

**NOT FOR PUBLICATION**

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

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**BAP NO. MW 15-029**

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**Bankruptcy Case No. 15-40258-MSH**

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**WILLIAM A. TRUDEAU, JR.,  
Debtor.**

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**WILLIAM A. TRUDEAU, JR.,  
Appellant.**

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**Appeal from the United States Bankruptcy Court  
for the District of Massachusetts  
(Hon. Melvin S. Hoffman, U.S. Bankruptcy Judge)**

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**Before  
Deasy, Godoy, and Cary,  
United States Bankruptcy Appellate Panel Judges.**

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**William A. Trudeau, Jr., Pro Se, on brief for Appellant.**

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**August 27, 2015**

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## **Cary, U.S. Bankruptcy Appellate Panel Judge.**

William A. Trudeau, Jr. (the “Debtor”) appeals pro se from the bankruptcy court’s April 21, 2015 order dismissing his bankruptcy case for failure to comply with certain court orders requiring him to file outstanding schedules, statements, and other documents. For the reasons set forth below, we **AFFIRM**.

### **BACKGROUND**

The Debtor, who is incarcerated in a federal prison in Devens, Massachusetts, filed a chapter 11 petition on February 11, 2015.<sup>1</sup> On the same date, the bankruptcy court entered an Order to Update directing the Debtor to file outstanding schedules, statements, certificate of credit counseling, and other documents by February 25, 2015, and providing that “[f]ailure to file the requested documents may result in the dismissal of your bankruptcy case, if not filed by the due dates above.” Three days later, on February 14, 2015, the bankruptcy court sent to the Debtor, by first class U.S. mail, postage prepaid, a bankruptcy assistance notice for pro se filers which provided information about available pro se resources, and repeated the warning that the failure to file information in a timely manner could result in the dismissal of the Debtor’s case.<sup>2</sup>

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<sup>1</sup> Unless expressly stated otherwise, all references to “Bankruptcy Code” or to specific statutory sections shall be to the Bankruptcy Reform Act of 1978, as amended, 11 U.S.C. §§ 101, et seq.

<sup>2</sup> The notice provided in part:

You have filed a case in the U.S. Bankruptcy Court for the District of Massachusetts without an attorney representing you. You are *pro se*. As a *pro se* debtor, you may get information about the bankruptcy process and the filing requirements from the Pro Se Law Clerk’s Office. The Pro Se Law Clerk can answer some basic bankruptcy questions.

On March 2, 2015, the Debtor filed a motion to extend time to file the missing documents. As grounds, the Debtor stated that the prison's "snail mail" was very slow, and he needed a 90-day extension to obtain bankruptcy counsel and to locate his financial records. By endorsed order dated March 12, 2015, the bankruptcy court extended the deadline for the Debtor to file the missing documents to April 13, 2015.

On March 16, 2015, the Debtor filed his second motion seeking a 90-day extension of time to file the required documents. As grounds, he again stated that he needed additional time to file the documents due to his incarceration, and the slow mail service. The bankruptcy court entered an endorsed order indicating the motion was moot as the extended deadline of April 13, 2015, had not yet expired.

On April 1, 2015, the U.S. Trustee filed a motion to dismiss the case due to the Debtor's failure to attend the meeting of creditors, attend the individual debtor interview scheduled by the U.S. Trustee, respond to requests to provide proof of insurance, open a debtor-in-possession account, and file a monthly operating report. The bankruptcy court scheduled the motion to dismiss for a hearing on May 28, 2015, with objections due by May 15, 2015.

On April 9, 2015, the Debtor filed his third motion to extend time to file the missing documents, seeking a 30-day extension to May 13, 2015. As grounds, he stated that he needed

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The Pro Se Law Clerk can give information, but not legal advice. No one from the Clerk's office can provide legal advice. Should you need legal representation, referrals can be made to an appropriate service. In fact, you are encouraged to consult the Pro Se Law Clerk regarding a referral. Bankruptcy is a complicated process with long-term financial consequences. If you fail to file all of the required documents, your case can be dismissed, which will cause you to forfeit rights. Also, re-opening or re-filing is costly!

time to acquire the Federal Rules of Bankruptcy Procedure and the local rules of the bankruptcy court, which he claimed were not available at the prison. On April 10, 2015, the bankruptcy court entered an order granting the motion as to the Debtor's request for a copy of the local rules, but denying it as to the request for an extension of time to file the required documents.

The Debtor did not file the required documents by the April 13, 2015 deadline, and on April 21, 2015, the bankruptcy court entered an Order of Dismissal, providing:

Due to the failure of the Debtor to comply with the Court's Order issued on February 11, 2015, and extended by Order dated 3/12/2015, the Debtor having failed to file the required documents, it is hereby ordered that the above-entitled case be and hereby is DISMISSED.

