NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL FOR THE FIRST CIRCUIT

BAP NO. MB 12-032

Bankruptcy Case No. 11-10672-FJB
Adversary Proceeding No. 11-01333-FJB

ANDREW J. COSTA,
Debtor.

GILBERT C. SULLIVAN,
Plaintiff-Appellant,

v.

ANDREW J. COSTA,
Defendant-Appellee.

Appeal from the United States Bankruptcy Court
for the District of Massachusetts
(Hon. Frank J. Bailey, U.S. Bankruptcy Judge)

Before
Haines, Deasy, and Tester,
United States Bankruptcy Appellate Panel Judges.

Thomas M. Barron, Esq., on brief for Plaintiff-Appellant.
Gary W. Cruickshank, Esq., on brief for Defendant-Appellee.

January 3, 2013

Tester, U.S. Bankruptcy Appellate Panel Judge.

Creditor, Gilbert C. Sullivan ("Sullivan"), appeals from a bankruptcy court order (the "Order"): (1) denying his untimely motion to amend his original § 523(c)[1] complaint to add § 727 claims against the debtor, Andrew J. Costa ("Costa"); (2) denying his untimely motion for an extension of time, *nunc pro tunc*, to file an adversary complaint under §§ 523(c) and 727(a); (3) granting Costa's motion to dismiss; and (4) dismissing the adversary proceeding with prejudice. For the reasons discussed below, we **AFFIRM** the Order.

BACKGROUND

Costa filed a petition for chapter 7 relief in January 2011. On Schedule D, he listed Sullivan as the holder of a $400,000.00 undersecured claim.[2]

The court initially set April 25, 2011, as the deadline for complaints objecting to discharge and to determine dischargeability.[3] Pursuant to Costa's own motion, the court extended that deadline to May 31, 2011. Thereafter, on May 20 and August 10, 2011, Sullivan filed timely motions to further extend the complaint deadline for himself.[4] The court allowed

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[1] All references to the "Code" or the "Bankruptcy Code" are to the Bankruptcy Code of 1978, as amended, 11 U.S.C. § 101, et seq. Unless otherwise indicated, all references to statutory sections are to sections of the Code. Unless expressly stated otherwise, all references to "Rule" or "Bankruptcy Rule" shall be to the Federal Rules of Bankruptcy Procedure.

[2] Although Costa's schedules are not included as part of the record, we may take judicial notice of bankruptcy court proceedings. See Kowalski v. Gagne, 914 F.2d 299, 305 (1st Cir. 1990).

[3] See Fed. R. Bankr. P. 4004(a) and 4007(c) (providing that complaints objecting to discharge and to determine dischargeability, respectively, "shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)").

[4] Additionally, the record reveals that the trustee filed five motions to extend the time to object to discharge, as to himself. As a result of the trustee's successive motions, the court extended his deadline for objecting to discharge to March 23, 2012.

both motions, further extending the deadline for Sullivan first to August 15, 2011, and then to September 15, 2011. Sullivan filed neither a complaint nor a motion to extend by the September 15, 2011 deadline. Two weeks later, however, on October 4, 2011, he filed a belated, unsupported motion ("the October 2011 Extension Motion") to extend the complaint deadline to November 22, 2011, to permit the continued investigation of his claims against Costa.[5] Costa objected the next day, asserting that Sullivan's request was untimely. On October 21, 2011, without a hearing, the court entered an order ("the October 2011 Extension Order"), granting the October 2011 Extension Motion and setting the complaint deadline for November 22, 2011. Costa did not seek reconsideration of the October 2011 Extension Order.

On November 21, 2011, Sullivan filed a multi-count complaint against Costa, seeking only a determination of dischargeability under § 523.[6] In his answer, Costa asserted as an affirmative defense that the complaint was time-barred. Thereafter, on January 6, 2012, Sullivan filed a motion to amend the complaint to add his three § 727 counts, representing that his counsel, "through mistake and inadvertence, neglected to include a reference to [ ] § 727" in the original complaint. He also filed a proposed amended complaint.

Costa opposed Sullivan's motion, emphasizing that the requested amendment was time-barred under Rules 4004(a) and 4007(c), and that the court allowed the October 2011 Extension Motion without specifically overruling his objection. Costa simultaneously filed a motion to

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[5] The bankruptcy court docket reflects that on the same date, successor counsel (Sullivan's fourth in the case) filed a notice of appearance on his behalf.

