

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

PRONSKE GOOLSBY & KATHMAN, §
PC f/k/a PRONSKE & PATEL, P.C.; §
SHURIG JETEL BECKETT §
TACKETT; DEAN FERGUSON; GARY §
G. LYON; ROBERT GARREY; §
POWERS TAYLOR, LLP; JEFFREY §
HALL; and DAVID PACIONE, §
Appellants, §
v. §
JEFFREY BARON, §
Appellee. §

No. 3:14-cv-01370-P

APPELLEE’S MOTION TO DISMISS

TO THE HONORABLE JORGE A. SOLIS:

Appellee, Jeffrey Baron, respectfully requests that the Court dismiss the above-styled and numbered bankruptcy appeal because the Appellants failed timely invoke to this Court’s appellate jurisdiction. In particular:

1. The Appellants did not timely file a Notice of Appeal within the 14 days of the entry of the order being appealed; and
2. After the expiration of this period, the Appellants failed to file a written motion, showing excusable neglect, within 21 days seeking an extension of time to file a Notice of Appeal.

In support, the Appellee respectfully shows:

I.

Background

This appeal concerns the entry of an Order of Dismissal, dismissing the involuntary bankruptcy case brought against Jeffrey Baron. (ECF Doc 1-1, pp. 6–7). The Order of Dismissal was entered March 14, 2014. (ECF no. 1-1, p. 6).

The Notice of Appeal was filed April 15, 2014. (ECF no. 1-1, p. 3).

II.

The Court Should Dismiss the Appeal

The timetable for perfecting an appeal of a final order of the Bankruptcy Court is set forth in Rule 8002 of the Federal Rules of Bankruptcy Procedure. The deadline to file a notice of appeal is 14 days from the entry of the order being appealed. Fed. R. Bankr. P. 8002(a). This deadline may be extended for up to 21 days past the general, 14-day deadline by filing a written motion showing “excusable neglect.” Fed. R. Bankr. P. 8002(c)(2).

The time limits proscribed by Rule 8002 are jurisdictional and cannot be waived. *Abraham v. Aguilar (In re Aguilar)*, 861 F.2d 873, 874 (5th Cir. 1988).

Clearly, the Appellants missed these deadlines. The 14th day following the Order of Dismissal was March 28, 2014. The 21st day following this deadline was April 18, 2014. The docket sheet from the Bankruptcy Court is devoid of any reference to a motion seeking an extension of the deadline to file a notice of appeal. (ECF 1-1, p. 62). The Record which is currently on file was filed April 15, 2014. If supplemented, the docket sheet from the underlying bankruptcy case would show that no motion seeking an extension of time was filed after April 15, 2014. A true and correct copy of the docket sheet entries from March 14, 2014 to the present date is attached as *Exhibit A*, and its contents are incorporated by reference.

By itself, the late-filed Notice of Appeal cannot be construed as a satisfying the requirements of a separately-filed, written motion as expressly required by Rule 8002(c)(2). *Williams v. EMC Mortgage Corp. (In re Williams)*, 216 F.3d 1295, 1297 (11th Cir. 2000). No other court has implied the filing of a motion for extension of time when an appellant has failed to file a written motion pursuant to Rule 8002(c)(2). *E.g., Sellitti v. R.H. Macy & Co., Inc. (In re R.H. Macy & Co., Inc.)*, 173 B.R. 303, 302 (S.D.N.Y. 1994); *American Freight System, Inc. v. W.A. Walker & Assoc's, Inc. (In re American Freight System, Inc.)*, 153 B.R. 316, 321 (D.Kan. 1993); *Martin v. Bay State Milling Co.*, 151 B.R. 154, 156 (N.D.Ill. 1993); *In re Bushnell*, 273 B.R. 359, 363 (Bankr.D.Vt. 2001); *Total Success, Inc. v. Moore (In re Total Success, Inc.)*, 47 B.R. 861, 862 (Bankr.Ariz. 1985).

WHEREFORE, premises considered, Appellee, Jeffrey Baron, respectfully requests that the Court dismiss the above-styled and numbered bankruptcy appeal because of the Appellants' failure to invoke this Court's appellate jurisdiction.

Respectfully Submitted this 29th day of April 2014.

