargeability of the Claim under § 523, nor did he provide any grounds for requesting an extension of that deadline.

In addition, Claimant's Second Extension Motion referred specifically to the *Trustee's Motion to Determine that Property Received Post-Petition is Property of the Bankruptcy Estate* (the

"Property of the Estate Motion").¹³ In the Property of the Estate Motion, the Trustee alleged that \$500,000.00 in attorney's fees received by Debtor during his Chapter 13 case were property of the Chapter 7 estate under § 348(f)(2) if Debtor had converted his case in bad faith.

On March 2, 2017, the Court conducted a hearing on the Second Extension Motions. At the hearing, Claimant did not address his request to extend the deadline for objecting to Debtor's discharge until after the Court ruled on the Property of the Estate Motion, and he did not object to the Court's statement that "until [Claimant] knows that he has a claim, there may be nothing for him to have excepted from discharge."¹⁴ Also, Claimant again failed to assert any basis to extend the deadline for filing an objection to the dischargeability of his Claim,¹⁵ and he did not rebut Debtor's contention that the "only thing we've got is the issue of [§] 727."¹⁶ After hearing from the parties, the Court announced its decision to grant the Second Extension Motions.¹⁷

Following the March 2, 2017 hearing, the Court entered its written *Order Granting Motions to Extend Time to File Objections to Discharge* (the "Second Extension Order"). The Second Extension Order was consistent with the Court's suggestion at the March 2 hearing that Claimant's objection to Debtor's discharge was dependent on the allowance of his Claim. It provides:

The deadline within which the Trustee and [Claimant] have to object to the Debtor's discharge is extended to the date that is 30 days *after the Court rules on the Debtor's objection to the claim of [Claimant]*. If the 30th day falls on a weekend day or a holiday, the deadline is extended to the first business day that is not a weekend day or holiday.¹⁸

¹¹ Doc. No. 230 (italics in original).

¹² *Id.* (italics in original).

¹³ Doc. No. 153.

¹⁴ Doc. No. 287, Transcript of March 2, 2017 hearing, p. 32, ll. 21-23.

¹⁵ Doc. No. 287, Transcript of March 2, 2017 hearing, pp. 32-35.

¹⁶ Doc. No. 287, Transcript of March 2, 2017 hearing, p. 33, ll. 3-4.

¹⁷ Doc. No. 287, Transcript of March 2, 2017 hearing, p. 33, ll. 6.

¹⁸ Doc. No. 277 (emphasis supplied).

Claimant did seek reconsideration or otherwise object to the Second Extension Order.

On February 3, 2021, the Court entered an order on the parties' most recently filed motions for summary judgment on Debtor's Objection to Claim (the "Summary Judgment Order").¹⁹ Among other matters, the Summary Judgment Order granted Debtor's motion for summary judgment on the issue of Claimant's unlicensed practice of law, sustained Debtor's Objection to Claim, and disallowed the Claim. Claimant timely filed a motion for reconsideration of the Summary Judgment Order,²⁰ and on February 26, 2021, the Court entered an order denying the motion (the "Order Denying Reconsideration").²¹ Under the Summary Judgment Order and Order Denying Reconsideration, the Court disallowed all of Claimant's contractual and equitable claims for compensation for services he claims he provided to Debtor.

On February 17 and March 3, 2021, respectively, Claimant filed a notice of appeal and an amended notice of appeal of the Summary Judgment Order and the Order Denying Reconsideration.²² Claimant's appeal is now pending in the District Court (the "Appeal").²³ Claimant has not moved for a stay pending appeal under Fed. R. Bankr. P. 8007.

On March 30, 2021, Debtor filed the Motion for Discharge. On April 2, 2021, Claimant filed the Third Extension Motion in which he objects to the entry of Debtor's discharge and also seeks an extension of time to file an objection to the discharge.

¹⁹ Doc. No. 851.

²⁰ Doc. No. 853.

²¹ Doc. No. 859.

²² Doc. Nos. 855, 863.

²³ United States District Court, Middle District of Florida, Case No. 2:21-cv-00156-SPC.

²⁴ The 30th day after the February 26, 2021 Order Denying Reconsideration was Sunday, March 28, 2021. Therefore, the deadline was extended to Monday, March 29, 2021, under the Second Extension Order. In his Sur-Reply, Claimant contends that the Second Extension Order permits the filing of an objection to Debtor's

B. The Third Extension Motion

The Court will first address Claimant's Third Extension Motion.