[6] The complaint relates to a $400,000 loan Sullivan extended to a company, of which Costa was president and treasurer.

dismiss, reiterating the timeliness issue and asking the court to dismiss the adversary proceeding with prejudice. In the motion, Costa did not specify the rule upon which he relied.

Sullivan did not oppose the motion to dismiss. Instead, on January 25, 2012, he filed another extension motion ("the January 2012 Extension Motion"), this time seeking to enlarge the time for filing both his initial complaint and subsequent amended complaint, *nunc pro tunc*, to November 22, 2011. As authority for the requested extension, he cited only Rule 4004(a), neglecting to reference Rule 4004(c). By the January 2012 Extension Motion, Sullivan implicitly recognized that the October 2011 Extension Motion was untimely, and that the complaint and amended complaint were also tardy. In his supporting memorandum, Sullivan urged the court to apply the "relation back doctrine" to permit the late filing of his amended complaint. Noting that Costa himself had filed four motions to extend deadlines pertaining to the production of documents and that the trustee had previously filed five motions to extend the complaint deadline, Sullivan argued that Costa's inaction had prolonged the chapter 7 proceedings. Costa retorted in an objection: "[W]hile the Chapter 7 Trustee has extended the deadline to object to Mr. Costa's discharge without opposition, the time for Mr. Sullivan to have filed such a complaint has expired."

Thereafter, the court conducted a hearing on the January 2012 Extension Motion, the motion to amend, and the motion to dismiss, and the parties submitted post-hearing briefs.[7] In his brief, Costa argued, among other things, that Kontrick v. Ryan, *supra*, was inapposite

[7] Although the bankruptcy court docket reflects that Sullivan timely filed his brief, it is not a part of the record. We may surmise from the content of Costa's reply brief, discussed *infra*, that Sullivan asserted, among other things, an argument based on Kontrick v. Ryan, 540 U.S. 443 (2004), where the Supreme Court held that a debtor forfeits the right to assert the untimeliness of a creditor's complaint objecting to discharge by failing to raise the issue before the bankruptcy court enters judgment on the complaint.

because: (1) he promptly raised the timeliness issue; (2) the court was without authority to enter the October 2011 Extension Order; (3) all of the extension motions filed by the trustee benefitted the trustee only; and (4) changing counsel did not constitute excusable neglect.

In his reply brief, Sullivan maintained that the motion to dismiss was untimely and therefore forfeited under the rule established in Kontrick v. Ryan, *supra*, that the deadline set forth in Rule 4004 is not jurisdictional and therefore subject to waiver if not raised timely. Sullivan again highlighted Costa's delays in the bankruptcy case, and urged the court to exercise its equitable powers under § 105 to apply the extensions granted in favor of the trustee to all parties. Lastly, Sullivan asserted that he missed the September 15, 2011 deadline due to "mistake or inadvertence" within the meaning of Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993).

Unpersuaded by Sullivan's arguments, the court entered the Order which is the subject of this appeal. At the outset of its accompanying memorandum of decision, the court acknowledged that the October 2011 Extension Order "was entered by administrative error, the Court having been unaware of the Debtor's timely filed objection to it." Accordingly, the court concluded that the October 2011 Extension Order was "infirm from the standpoint of due process," and treated it "as subject to reconsideration de novo in light of Debtor's objection to that motion." The court rejected Sullivan's argument that his reliance on the October 2011 Extension Order precluded reconsideration, stating "I need not determine whether reliance should preclude reconsideration because there was no reliance that made a difference." The court reasoned that by the time Sullivan "filed the motion on which that order was entered, the

time for him to file a complaint objecting to discharge or to determine the dischargeability of a debt had already lapsed."[8]

The court observed that "Rules 4007(c) and 9006(b)(3) operate mechanically to preclude a court from granting an extension of time to file a complaint required by § 523(c) unless the plaintiff has complied with the requirement in Rule 4007(c) that a motion to extend be filed before the time has expired." Noting that Sullivan failed to seek an extension until October 4, 2011, after the expiration of the September 14, 2011 deadline, the court concluded that the initial complaint was untimely under Rule 4007(c). Accordingly, the court granted the motion to dismiss, treating it as a motion for judgment under Fed. R. Civ. P. 12(c). It next denied the motion to amend, "for the same reasons it granted the motion to dismiss," explaining that:

> Rules 4004(a) and (b) operate as does Rule 4007(c). Both rules contain the same language with respect to filing deadlines. Additionally, Rule 9006(b)(3) operates in the same manner with respect to the deadline in 4004(a) as it does with respect to the deadline in Rule 4007(c): it specifies that a court may extend the deadline in Rule 4004(a) "only to the extent and under the conditions stated in [that] rule[ ]." Fed. R. Bankr. P. 9006(b)(3).