PENDERGRAFT & SIMON, LLP

/s/ Leonard H. Simon

Leonard H. Simon

Texas Bar No. 18387400

2777 Allen Parkway, Suite 800

Houston, Texas 77019

Tel. (713) 528-8555

Fax. (713) 868-1267

Counsel for Jeffrey Baron

Certificate of Conference

This is to certify that on Monday, April 28, 2014, at approximately 8:46 am, I forwarded a draft of this Motion to Gerrit M. Pronske, counsel for appellants, for purposes of conferring with him regarding same. I asked Mr. Pronske to advise as to whether he opposed the relief requested. As of the time of the filing of this Motion, I have not received a phone call, email or fax responding to my email.

/s/ Leonard H. Simon
Leonard H. Simon

Certificate of Service

I hereby certify that a true and correct copy of the above Appellee's Motion to Dismiss has been served on the following counsel/parties of record in accordance with Bankruptcy Rule 9013, BLR 9013-1 and local rules for ECF service on this 29th day of April 2014:

Counsel/parties appearing via ECF:

Gerrit M. Pronske, Counsel for Appellants

/s/ Leonard H. Simon
Leonard H. Simon

EXHIBIT “A”

**REFORM, 5th Circuit Appeal, EXHIBITS, SEALED EXH, Sealed Document, APPEAL,
DISMISSED****U.S. Bankruptcy Court
Northern District of Texas (Dallas)
Bankruptcy Petition #: 12-37921-sgj7**

Assigned to: Stacey G. Jernigan
Chapter 7
Involuntary

Date filed: 12/18/2012
Debtor dismissed: 03/14/2014
341 meeting: 01/06/2014
Deadline for objecting to discharge: 10/07/2013

Debtor disposition: Dismissed for Other Reason

Debtor**Jeffrey Baron**

P.O. Box 111501

Dallas, TX 75011

DALLAS-TX

SSN / ITIN: xxx-xx-9133

represented by **Christopher M. Albert**

Busch Ruotolo & Simpson, LLP

100 Crescent Court, Suite 250

Dallas, TX 75201

214-855-2880

Fax : 214-855-2871

Email: albert@buschllp.com

TERMINATED: 07/23/2013

Stephen Rudolph Cochell

The Cochell Law Firm

7026 Old Katy Road, Suite 259

Houston, TX 77024

(713) 980-8796

Fax : (713) 980-1179

Email: srcochell@cochellfirm.com**Leonard H. Simon**

Pendergraft & Simon L.L.P.

The Riviana Building, Suite 800

2777 Allen Parkway

Houston, TX 77019

713-528-8555

Fax : 832-202-2810

Email: lsimon@pendergraftsimon.com**Mark Stromberg**

Stromberg Stock

Northpark Center

8750 N Central Expwy, Ste 625

Dallas, TX 75231

972-458-5335

Fax : 972-861-5339

Email: mark@strombergstock.com

Edwin E. Wright, III
Abrams Centre
9330 LBJ Fwy, Suite 1400
Dallas, TX 75243
(972) 499-3406
Fax : (972) 231-9150
Email: wright@edwright.com

Trustee

John H. Litzler
1412 Main St., 24th Flr.
Dallas, TX 75202
(214) 752-0999

represented by **Kevin D. McCullough**
Rochelle McCullough L.L.P.
325 N. St. Paul St., Ste. 4500
Dallas, TX 75201
(214)953-0182
Fax : (214)953-0185
Email: kdm@romclawyers.com

Kathryn Gillian Reid
Rochelle McCullough LLP
325 N. Saint Paul Street, Suite 4500
Dallas, TX 75201
(214) 953-0182
Fax : (214) 953-0185
Email: kreid@romclawyers.com

Julian Preston Vasek
Rochelle McCullough, LLP
325 N. St. Paul St., Ste. 4500
Dallas, TX 75201-3827
(214) 953-0182
Fax : (214) 953-0185
Email: jvasek@romclawyers.com

U.S. Trustee

United States Trustee
1100 Commerce Street
Room 976
Dallas, TX 75242
214-767-8967

represented by **Lisa L. Lambert**
Office of the United States Trustee
1100 Commerce St., Rm. 976
Dallas, TX 75242
(214) 767-8967 ext. 1080
Fax : (214) 767-8971
Email: lisa.l.lambert@usdoj.gov

