

DEC 14 2012

NOT FOR PUBLICATION

SUSAN M. SPRAUL, CLERK  
U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

1 In re: ) BAP No. CC-12-1150-MkBePa  
2 )  
3 MIGUEL LEON; GREGORY LEE, ) Bk. Nos. RS 10-15045-MJ  
4 ) RS 10-15079-MJ  
5 Debtors. ) (Consolidated Bankruptcy Cases)  
6 )  
7 )  
8 ) Adv. Nos. RS 11-01980-MJ  
9 DONOVANT GRANT, ) RS 11-01981-MJ  
10 ) (Consolidated Adversary Proceedings)  
11 Appellant, )  
12 )  
13 v. ) **MEMORANDUM\***  
14 )  
15 MIGUEL LEON; GREGORY LEE, )  
16 )  
17 Appellees. )  
18 )

Submitted Without Oral Argument  
on November 15, 2012\*\*

Filed - December 14, 2012

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Meredith Jury, Bankruptcy Judge, Presiding\*\*\*

Appearances: Appellant Donovant Grant pro se on brief; Gary  
Sodikoff on brief for appellees Miguel Leon and  
Gregory Lee.

\*This disposition is not appropriate for publication.  
Although it may be cited for whatever persuasive value it may  
have (see Fed. R. App. P. 32.1), it has no precedential value.  
See 9th Cir. BAP Rule 8013-1.

\*\*By order entered October 4, 2012, this appeal was deemed  
suitable for submission without oral argument.

\*\*\*Case Number RS 10-15079-MJ and Adversary Number  
RS 11-01981-MJ formerly were assigned to Judge Catherine Bauer.  
However, by order of both Judge Bauer and Judge Jury, Case Number  
RS 10-15079-MJ and Adversary Number RS 11-01981-MJ were  
reassigned to Judge Jury.

1 Before: MARKELL, BEESLEY\*\*\*\* and PAPPAS, Bankruptcy Judges.  
2

3  
4 **INTRODUCTION**

5 Donovan Grant ("Grant") commenced nondischargeability  
6 adversary proceedings against debtors Miguel Leon and Gregory Lee  
7 (collectively, "Debtors") under 11 U.S.C. §§ 523(a)(2)(A) and  
8 (a)(6).<sup>1</sup> The bankruptcy court granted summary judgment in favor  
9 of the Debtors, holding that Grant had not timely filed his  
10 dischargeability complaints. Grant appeals, and we AFFIRM.

11 **FACTS**

12 Most of the key facts are not in dispute. We have drawn  
13 many of them from the adversary proceeding dockets and from the  
14 underlying bankruptcy case dockets.<sup>2</sup>

15 In 2005, Grant bought a 2002 Ford Explorer ("Explorer") for  
16 roughly \$8,000. Grant claims that he bought the Explorer from  
17 both of the Debtors. Grant also claims that, in order to induce  
18 him to purchase the Explorer, the Debtors intentionally made  
19 misrepresentations to him regarding the condition of and  
20

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21 \*\*\*\*Hon. Bruce T. Beesley, United States Bankruptcy Judge for  
22 the District of Nevada, sitting by designation.

23 <sup>1</sup>Unless specified otherwise, all chapter and section  
24 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and  
25 all "Rule" references are to the Federal Rules of Bankruptcy  
26 Procedure, Rules 1001-9037. All "Civil Rule" references are to  
27 the Federal Rules of Civil Procedure.

28 <sup>2</sup>We can take judicial notice of these dockets and of the  
imaged documents attached thereto. See O'Rourke v. Seaboard Sur.  
Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58 (9th Cir.  
1989); Atwood v. Chase Manhattan Mortg. Co. (In re Atwood),  
293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

1 maintenance performed on the Explorer. According to Grant, he  
2 suffered approximately \$4,000 in damages as a result of the  
3 Debtors' alleged fraud.