In light of the foregoing, the court denied "leave to amend on the basis that the proposed amendments [were] time-barred and would for that reason be futile."

Advancing to the January 2012 Extension Motion, the court rejected Sullivan's six arguments proffered in support of the requested extension. First, it dismissed as meritless Sullivan's excusable neglect argument, stating that excusable neglect does not apply to motions for enlargement of time under Rules 4004 and 4007. Second, the court disagreed with Sullivan's contention that § 105 permitted it to override the express limitations on a court's authority to

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[8] Although the court did not expressly vacate the October 2011 Extension Order, that result seems implicit.

extend set forth in Rules 4004(b), 4007(c), and 9006(b)(3). The court reasoned that "[§] 105(a) may not be invoked where the result of its application would be inconsistent with any other Code provision or it would alter other substantive rights set forth in the Code." Third, the court rejected Sullivan's waiver argument and his corresponding reliance on Kontrick v. Ryan, *supra*, because Costa raised the timeliness defense in his answer.

Fourth, the court summarily rejected Sullivan's argument that because of his reliance on the October 2011 Extension Order, "the order should be enforced notwithstanding that it was entered in error." The court simply reiterated that "[t]here was no reliance that made a difference, the dispositive lapse having occurred before the entry of the erroneous order." Fifth, the court was unpersuaded by Sullivan's argument that the time limits in Rules 4004(b) and 4007(c) are subject to equitable tolling, concluding "[a]s a matter of law, the facts alleged by the Plaintiff do not constitute the extraordinary circumstances required to apply the doctrine of equitable tolling." Lastly, the court rejected as baseless the argument that the extensions granted on behalf of the trustee should apply equally to Sullivan. Each of Sullivan's arguments having failed, the court denied his motion to extend time.

As it denied the motion to amend and the January 2012 Extension Motion and granted the motion to dismiss, the court dismissed the adversary proceeding with prejudice. Sullivan timely appealed the Order. The parties raise on appeal the same arguments they presented below.

JURISDICTION

We are duty-bound to determine whether we have jurisdiction before proceeding to the merits, even if the litigants have not raised the issue. Boylan v. George E. Bumpus, Jr. Constr. Co., Inc. (In re George E. Bumpus, Jr. Constr. Co., Inc.), 226 B.R. 724, 725-26 (B.A.P. 1st Cir.

1998) (citing Fleet Data Processing Corp v. Branch (In re Bank of New England Corp.), 218 B.R. 643, 645 (B.A.P. 1st Cir. 1998)). We may hear appeals from "final judgments, orders, and decrees," pursuant to 28 U.S.C. § 158(a)(1). In re Bank of New England, 218 B.R. at 645. "An order granting a motion to dismiss an adversary proceeding is a final order." Gonsalves v. Belice (In re Belice), 480 B.R. 199, 203 (B.A.P. 1st Cir. 2012) (citation omitted). Furthermore, the denial of Sullivan's request to amend the complaint and the denial of the January 2012 Extension Motion became final upon the entry of the Order. See Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice and Procedure § 3914 (2d ed. rev. 2012) (stating that pretrial rulings merge in the final judgment and are reviewable when the final judgment is appealed). Accordingly, we have jurisdiction to review all aspects of the Order.

STANDARD OF REVIEW

A bankruptcy court's findings of fact are reviewed for clear error and its conclusions of law are reviewed *de novo.* See Lessard v. Wilton-Lyndeborough Coop. School Dist., 592 F.3d 267, 269 (1st Cir. 2010). "A bankruptcy court's determination that a proceeding should be dismissed is a legal conclusion subject to *de novo* review." In re Belice, 480 B.R. at 203 (internal quotations and citation omitted).