Interim Trustee

John H. Litzler, Gap Trustee
1412 Main St., 24th Flr.
Dallas, TX 75202
(214) 752-0999

represented by **John H. Litzler**
1412 Main St., 24th Flr.
Dallas, TX 75202
(214) 752-0999
Email: msanchez@lssmllp.com

Kevin D. McCullough
(See above for address)

| Filing Date | Docket Text |
|-------------|---|
| 03/14/2014 | 466 (1 pg) Order denying motion for expedited hearing (Related Doc# 465 Expedite hearing on # 464 Motion for relief from stay) Entered on 3/14/2014. (Mathews, M.) |
| 03/14/2014 | 467 (2 pgs) Order dismissing Debtor without prejudice. Entered on 3/14/2014. (Mathews, M.) |
| 03/16/2014 | 468 (3 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 466 Order denying motion for expedited hearing (Related Doc 465 Expedite hearing on # 464 Motion for relief from stay) Entered on 3/14/2014. (Mathews, M.)) No. of Notices: 2. Notice Date 03/16/2014. (Admin.) |
| 03/16/2014 | 469 (5 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 467 Order dismissing Debtor without prejudice. Entered on 3/14/2014. (Mathews, M.)) No. of Notices: 41. Notice Date 03/16/2014. (Admin.) |
| 04/11/2014 | 470 (15 pgs; 3 docs) Application for compensation <i>and reimbursement of expenses</i> for Litzler, Segner, Shaw & McKenney LLP, Accountant, Period: 1/21/2013 to 4/10/2014, Fee: \$18,511.00, Expenses: \$229.39. Filed by (Attachments: # 1 Exhibit A # 2 Service List) (Litzler, John) |
| 04/11/2014 | 471 (27 pgs; 4 docs) Application for compensation for Stromberg Stock, PLLC, Debtor's Attorney, Period: 1/15/2013 to 7/31/2013, Fee: \$145506.67, Expenses: \$957.79. Filed by Creditor Stromberg Stock, PLLC Objections due by 5/5/2014. (Attachments: # 1 Exhibit 1 # 2 Exhibit A - Part I # 3 Exhibit Part 2) (Stromberg, Mark) |
| 04/11/2014 | 472 (14 pgs; 3 docs) Application for compensation for Busch Ruotolo & Simpson, LLP, Debtor's Attorney, Period: 1/28/2013 to 8/21/2013, Fee: \$14,093.33, Expenses: \$565.00. Filed by Creditor Busch Ruotolo & Simpson, LLP Objections due by 5/5/2014. (Attachments: # 1 Exhibit 1 # 2 Exhibit A) (Albert, Christopher) |
| 04/11/2014 | 473 (245 pgs; 7 docs) Application for compensation <i>Receiver's Application for Payment</i> . Filed by Attorney Jeffrey R Fine (Attachments: # 1 Exhibit A # 2 Exhibit B # 3 Exhibit C # 4 Exhibit D # 5 Exhibit E # 6 Exhibit F) (Fine, Jeffrey) |
| 04/13/2014 | 474 (29 pgs) Adversary case 14-03047. Complaint by Jeffrey Baron against Gerrit Pronske, Pronske & Patel, P.C., Pronske, Goolsby & Kathman, P.C., ELIZABETH L. MORGAN, Schurig Jetel Beckett Tackett, Dean Ferguson, Gary G. Lyon, Robert Garrey, Powers Taylor, LLP, Mark Taylor, Jeffrey Hall, David L. Pacione. Fee Amount \$293. Nature(s) of suit: 14 (Recovery of money/property - other). (Simon, Leonard) |
| 04/14/2014 | 475 (49 pgs; 4 docs) Application for compensation for Rochelle McCullough, LLP, Trustee's Attorney, Period: 1/21/2013 to 3/14/2014, Fee: \$243,201.00, Expenses: \$12,945.07. Filed by Attorney Rochelle McCullough, LLP Objections due by 5/8/2014. (Attachments: # 1 Exhibit A # 2 Coversheet # 3 Service List) (McCullough, Kevin) |

