

NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT**

BAP NO. PR 10-080

Bankruptcy Case No. 07-05871-ESL

**RIDEL ALEGRE FERNÁNDEZ ROSADO,
Debtor.**

**RIDEL ALEGRE FERNÁNDEZ ROSADO,
Appellant,**

v.

**CELEDONIO CORREDERA PABLOS,
PABLO LÓPEZ BÁEZ, EMMA TERESA BENÍTEZ,
and OSIRIS DELGADO,
Appellees.**

**Appeal from the United States Bankruptcy Court
for the District of Puerto Rico
(Hon. Enrique S. Lamoutte, U.S. Bankruptcy Judge)**

**Before
Hillman, Feeney, and Kornreich,
U.S. Bankruptcy Appellate Panel Judges.**

Daniel M. Press, Esq., on brief for Appellant.

Eduardo J. Corretjer Reyes, Esq., and Wilfredo A. Geigel, Esq., on brief for Appellees.

August 10, 2011

Per Curiam.

Ridel Allegre Fernández Rosado (the “Debtor”) appeals from a bankruptcy court order dismissing his case pursuant to 11 U.S.C. § 707(a).¹ The Debtor contends that the bankruptcy court erred in denying his requests for the entry of his discharge and in dismissing his case for bad faith under § 707(a). For the reasons set forth below, we conclude that the bankruptcy court incorrectly postponed the entry of discharge. Accordingly, we **REVERSE** the orders denying the requests for discharge and **REMAND** the matter to the bankruptcy court for proceedings consistent with this opinion.

BACKGROUND

The Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code on October 9, 2007. On October 10, 2007, the bankruptcy court set a deadline of December 31, 2007, for the filing of complaints objecting to the discharge under § 727 and seeking exceptions to the dischargeability of particular debts under § 523.

On December 18, 2007, the United States trustee filed a motion to extend time for filing a complaint objecting to discharge under § 727 and a motion to dismiss the case under § 707(b) through February 29, 2008, which the court granted, extending the deadlines for such requests to February 29, 2008. Creditor Juan Botello (“Botello”), on December 31, 2007, filed a motion for an extension of time to file a complaint objecting to discharge, and the court, on January 2, 2008, entered an order granting an extension for Botello to February 29, 2008. Additional creditors,

¹ Unless otherwise indicated, the terms “Bankruptcy Code,” “section” and “§” refer to Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 37. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure, and all references to “Rule” are to the Federal Rules of Civil Procedure.

Pablo López Báez (“López”), Dr. Osiris Delgado (“Delgado”) and Emma Teresa Benítez (“Benítez”), sought to amend the January 2, 2008 order to include them in the previously granted extension, which the Court allowed on January 15, and January 31, 2008. A review of the motions and the bankruptcy court’s orders reveals that the scope of the bankruptcy court’s extension orders related only to complaints objecting to the Debtor’s discharge under § 727.

Between February 1, 2008, and February 29, 2008, Delgado, Benítez, Báez and creditor Celedonio Corredera Pablos (“Corredera,” collectively the “Appellees”) filed adversary complaints seeking an exception to discharge of particular debts under § 523. The bankruptcy court ultimately dismissed the various adversary complaints under § 523 as time-barred, reasoning that the extensions were solely for § 727 complaints and not for § 523 complaints. The various creditors filed motions to reconsider the orders dismissing the complaints which the court denied. Although certain creditors filed complaints under § 523, no party timely filed a complaint seeking denial of the debtor’s discharge under § 727, including the Appellees.

The Trustee filed a report of no distribution on January 8, 2009. The Debtor filed his certification of completion of personal financial management instruction course on April 9, 2009. On that date he also filed a motion requesting entry of discharge forthwith. In his motion for a discharge, the Debtor asserted that he was entitled to an immediate discharge as the deadlines for objection to the discharge had expired, that he had completed his duties as a debtor, and that there was no legitimate reason to delay his fresh start. The creditors filed an objection to the motion, albeit mistakenly docketing it in one of their adversary proceedings. By order dated April 22, 2009, the bankruptcy court entered an order postponing the entry of the discharge until, *inter alia*, the adversary proceeding judgment became final.

On April 28, 2009, the Appellees filed a motion to dismiss the Debtor's case pursuant to § 707(a) on the ground that the case was commenced in bad faith. On May 16, 2009, ten weeks after the expiration of the discharge deadline, the Debtor filed a second motion requesting entry of the discharge forthwith pursuant to Bankruptcy Rule 4004(c). This motion was a duplicate of the first. On May 26, 2009, the Debtor also filed a motion requesting that the court enter an order suspending the motion to dismiss pending his request for entry of the discharge. On May 29, 2009, the bankruptcy court denied the Debtor's first and second motions for entry of the discharge and denied the motion for an order suspending proceedings on the motion to dismiss.

Several months later, the Debtor filed a motion for reconsideration of, *inter alia*, the order denying his second request for discharge. The bankruptcy court denied reconsideration as to the request for discharge because "at this point in time the court pursuant to Fed. R. Bankr. P. 4004(c)(1)(D) may not enter a discharge order because there is currently pending a motion to dismiss under § 707(a) of the Bankruptcy Code." The Panel denied as interlocutory the Debtor's request for leave to appeal the bankruptcy court's denial of his requests for discharge.

Ultimately, the bankruptcy court issued its Opinion and Order granting the Appellees' motion to dismiss on the grounds that the Debtor filed his bankruptcy petition in bad faith under § 707(a). See In re Fernández Rosado, No. 07-05871, 2010 WL 5019023 (Bankr. D. P.R. December 1, 2010). The Debtor appealed the order dismissing his case and listed in his statement of issues whether the bankruptcy court erred in failing to grant his requests for entry of discharge.