DISCUSSION

I. The Fed. R. Civ. P. 12(c) Motion to Dismiss Standard

"[T]he Court must apply the same standards to a [Fed. R. Civ. P.] 12(c) motion as would be applied to a [Fed. R. Civ. P.] 12(b)(6) motion."[9] Food King, Inc., 2006 WL 3674997, at *3 (citations omitted); see also Gray v. Evercore Restructuring L.L.C., 544 F.3d 320, 324 (1st Cir. 2008). "A court may grant a motion to dismiss a complaint under Rule 12(b)(6) or 12(c) only if, accepting all alleged facts as true, the plaintiff is not entitled to relief." Food King, Inc., 2006 WL 3674997, at *4 (internal quotations and citation omitted). "Where a court grants a Rule 12(b)(6) or Rule 12(c) motion based on an affirmative defense, the facts establishing that defense must: (1) be definitively ascertainable from the complaint and other allowable sources of information, and (2) suffice to establish the affirmative defense with certitude." Gray v. Evercore Restructuring L.L.C., 544 F.3d at 324 (citation and internal quotations omitted).

II. Timeliness Standards

A. Rule 4007(c)

Pursuant to Rule 4007(c), a § 523(c) complaint must be filed within 60 days of the date first set for the meeting of creditors under § 341(a). Fed. R. Bankr. P. 4007(c). Rule 4007(c) further provides that the court may, for cause, extend the deadline if the party seeking the extension files a motion before the deadline expires. Fed. R. Bankr. P. 4007(c).

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[9] Although Sullivan challenges the court's treatment of the motion to dismiss as one under Fed. R. Civ. P. 12(c), rather than Fed. R. Civ. P. 12(b)(6), his argument is misplaced. While "motions brought pursuant to Rule 12(b)(6) must be filed before any responsive pleading, . . . motions brought pursuant to Rule 12(c) may be brought after a responsive pleading has been filed." Food King, Inc. v. Norkus Enters., Inc., No. CIV A 04-1500 MLC, 2006 WL 3674997, at *3 (D.N.J. Dec. 13, 2006) (citing Fed. R. Civ. P. 12(b)(6) and 12(c); Turbe v. Gov't of V.I., 938 F.2d 427, 428 (3d Cir. 1991)). Because Costa filed his motion to dismiss after his answer, the court's treatment of the motion was appropriate.

Rule 9006(b)(3) "limits the bankruptcy court's discretion . . . by providing, *inter alia*, that a bankruptcy court may enlarge the time for taking action under Rule 4007(c) only to the extent and under the conditions stated in Rule 4007(c)." Torres Vazquez v. Prego Cruz (In re Prego Cruz), 323 B.R. 827, 831 (B.A.P. 1st Cir. 2005) (citing Fed. R. Bankr. P. 9006(b)(3)). Rule 4007(c) "requires that a motion seeking enlargement of the period for objecting to discharge must be filed *before* the time period has expired. Id. (emphasis in original) (citing Fed. R. Bankr. P. 4007(c); Lawrence P. King, 10 Collier on Bankruptcy ¶ 9006.08 (15th ed. rev. 2012)). "Therefore, Rule 4007(c) precludes the bankruptcy court from granting late-filed motions to extend the period in which a party can object to a debtor's discharge of a debt." Id. (citing Lure Launchers, LLC v. Spino (In re Spino), 306 B.R. 718, 721 (B.A.P. 1st Cir. 2004)) (footnote omitted). "This strict limitations period . . . is designed to further the fresh start goals of bankruptcy relief by requiring creditors to promptly join their objections to discharge in order that the debtor and other participants in the proceedings may enjoy finality and certainty of relief." Dole v. Grant (In re Summit Corp.), 109 B.R. 534, 537 (D. Mass. 1990) (citation omitted).

B. Rule 4007(c) Applied

In this case, the record indicates that the deadline for filing § 523 complaints, as extended, was September 15, 2011. The record further reflects that Sullivan failed to timely file the initial § 523 complaint or to timely request a further extension of the September 15th complaint deadline as required by Rule 4007(c). In fact, Sullivan concedes that there is no question that the October 2011 Extension Motion was late. Accordingly, the bankruptcy court lacked authority to enter the October 2011 Extension Order and, recognizing its error, properly

reconsidered it.[10] Under these circumstances, we further conclude that the bankruptcy court correctly declined to enlarge the time to file the initial complaint and properly dismissed the complaint as untimely. Indeed, the "strict limitations period" of Rule 4007(c), read together with Rule 9006(b)(3), mandates this result. In re Summit Corp., 109 B.R. at 437.