| | |
|------------|---|
| 04/14/2014 | 476 (3 pgs) Notice of appeal . Fee Amount \$298 filed by Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske Goolsby & Kathman, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 467 Order dismissing case). Appellant Designation due by 04/28/2014. (Pronske, Gerrit) |
| 04/15/2014 | Receipt of filing fee for Notice of appeal(12-37921-sgj7) [appeal,ntcap] (298.00). Receipt number 18887284, amount \$ 298.00 (re: Doc# 476). (U.S. Treasury) |
| 04/15/2014 | 478 (7 pgs; 3 docs) Certificate of mailing regarding appeal (RE: related document(s) 476 Notice of appeal . filed by Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske Goolsby & Kathman, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 467 Order dismissing case). (Attachments: # 1 Service List) (Whitaker, Sheniqua) |
| 04/15/2014 | 479 (1 pg) Transmittal of record on appeal to U.S. Court of Appeals. Deficient record on appeal: "Untimely. ,Transmitted: Mini Record. . (RE: related document(s) 476 Notice of appeal . (RE: related document(s) 467 Order dismissing case). (Whitaker, Sheniqua) |
| 04/15/2014 | 481 (10 pgs; 2 docs) Amended application for compensation <i>THE RECEIVERS SUPPLEMENTAL APPLICATION FOR PAYMENT UNDER 11 U.S.C. § 303(i) AND 543(c) OF COSTS, ATTORNEYS FEES, AND DAMAGES INCURRED</i> . Filed by Attorney Jeffrey R Fine (Attachments: # 1 Exhibit I) (Fine, Jeffrey) |
| 04/15/2014 | 482 (4 pgs) Notice of docketing record on appeal. Civil Action Number: 3:14-CV-1370-P (RE: related document(s) 476 Notice of appeal) (Blanco, J.) (Entered: 04/16/2014) |
| 04/17/2014 | 483 (3 pgs) Order Setting Scheduling Conference and Setting Potential Scheduling Conference Entered on 4/17/2014 (RE: related document(s) 470 Application for compensation filed by Accountant Litzler, Segner, Shaw & McKenney LLP, 471 Application for compensation filed by Creditor Stromberg Stock, PLLC, 472 Application for compensation filed by Creditor Busch Ruotolo & Simpson, LLP, 473 Application for compensation filed by Interested Party Peter S. Vogel, Receiver, 475 Application for compensation, 481 Amended Application for compensation filed by Interested Party Peter S. Vogel, Receiver). Status Conference to be held on 6/10/2014 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Mathews, M.) Modified text on 4/21/2014 (Mathews, M.). |
| 04/17/2014 | 484 (5 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 478 Certificate of mailing regarding appeal (RE: related document(s) 476 Notice of appeal . filed by Dean Ferguson, Robert Garrey, Jeffrey Hall, Gary G. Lyon, David L. Pacione, Powers Taylor, LLP, Pronske Goolsby & Kathman, P.C., Shurig Jetel Beckett Tackett (RE: related document(s) 467 Order dismissing case). (Attachments: # 1 Service List) No. of Notices: 1. Notice Date 04/17/2014. (Admin.) |
| | 485 (5 pgs) BNC certificate of mailing - PDF document. (RE: related document(s) 483 Order Setting Potential Scheduling Conference Entered on 4/17/2014 (RE: related |

04/19/2014

document(s) [470](#) Application for compensation filed by Accountant Litzler, Segner, Shaw & McKenney LLP, [471](#) Application for compensation filed by Creditor Stromberg Stock, PLLC, [472](#) Application for compensation filed by Creditor Busch Ruotolo & Simpson, LLP, [473](#) Application for compensation filed by Interested Party Peter S. Vogel, Receiver, [475](#) Application for compensation, [481](#) Amended Application for compensation filed by Interested Party Peter S. Vogel, Receiver). Status Conference to be held on 6/10/2014 at 01:30 PM at Dallas Judge Jernigan Ctrm. (Mathews, M.)
No. of Notices: 2. Notice Date 04/19/2014. (Admin.)

| PACER Service Center | | | |
|-----------------------------|---------------|-------------------------|--|
| Transaction Receipt | | | |
| 04/23/2014 22:46:01 | | | |
| PACER Login: | pe0710 | Client Code: | baron |
| Description: | Docket Report | Search Criteria: | 12-37921-sgj7 Fil or Ent: filed From: 3/14/2014 To: 4/23/2014 Doc From: 0 Doc To: 99999999 Term: included Headers: included Format: html Page counts for documents: included |
| Billable Pages: | 4 | Cost: | 0.40 |