4 Grant first sued the Debtors in state court (Ventura County  
5 Superior Court Case No. CIV 244559). But before the disposition  
6 of Grant's state court lawsuit, both debtors filed chapter 7  
7 bankruptcy cases on February 24, 2010. Neither of the Debtors  
8 initially listed Grant on their original master mailing lists  
9 filed on February 24, 2010, contemporaneously with their  
10 bankruptcy petitions. Consequently, unlike those creditors  
11 initially listed by the Debtors, the bankruptcy court did not  
12 mail to Grant formal written notice of the bankruptcy filings.  
13 That notice, sent to other creditors as of February 26, 2010, set  
14 forth the date of the § 341(a) first meeting of creditors and the  
15 deadline or bar date under Rule 4007(c) for filing  
16 nondischargeability complaints. In Leon's case, the bar date was  
17 set for June 7, 2010, and in Lee's case it was set for June 4,  
18 2010.

19 Both Debtors filed papers in their respective bankruptcy  
20 cases in March 2010 listing Grant and his correct address. These  
21 papers included: (1) their amended master mailing lists, and  
22 (2) their schedule of nonpriority unsecured creditors  
23 (Schedule F). There are proofs of service attached to both  
24 amended master mailing lists, both dated March 3, 2010. In them,  
25 the debtors declared under penalty of perjury that they had  
26 mailed a notice of their amended master mailing lists to the  
27 parties listed on the attached mailing list ("March 2010  
28 Notice"). Grant is listed on both mailing lists, again at his

1 correct address.

2 In addition, Grant admitted to having actual knowledge of  
3 both bankruptcy filings by no later than early May 2010 ("May  
4 2010 Notice"). He received the May 2010 Notice from Debtors'  
5 state court counsel, who filed and served in the state court, on  
6 April 29, 2010, formal notice of the bankruptcy filings.

7 Grant did not take any action in either of the Debtors'  
8 bankruptcy cases until January 2011, when he filed motions to  
9 reopen both bankruptcy cases so that he could commence  
10 dischargeability actions against both Debtors. Grant obtained  
11 leave to reopen both cases, and in October 2011 he commenced an  
12 adversary proceeding in each bankruptcy case seeking an exception  
13 from discharge of debt under §§ 523(a)(2)(A) and (a)(6).<sup>3</sup>

14 Ultimately, the bankruptcy court consolidated for hearing and  
15 disposition both bankruptcy cases and both adversary proceedings.

16 Shortly before consolidation, at status conferences held in  
17 December 2011 in both adversary proceedings, the court discussed  
18 with the parties its view that the adversary proceedings appeared  
19 ripe for disposition on summary judgment. Particularly in the  
20 adversary proceeding against Leon, the court explained why it  
21 thought Leon was entitled to summary judgment. According to the  
22 court: (1) the complaint appeared untimely, and (2) Grant

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23  
24 <sup>3</sup>In addition to his claims for relief under §§ 523(a)(2)(A)  
25 and (a)(6), Grant stated in each complaint a third claim for  
26 relief under § 105(a). Because Grant's appeal brief does not  
27 address this third claim for relief, he has waived any argument  
28 relating thereto. See Golden v. Chicago Title Ins. Co. (In re  
Choo), 273 B.R. 608, 613 (9th Cir. BAP 2002); Branam v. Crowder  
(In re Branam), 226 B.R. 45, 55 (9th Cir. BAP 1998), aff'd,  
205 F.3d 1350 (table) (9th Cir. 1999).

1 appeared to have sufficient knowledge of the bankruptcy filing  
2 such that he should have filed his dischargeability complaints  
3 long before he actually did. The Debtors' counsel indicated at  
4 both status conferences that he would be filing summary judgment  
5 motions along the lines indicated by the court. Thus, Grant knew  
6 in December 2011 that he likely was going to face summary  
7 judgment motions in both adversary proceedings asserting:  
8 (1) that he had actual knowledge of the Debtors' bankruptcy  
9 filings, and (2) that he nonetheless failed to timely file his  
10 dischargeability complaints.

