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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

EASTMAN KODAK COMPANY, *et al.*,

Debtors.

VALENTIN ANSELMO ORTEGA
LOPEZ,

Appellant,

v.

EASTMAN KODAK COMPANY, *et al.*,

Appellees.

Chapter 11
Case No. 12-10202 (ALG)

ORDER

14 Civ. 9519 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

On February 20, 2014, Valentin Anselmo Ortega Lopez (“Ortega”) appealed from a January 27, 2014 order of United States Bankruptcy Judge Allan L. Gropper, denying Ortega’s claim for payment by the bankruptcy estate of Eastman Kodak Company (“Kodak”). The claim arises from Kodak stock that was terminated prior to the company’s emergence from bankruptcy. For the reasons stated below, the appeal will be denied and the order of the Bankruptcy Court will be affirmed.

BACKGROUND

Between July 7, 2011 and September 3, 2013, Ortega purchased Kodak stock. (See Request for Payment (Bankr. Dkt. No. 5242) at 2¹) On January 19, 2012, Kodak and its

¹ The page numbers of documents referenced in this Order correspond to the page numbers designated by the Electronic Case Filing system.



affiliates filed for Chapter 11 bankruptcy relief. (See Voluntary Pet. (Chapter 11) (Bankr. Dkt. No. 1)) On August 21, 2013, Kodak and its affiliates proposed an amended plan (the “Plan”) to emerge from bankruptcy. (See Order Confirming Chapter 11 Plan (Bankr. Dkt. No. 4966-1), Ex. A (Plan)) The Plan, among other things, called for cancellation of certain shareholders’ equity interests. (Id., Ex. A (Plan) ¶ 5.6)

On September 3, 2013, Kodak emerged from bankruptcy protection. (See Notice of Effective Date (Bankr. Dkt. No. 5015)) On October 15, 2013, Ortega filed a claim seeking to recoup his lost investment, which he valued at \$283,960.80. (See Request for Payment (Bankr. Dkt. No. 5242) at 2) Kodak filed an objection to Ortega’s claim, arguing that his equity interest was terminated as part of the Plan. (See Mot. for Obj. to Claims (Bankr. Dkt. No. 5334) at 24) Ortega filed responses to Kodak’s objection on December 17, 2013 and December 18, 2013. (See Resp. to Mot. (Bankr. Dkt. Nos. 5399, 5405))

On January 27, 2014, Judge Gropper issued an order sustaining Kodak’s objection and denying Ortega’s claim. (See Order (Bankr. Dkt. No. 6231)) That order was entered on the docket that same day. (Id.)

On February 20, 2014, Ortega filed the instant appeal.² (Notice of Appeal (Dkt. No. 1)) Kodak argues that Ortega missed the fourteen-day window for filing an appeal and that as a result this Court lacks jurisdiction to hear Ortega’s appeal. (Appellee Br. (Dkt. No. 4) at 6)

² Although Ortega dated his notice of appeal February 19, 2014, it was stamped by the Bankruptcy Court clerk on February 20, 2014. “The date on which a notice of appeal is ‘filed’ is . . . ‘the date the clerk receives it, not the date it is mailed.’” Ivers v. Ciena Capital LLC, No. 15-CV-7993(RA), 2016 WL 1562943, at *2 (S.D.N.Y. Apr. 15, 2016) (quoting Petite-El v. WorldCom, Inc., No. 05 Civ. 3179 (PAC), 2006 WL 27443, at *2 n.5 (S.D.N.Y. Jan. 4, 2006)). In any event, this one-day difference is of no consequence to this Court’s ruling.

DISCUSSION

Pursuant to 28 U.S.C. § 158(a)(1), district courts are vested with appellate jurisdiction over bankruptcy court rulings. 28 U.S.C. § 158(a)(1). Appeals must be submitted within the “time provided by Rule 8002 of the Bankruptcy Rules,” however. 28 U.S.C. § 158(c)(2). Pursuant to Rule 8002, “a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.” Fed. R. Bankr. P. 8002(a)(1). In calculating the fourteen-day period, Fed. R. Bankr. P. 9006(a) directs courts to “(A) exclude the day of the event that triggers the period; (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and (C) include the last day of the period.” Fed. R. Bankr. P. 9006(a); see also Ivers v. Ciena Capital LLC, No. 15-CV-7993(RA), 2016 WL 1562943, at *2 (S.D.N.Y. Apr. 15, 2016) (noting that the fourteen-day period set forth in Rule 8002(a)(1) includes weekends and holidays, and is “not fourteen business days”). Because Judge Gropper’s order was entered on January 27, 2014, the fourteen-day period to file a notice of appeal expired on February 10, 2014. Ortega did not file his appeal until February 20, 2014, however. (Notice of Appeal (Dkt. No. 1))

“[I]n the absence of a timely notice of appeal in the district court, the district court is without jurisdiction to consider the appeal” In re Siemon, 421 F.3d 167, 169 (2d Cir. 2005) (per curiam); see also In re Indu Craft, Inc., 749 F.3d 107, 115 (2d Cir. 2014) (“[E]ven though it is a bankruptcy rule that specifies the time within which an appeal must be filed, the statutory incorporation of that rule renders the requirement statutory, and hence, jurisdictional and non-waivable.” (quoting In re Caterborne, 640 F.3d 108, 112 (3d Cir. 2011))). Where a party files a notice of appeal after the fourteen-day period set forth in Bankruptcy Rule 8002(a)(1), “a bankruptcy court may extend the time to file a notice of appeal upon a party’s

motion that is filed: (A) within the time prescribed by this rule; or (B) within 21 days after that time, if the party shows excusable neglect.” Fed. R. Bankr. P. 8002(d)(1).

Here, Ortega filed his notice of appeal concerning Judge Gropper’s January 27, 2014 order on February 20, 2014 – twenty-four calendar days after that order was entered on the docket. Ortega never filed a motion for an extension of time, nor has he attempted to show that his untimely appeal should be allowed under the “excusable neglect” doctrine.

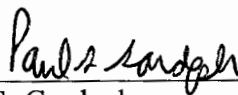
Because Ortega filed his appeal outside of the time allotted by Rule 8002, this Court is without jurisdiction to hear his appeal.

CONCLUSION

For the reasons stated above, this appeal is dismissed in its entirety. The Clerk of the Court is directed to close this case.

Dated: New York, New York
August 22, 2016

SO ORDERED.



Paul G. Gardephe
United States District Judge