1. The Third Extension Motion is untimely.

Under Fed. R. Bankr. P. 4004(b)(1), a motion to extend the time to object to a debtor's discharge must be filed before the time for objecting has expired. The single exception to this rule is if grounds exist to revoke a debtor's discharge under § 727(d), and the objecting party did not have knowledge of the facts supporting revocation in time to file the objection. Here, the time for objecting to Debtor's discharge expired—at the latest—on March 29, 2021,²⁴ and Claimant did not file the Third Extension Motion until April 2, 2021. The Third Extension Motion does not state any grounds for revoking a discharge that were unknown to Claimant in time to file an objection. Consequently, Claimant's Third Extension Motion is untimely.

2. The pending appeal does not stay entry of Debtor's discharge.

In the Third Extension Motion, Claimant states that his notice of appeal "bookmarks and stays the bankruptcy proceedings."²⁵ But the "appeal of a bankruptcy court order does not stay the effect of the order unless a stay pending appeal is requested and received."²⁶ As the bankruptcy court noted in *In re LaClair*,²⁷ it is a "simple statement of law" that the "filing of a notice of appeal does not stay the effect of a federal court order, absent a stay granted by the trial court or the reviewing court."

discharge within "30 days of final court order." But the Second Extension Order provides that the matter came before this Court for hearing, and that the deadline was extended "to the date that is 30 days after the Court rules on the Debtor's objection" to Claimant's claim. The Second Extension Order does not require that the Court's order be a final order.

²⁵ Doc. No. 869, ¶ 5.

²⁶ *In re U.S. Airways Inc.*, 445 B.R. 566, 572 (Bankr. E.D. Va. 2011) (citation omitted).

²⁷ 360 B.R. 388, n. 2 (Bankr. D. Mass. 2006).

Motions for a stay pending appeal are governed by Fed. R. Bankr. P. 8007. Here, Claimant filed a notice of appeal and amended notice of appeal, but he did not file a motion for stay pending appeal under Rule 8007 before the time expired to object to Debtor's discharge.

And although the Appeal deprives this Court of jurisdiction to enter rulings modifying the Summary Judgment Order, it does not deprive this Court of jurisdiction to rule on other matters in the bankruptcy case. In the Eleventh Circuit, "[t]he filing of a proper notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the appellate court *and divests the trial court of its control over those aspects of the case involved in the appeal.*"²⁸ Here, the only issues involved in the Appeal are those that relate to Debtor's Objection to Claim and the disallowance of Claimant's Claim; the Appeal does not relate to the issue of Debtor's entitlement to a discharge.

The facts here are easily distinguished from those presented to the Ninth Circuit Court of Appeals in *In re Padilla*.²⁹ In *Padilla*, the Ninth Circuit held that the bankruptcy court lacked jurisdiction to enter the debtor's discharge during an appeal of the bankruptcy court's order dismissing the case, because the discharge of the debtor's debts and closure of his case "drastically changed the status quo and amounted to a final adjudication of the substantial rights directly involved in the appeal."³⁰

Here, nothing in the Court's Summary Judgment Order or the Appeal relates to the issue of Debtor's entitlement to a discharge. Objections to discharge under § 727 involve matters that affect

the bankruptcy estate in general, rather than matters that affect only one creditor.³¹ For example, under § 727, a debtor's discharge may be denied as to all of his creditors if the debtor fraudulently transferred property of the estate, failed to keep financial information, made a false oath in the bankruptcy case, failed to explain a loss of assets, or refused to obey a court order in the bankruptcy case.³² But the disallowance of Claimant's Claim in the Summary Judgment Order relates solely to Claimant's Claim, and the deadline for Claimant to object to the dischargeability of the Claim expired in February 2017. The Summary Judgment Order does not relate to any conduct of Debtor that affected all creditors,³³ and the Court's ruling in the Summary Judgment Order does not fall within any of the objections to discharge under § 727. In other words, entry of Debtor's discharge will not amount to "a final adjudication of the substantial rights directly involved in the appeal."

3. Entry of Debtor's discharge does not affect the Trustee's administration of the bankruptcy estate.

In his Sur-Reply, Claimant argues that granting Debtor a discharge at this stage of the case would likely cause him irreparable damage because the Trustee holds "\$500,000 in addition to further funds (\$1,100,000)" due from another source.³⁴ But while a debtor's discharge under § 524 operates as an injunction against the collection of dischargeable debts from the debtor, it does not eliminate valid claims against the bankruptcy estate and it has no impact on a trustee's administration and distribution of assets of the estate under Chapter 7.³⁵

the case, and entered a discharge order. Although the Ninth Circuit ultimately affirmed the BAP's reversal of the bankruptcy court's dismissal order, it held that the discharge order was void because the bankruptcy court lacked jurisdiction to enter it while the appeal was pending.

³¹ *In re Hass*, 273 B.R. 45, 49 (Bankr. S.D.N.Y. 2002).