JURISDICTION

The bankruptcy appellate panel has jurisdiction to hear appeals from “final judgments, orders, and decrees” pursuant to 28 U.S.C. § 158(a)(1) or, “with leave of the court, from interlocutory orders and decrees” pursuant to 28 U.S.C. § 158(a)(3). Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998). As an order dismissing a case is a final order, the Panel has jurisdiction to consider the order dismissing the Debtor’s case. See Neary v. Padilla (In re Padilla), 222 F.3d 1184, 1188 (9th Cir. 2000) (explaining order dismissing chapter 7 was final order); Pellegrino v. Boyajian (In re Pellegrino), 423 B.R. 586, 589 (B.A.P. 1st Cir. 2010) (ruling order dismissing chapter 13 is a final order); Fleury v. Carmichael (In re Fleury), 306 B.R. 722, 726 (B.A.P. 1st Cir. 2004) (same).

In addition to the order dismissing the case, however, the Debtor appeals from the orders denying his requests for entry of discharge. “[A]n appeal from the final judgment brings up the interlocutory decisions for review by this court.” Brandt v. Wand Partners, 242 F.3d 6 (1st Cir. 2001) (citing John’s Insulation, Inc. v. L. Addison & Assocs., Inc., 156 F.3d 101, 105 (1st Cir. 1998)). See also Rivera Siaca v. DCC Operating, Inc. (In re Olympic Mills Corp.), 333 B.R. 540, 548-9 (B.A.P. 1st Cir. 2005). The two orders denying the Debtor’s request for entry of discharge were interlocutory orders which became final when the bankruptcy court dismissed the case. The Debtor raised the issue of these orders in his statement of issues and the parties addressed the issue in their briefs. Thus, the Panel has jurisdiction to consider these orders as well.

STANDARD OF REVIEW

Appellate courts reviewing decisions of the bankruptcy court generally apply *de novo* review to conclusions of law and the “clearly erroneous” standard to findings of fact. See Aja v.

Emigrant Funding Corp. (In re Aja), 442 B.R. 857, 860 (B.A.P. 1st Cir. 2011). “A bankruptcy court's order dismissing a debtor's case should be overturned only if the debtors establish that the bankruptcy court committed a clear abuse of discretion.” Roberts v. Boyajian (In re Roberts), 279 B.R. 396, 399 (B.A.P. 1st Cir. 2000) (citing Roumeliotis v. Popa (In re Popa), 214 B.R. 416, 418 (B.A.P. 1st Cir. 1997), *aff'd*, 140 F.3d 317 (1st Cir. 1998), *cert. denied*, 525 U.S. 869 (1998)). The interpretation and application of the Bankruptcy Rules are subject to *de novo* review. See Christensen v. Black (In re Black), 130 Fed.Appx. 205, 206 (10th Cir. 2005); Key Bar Invest., Inc. v. Cahn (In re Cahn), 188 B.R. 627, 629 (B.A.P. 9th Cir. 1995)

DISCUSSION

Bankruptcy Rule 4004 governs the timing of granting or denying a debtor’s discharge in chapter 7. Bankruptcy Rule 4004(c), provides:

(1) In a chapter 7 case, on expiration of the times fixed for objecting to discharge and for filing a motion to dismiss the case under Rule 1017(e), the court shall forthwith grant the discharge unless:

...

(B) a complaint, or a motion under § 727(a)(8) or (a)(9), objecting to the discharge has been filed and not decided in the debtor’s favor;

...

(D) *a motion to dismiss the case under § 707 is pending;*

...

(F) a motion to extend the time for filing a motion to dismiss the case under Rule 1017(e)(1) is pending;

Fed. R. Bankr. P. 4004(c)(1)(B), (D)-(E) (emphasis added).

In this case, none of the exceptions listed in Bankruptcy Rule 4004(c) were present on the expiration of the extended deadline. The only pending complaints were those seeking a determination of an exception to the dischargeability of particular debts under § 523. The pendency of such complaints is not a sufficient reason to delay a debtor’s discharge under the rule.

See In re Edler, 416 B.R. 147, 151 (Bankr. E.D. Pa. 2009) (“The filing of a complaint to determine the dischargeability of a particular debt is not one of the grounds for deferring the entry of the discharge order.”). Because it had no basis upon which to delay or deny the entry of the discharge, the bankruptcy court was required to grant the discharge “forthwith.”² See In re Morgan, 290 B.R. 246, 248 (Bankr. D. Del. 2003) (“As none of the other enumerated exceptions apply herein, the Court is compelled to enter a discharge pursuant to Rule 4004(c).”). Accordingly, the bankruptcy court abused its discretion and erred when it denied the Debtor’s requests for entry of his discharge.

CONCLUSION

Having determined that it was error not to enter the discharge, we **REVERSE** the orders denying the Debtor’s requests for entry of discharge and **REMAND** for the entry of the Debtor’s discharge. Because neither the creditors nor the court had the benefit of this ruling when proposing or ruling on the motion to dismiss, we **VACATE** the order dismissing the case and **REMAND** the matter for a redetermination of the motion to dismiss in light of this opinion.

² “Forthwith” is defined as “immediately; without delay; directly; promptly; within a reasonable time under the circumstances.” BLACK’S LAW DICTIONARY 725 (9th ed. 2009); see, e.g., Coggin v. Coggin (In re Coggin), 30 F.3d 1443, 1449 (11th Cir. 1994) (similarly defining “forthwith”).