C. Rule 4004

We next address the January 2012 Extension Motion and the motion to amend the initial complaint to add counts under § 727(a). Rule 4004(a) establishes the time for filing a complaint to object to the debtor's discharge under § 727(a). "Rules 4004(a) and 4007(c) contain identical time limits and conditions on the bankruptcy court's ability to grant extensions of those time limits." Francis v. Eaton (In re Eaton), 327 B.R. 79, 81 n.2 (Bankr. D.N.H. 2005). Rule 4004(a) requires that a complaint objecting to the debtor's discharge "shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a)." Fed. R. Bankr. P. 4004(a). Paragraph (b) of Rule 4004, which governs extensions, provides that "[o]n motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to

[10] Although the bankruptcy court did not cite the authority upon which it relied when it reconsidered the October 2011 Extension Order, Fed. R. Civ. P. 60(a), made applicable to bankruptcy proceedings by Rule 9024, empowers courts to "correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record." Fed. R. Civ. P. 60(a). The rule further provides that "[t]he court may do so on motion or on its own, with or without notice." Id.

discharge." Fed. R. Bankr. P. 4004(b)(1). The rule directs, however, that the motion "shall be filed before the time has expired."[11] Id. Rule 9006(b)(3) provides that the court may enlarge the time to file a complaint under Rule 4004(a) "only to the extent and under the conditions stated" in that rule. Fed. R. Bankr. P. 9006(b)(3). "[G]iven the similar language of Rules 4004(a) and 4007(c), construction of one is informative of the proper construction of the other." Schwartz v. Weinberg (In re Weinberg), 197 Fed. Appx. 182, 185 n.3 (3d Cir. 2006) (citing Kontrick v. Ryan, 540 U.S. at 448 n.3; In re Eaton, 327 B.R. at 81 n.2).

D. Rule 4004 Applied

The bankruptcy court's application of Rule 4004 in the instant case was straightforward. Because Sullivan brought his § 727 counts and the January 2012 Extension Motion more than four months after the expiration of the September 15, 2011 deadline, the court denied the requested extension and ruled that the proposed amended counts were time-barred. The Rule 4007(c) analysis above applies with equal force to Rule 4004(a) and the deadlines established in Rule 4004(a) are equally firm. Indeed, Rule 4004(a) is to be strictly construed. Frati v. Gennaco, No. 10-11055-PBS, 2011 WL 241973, at *4 (D. Mass. Jan. 24, 2011). Thus, the bankruptcy court properly denied the January 2012 Extension Motion and the motion to amend, to the extent that they sought the allowance of Sullivan's late § 727 claims. To the extent that

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[11] A recent amendment to Rule 4004(b) permits a motion to extend the time to object to discharge to be filed:

> . . . [A]fter the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection.

Fed. R. Bankr. P. 4004(b)(2). Sullivan makes no claims under this amendment; nor would the record support such a claim.

the January 2012 Extension Motion attempted, again, to permit the late filing of Sullivan's § 523 claims, it was properly denied for the reasons previously stated.

Sullivan asserts unpersuasively that the court should have exercised its equitable powers under § 105[12] to permit the acceptance of his late § 727 claims. This argument ignores the well-established principle, recognized by the bankruptcy court, that a court's § 105 powers are not unfettered. "Section 105 may not be invoked where the result of its application would be inconsistent with any other Code provision or it would alter other substantive rights set forth in the Code." Ameriquest Mortgage Co. v. Nosek (In re Nosek), 544 F.3d 34, 44 (1st Cir. 2008). Accordingly, § 105 does not permit an extension of time after the expiration of the applicable limitations period, "as determined in accordance with the Bankruptcy Code and Bankruptcy Rules." Yesh Diamonds, Inc. v. Yashaya, No. 09-CV-2016, 2010 WL 3851993, at *4 (E.D.N.Y. Sept. 27, 2010) (citation omitted) (affirming bankruptcy court's dismissal of late § 523 complaint).