The bankruptcy court then cancelled the hearing on the U.S. Trustee's motion to dismiss as it had dismissed the case.

The Debtor filed a motion to reconsider the Order of Dismissal, arguing that the bankruptcy court had prematurely dismissed the case because the scheduled hearing on the U.S. Trustee's motion for dismiss was not until May 28, 2015. The Debtor also filed an objection to the U.S. Trustee's motion to dismiss, and a notice of appeal of the Order of Dismissal.

On May 7, 2015, the bankruptcy court entered an order denying the motion for reconsideration, stating: "My dismissal was not on trustee's motion to dismiss but on Debtor's failure to file documents by the extended deadline per prior court orders. Debtor had until April 13 on a case filed on February 11, more than adequate time to hire counsel and file the required documents." It also entered an order indicating that the Debtor's objection to the U.S. Trustee's motion to dismiss was moot.

## **JURISDICTION**

The Panel has jurisdiction to hear appeals from a final judgment of the bankruptcy court. 28 U.S.C. § 158(a)(1). An order dismissing a case is a final order, and, therefore, the Panel has jurisdiction to hear this appeal. In re Eldorado Canyon Props., LLC, 505 B.R. 601, 603 (B.A.P. 1st Cir. 2014) (citation omitted); see also In re Colón Martinez, 472 B.R. 137, 143 (B.A.P. 1st Cir. 2012) (“An order dismissing a chapter 11 case is a final, appealable order.”) (citations omitted) (internal quotations omitted).

## **STANDARD OF REVIEW**

The Panel reviews a bankruptcy court’s findings of fact for clear error and its conclusions of law de novo. See Lessard v. Wilton-Lyndeborough Coop. Sch. Dist., 592 F.3d 267, 269 (1st Cir. 2010). A bankruptcy court’s order dismissing a debtor’s case should be overturned only if the debtor establishes that the bankruptcy court committed a clear abuse of discretion. In re Eldorado Canyon, 505 B.R. at 603 (citation omitted) (quotations omitted). “A court abuses its discretion if it does not apply the correct law or if it rests its decision on a clearly erroneous finding of material fact.” Id. at 603-04 (citation omitted) (internal quotations omitted).

## **DISCUSSION**

### **I. The Standards**

Section 521(a)(1) imposes certain duties upon a debtor in bankruptcy, providing, in relevant part, as follows:

- (a) The debtor shall—
  - (1) file —
    - (A) a list of creditors; and
    - (B) unless the court orders otherwise—

- (i) a schedule of assets and liabilities;
- (ii) a schedule of current income and current expenditures;
- (iii) a statement of the debtor's financial affairs . . .
- . . .
- (v) a statement of the amount of monthly net income, itemized to show how the amount is calculated . . . .

11 U.S.C. § 521(a)(1).<sup>3</sup> Bankruptcy Rule 1007(c) requires the debtor to file “the schedules, statements, and other documents . . . with the petition or within 14 days thereafter,” or to seek an extension of time. Fed. R. Bankr. P. 1007(c).

Moreover, § 105(a) “empowers the bankruptcy court to exercise its equitable powers — where ‘necessary’ or ‘appropriate’ — to facilitate the implementation of other Bankruptcy Code provisions.” In re Eldorado Canyon, 505 B.R. at 604 (quoting Besette v. Avco Fin. Servs., Inc., 230 F.3d 439, 444 (1st Cir. 2000)). That section provides:

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). “Section 105(a) ‘provides a bankruptcy court with statutory contempt powers . . . .’” In re Eldorado Canyon, 505 B.R. at 604 (quoting Besette v. Avco Fin. Servs., 230 F.3d at 445). “Those powers include ‘discretionary *sua sponte* dismissals.’” Id. (quoting

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<sup>3</sup> Massachusetts Local Bankruptcy Rule 1007-1 similarly specifies the lists, schedules, statements, and other documents required of the debtor, including, inter alia, an original matrix of all creditors and their last known complete addresses, and a certificate of credit counseling pursuant to § 1109(h). See MLBR 1007-1.

In re Gonic Realty Trust, 909 F.2d 624, 626 n.1 (1st Cir. 1990)); see also Howard v. Lexington Invs., Inc., 284 F.3d 320, 322-23 (1st Cir. 2002) (dismissing case for failure to comply with court order that resulted in delay to creditors).