³² 11 U.S.C. §§ 727(a)(2), (3), (4), (5), (6).

³³ See *In re Hass*, 273 B.R. at 49.

³⁴ Doc. No. 871, ¶ 4.

³⁵ *In re Yelverton*, 2014 WL 4840444, at *9 (Bankr. D.D.C. Sept. 25, 2014), *rev'd on other grounds*, 831 F.3d 585 (D.C. Cir. 2016).

²⁸ *In re Walker*, 515 F.3d 1204, 1211 (11th Cir. 2008) (emphasis added).

²⁹ 222 F.3d 1184 (9th Cir. 2000).

³⁰ *In re Padilla*, 222 F.3d at 1190. In *Padilla*, the U.S. Trustee moved to dismiss the debtor's Chapter 7 case as having been filed in bad faith. The bankruptcy court granted the motion and dismissed the case; the debtor appealed to the Bankruptcy Appellate Panel for the Ninth Circuit, which reversed and remanded; the U.S. Trustee appealed the BAP's ruling to the Ninth Circuit Court of Appeals. When the U.S. Trustee did not move for a stay pending the appeal, the bankruptcy court reinstated the debtor's bankruptcy case, proceeded with

4. Claimant fails to show cause to extend the deadline to object to discharge.

Finally, even if the Third Extension Motion were timely filed, under Rule 4004(b)(1), courts may only grant extensions of time to object to a discharge “for cause.” A showing of cause is necessary because a discharge is the cornerstone of a Chapter 7 debtor’s fresh start, and debtors have an interest in the final resolution of discharge issues. In *In re St. George*,³⁶ the court stated that:

[E]xtensions of the deadline to challenge a debtor’s discharge should be rarely granted and . . . cause for such a request should be narrowly construed. . . . When seeking relief under Rule 4004(b)(1), it is the burden of the moving party to demonstrate that cause exists.³⁷

Here, other than Claimant’s incorrect statement that his notice of appeal stays the bankruptcy proceeding, the Third Extension Motion fails to state any “cause” to further extend the deadline. Debtor’s case has been pending as a Chapter 7 case for more than four years; Claimant had actual knowledge of the extended deadline to file an objection to Debtor’s discharge; and Claimant has not articulated any basis for the denial of Debtor’s discharge despite ample opportunity to discover such grounds.

C. Debtor’s Motion for Discharge

Under the Second Extension Order, the last day for Claimant or the Trustee to object to Debtor’s discharge was either March 5, 2021 (30 days from the date of the Summary Judgment Order), or, at the latest, March 29, 2021 (30 days from the date of the Order Denying Reconsideration).³⁸

On March 30, 2021, Debtor filed the Motion for Discharge. On that date, neither Claimant nor the Trustee had filed a motion to further extend the deadline for objecting to Debtor’s discharge, the

deadline for objecting to his discharge had expired, and there no stay was in effect regarding entry of a discharge.

D. Conclusion

The Court finds, first, the Third Extension Motion is untimely; second, the pending Appeal does not divest this Court of jurisdiction to rule on the Third Extension Motion or to enter Debtor’s discharge; third, the entry of Debtor’s discharge does not affect the Trustee’s administration of the bankruptcy estate; fourth, even if the Third Extension Motion were timely filed, Claimant failed to show cause to extend the deadline for filing objections to discharge; and, finally, because the deadline for Claimant and the Trustee to object to Debtor’s discharge expired without any action by either party, Debtor is entitled to his discharge.

Accordingly, it is

ORDERED:

1. Debtor’s *Motion for Entry of Discharge* (Doc. No. 868) is **GRANTED**, and the Court will enter a separate Discharge of Debtor.

2. Claimant’s *Motion to Extend Time to Object to Discharge on Basis of Pending Appeal(s)* (Doc. No. 869) is **DENIED**.

3. To the extent that Claimant included additional requests for relief in his Sur-Reply (Doc. No. 871), those requests are **DENIED**.

DATED: April 14, 2021.

/s/ Caryl E. Delano

Caryl E. Delano
Chief United States Bankruptcy Judge

³⁶ 2017 WL 1379321 (6th Cir. BAP Apr. 17, 2017).

³⁷ *In re St. George*, 2017 WL 1379321, at *4 (quoting *In re Vinson*, 509 B.R. 128, 133 (Bankr. S.D. Ohio 2013), and *In re Aloia*, 496 B.R. 366, 380 (Bankr. E.D. Pa. 2013)).

³⁸ The 30th day after the February 26, 2021 Order Denying Reconsideration fell on Sunday, March 28, 2021. Therefore, the deadline was extended to Monday, March 29, 2021 (*see* FN 24).