

UNITED STATES BANKRUPTCY APPELLATE PANEL
FOR THE FIRST CIRCUIT

In re: *
*
CHRISTOPHER PILAVIS, * BAP NO. MB 99-049
Debtor. *
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*
RICHARD A. CAMPANA, * Bankruptcy No. 98-13074-WCH
Plaintiff/Appellee, *
* Adversary No. 98-2097
v. *
*
CHRISTOPHER PILAVIS, *
Defendant/Appellant. *
-----*

Before GOODMAN, HAINES and VAUGHN, Bankruptcy Judges.

ORDER DISMISSING APPELLEE CERDAN AND STRIKING ISSUE ON APPEAL

HAINES, B.J.

Before the Bankruptcy Appellate Panel is Appellee Ricardo Cerdan's motion to dismiss Debtor/Appellant Christopher Pilavis's appeal or, alternatively, to strike an issue from Mr. Pilavis's designation of issues. Because we conclude that the portion of the appeal concerning Mr. Cerdan is not a matter over which appellate jurisdiction lies, we will grant his motion to strike the issue relating to him and, further, sua sponte dismiss Mr. Cerdan as a party to the appeal.¹

¹ As a result, we do not address that portion of Mr. Cerdan's motion asking that the appeal be dismissed in toto on account of Mr. Pilavis's assertedly late designation of the record.

Mr. Pilavis's Notice of Appeal identifies several rulings over which he asks us to exercise appellate review. They include the bankruptcy court's entry of summary judgment against him in an adversary proceeding (Campana v. Pilavis, Adv. Pro. No. 98-2097) to which Mr. Cerdan was not a party, as well as an order extending the time within which Mr. Cerdan could file a complaint objecting to Mr. Pilavis's discharge. Obviously, the former issued in the adversary proceeding; the latter issued in the underlying bankruptcy case. Although the bankruptcy court considered (and issued rulings respecting) both matters on the same day, the adversary proceeding was never consolidated with Mr. Cerdan's contested motion for any purpose.

Although the Debtor's Notice of Appeal was timely as to both orders, it created an impermissible procedural anomaly - a single appeal addressing two separate orders, addressing wholly separate matters, issued in favor of two distinct parties. A consolidated appeal cannot be had by the Appellant's unilateral choice.

We could order Mr. Pilavis to remedy his appeal's procedural deficiency, but to do so would be futile. An order extending the time within which to file a complaint objecting to discharge is not a final order for purposes of appellate jurisdiction and does not fit with exceptions to the final order rule. See generally, Fleet Data Processing Corp. v. Branch (In re Bank of New England Corp.), 218 B.R. 643 (B.A.P. 1st Cir. 1998).

In light of the foregoing, we hereby grant Mr. Cerdan's motion and ORDER that the fourth issue in his designation of issues on appeal be stricken. In addition, we sua sponte DISMISS Mr. Cerdan as a party, without prejudice to Mr. Pilavis's right to initiate an appeal upon entry of a final judgment in any adversary proceeding that Mr. Cerdan may initiate.

SO ORDERED.

On this 3rd day of August, 1999.