## **II. Applying the Standards**

After notifying the Debtor of the missing documents and extending the deadline to file such documents, the bankruptcy court dismissed the Debtor's case due to his failure to file the documents specified in the bankruptcy court's February 11, 2015 order, including his schedules and statement of financial affairs. The Debtor offered no just cause for further extension of the deadline, nor did he demonstrate a good faith effort to comply with his obligations under the Bankruptcy Code. Nor are the Debtor's obligations under § 521(a)(1)(A) merely technical nuisances which have no impact on the case. As the Panel has stated:

Bankruptcy schedules serve the important purpose of ensuring that adequate information is available for the trustee and creditors. Full disclosure of assets and liabilities in the schedules is the "*quid pro quo* for the receipt of a bankruptcy discharge." First United Bank & Trust Co. v. Buescher (In re Buescher), 491 B.R. 419, 439-40 (Bankr. E.D. Tex. 2013). Moreover, it is "entirely appropriate" for the bankruptcy court to set and enforce deadlines. Howard v. Lexington Invs., Inc., 284 F.3d [at] 323 [ ]. Indeed, "[n]either the court nor creditors should have to coerce or implore a debtor into fulfilling the obligations imposed upon it." In re Berryhill, 127 B.R. 427, 433 (Bankr. N.D. Ind. 1991) (citation omitted).

In re Eldorado Canyon, 505 B.R. at 604-05. Thus, it was entirely appropriate for the bankruptcy court to exercise its authority under § 105(a), and to set and enforce a

deadline for the Debtor to comply with his obligations under § 521 and file the missing documents. See Howard v. Lexington Invs., 284 F.3d at 323; 11 U.S.C. § 105(a).<sup>4</sup>

The Debtor argues, however, that the bankruptcy court prematurely dismissed his case because the scheduled hearing on the U.S. Trustee's motion to dismiss was not until May 28, 2015. In addition, he argues that the prison system hindered his ability to comply with the U.S. Trustee's requests for a debtor-in-possession account and monthly reports, as well as his ability to collect the information necessary to complete his schedules and statements. He also contends that the bankruptcy court's failure to request video access for him to attend the initial debtor meeting and the meeting of creditors violated his due process rights.

Based on his arguments, it appears that the Debtor is confusing the allegations set forth in the U.S. Trustee's motion to dismiss with the bankruptcy court's grounds for dismissal. As noted above, the bankruptcy court dismissed the Debtor's case due to his failure to comply with the court's orders of February 11, 2015, and March 12, 2015, and file the required documents. The Debtor's incarceration in a federal prison does not excuse compliance with his § 521 obligations or the bankruptcy court's orders. See Bristol v. DeRosa (In re Bristol), No. 09-CV-3730, 2010 U.S. Dist. LEXIS 104777, \*10 (E.D.N.Y. Sept. 30, 2010) (holding debtor's incarceration did not excuse him from complying with the obligations imposed under the

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<sup>4</sup> Although the bankruptcy court did not specifically state that it was dismissing the case pursuant to its authority under § 105(a), it is inherent in the bankruptcy court's ruling as that section of the Bankruptcy Code gives bankruptcy courts "statutory contempt powers," including "discretionary *sua sponte* dismissals." See In re Eldorado Canyon, 505 B.R. at 604 (citations omitted) (internal quotations omitted).

Bankruptcy Code); Klinger v. Schwartz (In re Klinger), No. 3:01CV2311 (CFD), 2004 U.S. Dist. LEXIS 21085, \*7 (D. Conn. Sept. 30, 2004) (ruling pro se appellant’s incarceration was insufficient reason for his failure to comply with court orders). The bankruptcy court gave him ample time to obtain bankruptcy counsel and copies of the Federal Rules of Bankruptcy Procedure and the local bankruptcy rules, which were available online, and to file the required documents.

Moreover, the Debtor’s ability to file his bankruptcy petition, some of his schedules, and three motions requesting extensions of time to file the missing documents—all while being incarcerated—indicates that he had the ability to file documents with the bankruptcy court. See In re Bristol, 2010 U.S. Dist. LEXIS 104777, at \*10 (stating debtor’s ability to file documents while incarcerated indicated he had the ability to comply with his obligations under the Bankruptcy Code). While we are mindful that the conditions described by the Debtor would make the filing of documents harder for him than if he were not incarcerated, the court gave him extra time to complete that task and, on at least two occasions, told him that the filing of the missing documents was critical to the survival of his case. Despite this, the Debtor did not do so. He could have, and should have, completed the documents to the best of his ability, and amended them later if necessary. That would have shown a good faith effort to comply with the mandates of the Bankruptcy Code and the orders of the bankruptcy court. Courts must have the ability to “establish orderly processes and manage their own affairs,” and “disobedience of court orders is inimical to the orderly administration of justice and, in and of itself, can constitute

extreme misconduct.” Young v. Gordon, 330 F.3d 76, 81 (1st Cir. 2003) (citations omitted).

Thus, the bankruptcy court did not abuse its discretion in dismissing the Debtor’s case.

**CONCLUSION**

For the reasons set forth above, we **AFFIRM**.