11 The Debtors moved for summary judgment, asserting that Grant  
12 did not timely file his nondischargeability complaints, as  
13 required by Rule 4007(c). The hearing on the summary judgment  
14 motion<sup>4</sup> was set for March 1, 2012. Grant did not timely respond  
15 to the summary judgment motion. Instead, he filed on  
16 February 17, 2012, less than two weeks before the hearing on the  
17 summary judgment motion, a motion to continue. The main reason  
18 Grant gave for a continuance was that he needed more time to  
19 conduct discovery. In relevant part, Grant asserted that he was  
20 in the process of conducting discovery in order to address the  
21 issue of whether Debtors actually served their March 2010  
22  
23  
24

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25 <sup>4</sup>Actually, the adversary proceedings had not yet been  
26 consolidated, so the Debtors filed two separate summary judgment  
27 motions. But we still refer to them herein as a single summary  
28 judgment motion, in light of the subsequent consolidation and for  
ease of reference. There is no material distinction between the  
two motions.

1 Notice.<sup>5</sup>

2 The bankruptcy court denied Grant's motion to continue. In  
3 part, the bankruptcy court ruled that Grant's pending and  
4 proposed discovery was irrelevant to the sole issue presented by  
5 the summary judgment motion - the timeliness issue.

6 The day before the hearing on the summary judgment motion,  
7 Grant filed a belated opposition. Grant argued that the  
8 bankruptcy court already had effectively granted him an extension  
9 of the deadline under Rule 4007(c) for filing his  
10 nondischargeability complaints, when it entered orders reopening  
11 the Debtors' bankruptcy cases in 2011. Grant alternately argued  
12 that he should be granted Civil Rule 60(b)(1) relief from the  
13 untimely filing of his complaints. According to Grant his  
14 untimely filings were the result of excusable neglect caused by  
15 the distraction of his ongoing litigation of unrelated disputes  
16 with third parties. Grant also contended that the Debtors'  
17 allegedly fraudulent and evasive conduct during the sale of the  
18 Explorer, during the state court litigation and during their  
19 bankruptcy cases all militated in favor of extending the  
20 Rule 4007(c) deadline.<sup>6</sup>

21 \_\_\_\_\_  
22 <sup>5</sup>As Grant put it, "plaintiff should be allowed to further  
23 discover information pertaining to . . . when and whether the  
24 defendant[s] gave notice of [their] late filed schedules,  
25 statement of affairs as declared to in their Chapter 7 petitions  
26 to local creditors." Ex Parte Motion for Continuance (Feb. 17,  
27 2012) at p. 4 of 7. In this regard, Grant further stated:  
28 "Plaintiff served subpoenas on two of the several witnesses he as  
[sic] intended to serve, in efforts to prove facts in support of  
his opposition." Id. at p. 2 of 7; see also p. 7 of 7.

<sup>6</sup>In part, Grant contended that the Debtors' failure to  
(continued...)

1 The next day, on March 1, 2012, the bankruptcy court held a  
2 hearing on the summary judgment motion. The court decided to  
3 consider Grant's belated opposition, but it rejected his  
4 arguments. The court held that it had no discretion to extend  
5 the Rule 4007(c) deadline, based on excusable neglect, the  
6 Debtors' alleged conduct, or Grant's motions to reopen.  
7 According to the court, because Grant had admitted to receiving  
8 actual notice of the Debtors' bankruptcy filings by early  
9 May 2010, Grant should have filed his dischargeability complaints  
10 certainly by no later than September 2010. Because Grant did not  
11 file his dischargeability complaints until October 2011, the  
12 bankruptcy court concluded that the Debtors were entitled to  
13 summary judgment and that Grant's adversary proceedings should be  
14 dismissed.

15 The bankruptcy court entered a judgment on March 1, 2012,  
16 dismissing Grant's consolidated adversary proceedings and  
17 declaring Grants' claims against the Debtors to be discharged.  
18 Grant timely filed a notice of appeal from the judgment on  
19 March 14, 2012.

20  
21 \_\_\_\_\_  
22 <sup>6</sup>(...continued)  
23 schedule and list Grant and his claim at the time they filed  
24 their bankruptcy petitions was intentional and fraudulent. But  
25 Grant offered no evidence to support this proposition. More  
26 importantly, the Debtors' tardiness in scheduling and listing  
27 their debt to Grant had no impact on the dischargeability of the  
28 debt. These both were chapter 7 no-asset cases. In such cases,  
failure to schedule (or tardily scheduling) a debt does not  
affect its dischargeability. Beezley v. Cal. Land Title Co.  
(In re Beezley), 994 F.2d 1433, 1434 (9th Cir. 1993). Accord,  
White v. Nielsen (In re Nielsen), 383 F.3d 922, 925-27 (9th Cir.  
2004).