III. Sullivan's Excusable Neglect and Equitable Tolling Arguments

Sullivan's argument that the delays in this case were occasioned by excusable neglect within the meaning of Rule 9006(b)(1) is unavailing.[13] "[A]lthough Rule 9006(b)(1) generally

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[12] That statute provides, in pertinent part:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

[13] That rule provides, in relevant part:

contemplates an extension of time being granted 'after the expiration of the specified period . . . where the failure to act was the result of excusable neglect,' Rule 9006(b)(3) renders that standard inapplicable to a motion to extend the period specified by Rule 4007(c)" and Rule 4004(a). In re Weinberg, 197 Fed. Appx. at 186 (citing Pioneer, 507 U.S. at 389 n.4). As the Supreme Court stated, "[t]he time-computation and time-extension provisions of Rule 9006 . . . are generally applicable to any time requirement found elsewhere in the rules unless expressly excepted." Pioneer, 507 U.S. at 389 n.4. Thus, in the context of Rules 4004(a) and 4007(c), there is no allowance for excusable neglect if a motion to extend time is filed late, or not at all. In re Prego Cruz, 323 B.R. at 831 (citation omitted). Accordingly, because both the October 2011 Extension Motion and the January 2012 Extension Motion were undeniably late, "excusable neglect" cannot serve as a legitimate basis for extending Rule 4004(a) or 4007(c)'s deadlines.

Sullivan also argues unconvincingly that the bankruptcy court should have equitably tolled the applicable deadlines in this case. We agree with the courts in this circuit which have held that Rule 4004 and Rule 4007 do not allow equitable exceptions, notwithstanding their nonjurisdictional nature, when a party files an untimely extension request. See, e.g., In re Spino, 306 B.R. at 721 ("Rule 4007(c) allows the bankruptcy court no discretion to extend the period to object to the dischargeability of a debt when the Motion was filed after the time has expired.");

> Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules . . . , 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.

Fed. R. Bankr. P. 9006(b)(1).

P.R. Electric Power Auth. v. Cintron (In re Cintron), 447 B.R. 82, 87 (Bankr. D.P.R. 2011) ("There is 'almost universal agreement that the provisions of [Rule] 4007(c) are mandatory and do not allow the Court any discretion to grant a late filed motion to extend time to file a dischargeability complaint.'"); In re Eaton, 327 B.R. at 85 (refusing to equitably toll Rule 4004(a) and 4007(c)'s deadlines, where no extension was sought prior to deadlines' expiration). As the New Hampshire bankruptcy court stated: "While principles of equitable tolling may, as a general proposition, apply to non-jurisdictional deadlines, the general rule cannot overcome express limitations." In re Eaton, 327 B.R. at 85.

Mindful that the purpose of Rule 4004 and Rule 4007 is to compel creditors to move swiftly, we conclude that Sullivan's equitable tolling argument is unavailing. Moreover, even if equitable tolling were applicable, Sullivan was required to show that his failure to file a timely complaint "was the result of (1) extraordinary circumstances, (2) beyond [his] control or external to [his] own conduct, (3) that prevented [him] from filing on time." In re Strojny, No. 08-17328, 2011 WL 6887206, at * 5 (Bankr. D. Mass. Dec. 29, 2011) (internal quotations and citation omitted). On notice of the complaint deadline, as extended by his own motions, Sullivan could have protected his interests, but did not.

There is nothing in the record which suggests that Sullivan's change in counsel was either an extraordinary circumstance or beyond his control. Moreover, courts generally hold that circumstances related to the hiring of counsel are not sufficiently compelling to justify relief from filing deadlines, under equitable theories. See, e.g., Devenger v. Forant (In re Forant), No. 02-10643, 2003 WL 22247234, at *2 (Bankr. D. Vt. Feb. 25, 2003) (denying defendant's late motion to extend time to respond to summary judgment motion on the grounds that failure to

hire counsel before the expiration of the deadline did not constitute excusable neglect under Rule 9006(b)); In re W & L Assocs., Inc., 74 B.R. 681 (Bankr. E.D. Pa. 1987) (holding that unreported changes of counsel and reassignment of case to different counsel failed to satisfy standard for showing excusable neglect); Halpert v. Interstate Computer Serv., Inc. (In re World Wide Gifts, Inc.), 10 B.R. 761 (Bankr. S.D.N.Y. 1981) (holding that failure to timely contact counsel does not equate to excusable neglect). Thus, a review of the record exposes no facts which might justify equitable tolling, as the bankruptcy court correctly noted in its decision.

CONCLUSION

For all of the foregoing reasons, we **AFFIRM** the Order.