1 deadline has run. Excusable neglect and relief under Civil  
2 Rule 60(b)(1) cannot be used to extend the deadline, unless those  
3 theories are asserted in connection with a timely extension  
4 motion. Kelly v. Gordon (In re Gordon), 988 F.2d 1000, 1001 (9th  
5 Cir. 1993); Jones v. Hill (In re Hill), 811 F.2d 484, 486 (9th  
6 Cir. 1987); Herndon v. De La Cruz (In re De La Cruz), 176 B.R.  
7 19, 24 (9th Cir. BAP 1994); Osborn v. Ricketts (In re Ricketts),  
8 80 B.R. 495, 496 (9th Cir. BAP 1987).

9 The Ninth Circuit has strictly enforced the Rule 4007(c)  
10 deadline against untimely § 523(c) claims. See, e.g., Moody v.  
11 Bucknum (In re Bucknum), 951 F.2d 204, 206-07 (9th Cir. 1991);  
12 Lompa v. Price (In re Price), 871 F.2d 97, 98-99 (9th Cir 1989).  
13 Nonetheless, the Bankruptcy Code provides an alternate claim for  
14 relief for § 523(c) creditors who are neither "listed nor  
15 scheduled" in time to permit them to file their dischargeability  
16 complaint before the Rule 4007(c) deadline expires. See  
17 § 523(a)(3)(B). That section provides in relevant part:

18 (a) A discharge under section 727, . . . does not  
19 discharge an individual debtor from any debt-

20 . . . .  
21 (3) neither listed nor scheduled under section  
22 521(1) of this title with the name, if known to  
23 the debtor, of the creditor to whom such debt is  
24 owed, in time to permit-

25 . . . .  
26 (B) if such debt is of a kind specified in  
27 paragraph (2), (4) or (6) of this subsection,  
28 timely filing of a proof of claim and timely  
request for a determination of dischargeability of  
such debt under one of such paragraphs, unless  
such creditor had notice or actual knowledge of  
the case in time for such timely filing and  
request.

1 (Emphasis added).<sup>8</sup>

2 This Panel agrees with the parties and the bankruptcy court  
3 that the key to this appeal is the independent clause at the end  
4 of § 523(a)(3)(B): “unless such creditor had notice or actual  
5 knowledge of the case in time for such timely filing and  
6 request.” We also agree with them that Manufacturers Hanover v.  
7 Dewalt (In re Dewalt), 961 F.2d 848, 851 (9th Cir. 1992), is  
8 controlling. We first will examine Dewalt and its application in  
9 this case; then we will consider Grant’s arguments on appeal.

10 In Dewalt, the creditor Manufacturers Hanover (“Hanover”)   
11 filed an untimely adversary complaint under § 523(a)(2)(B),  
12 roughly five months after the Rule 4007(c) deadline had passed.  
13 The debtor Dewalt filed a motion to dismiss the complaint based  
14 on the timeliness issue. It was undisputed that Hanover did not  
15 receive any formal written notice of either the bankruptcy filing  
16 or of the Rule 4007(c) bar date. It also was undisputed that  
17 Hanover gained actual knowledge of Dewalt’s bankruptcy filing  
18 seven days before the Rule 4007(c) deadline, when “the debtor’s  
19 counsel telephoned the office of the creditor’s counsel and left  
20 a cryptic message with the secretary that the debtor had  
21 previously filed for bankruptcy.” Id. at 849.

22 The bankruptcy court granted the motion to dismiss, and a  
23 divided BAP panel affirmed the bankruptcy court. Relying on  
24

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25 <sup>8</sup>The Rule 4007(c) bar date does not apply to § 523(a)(3)(B)  
26 claims for relief. See Wilborn v. Gallagher (In re Wilborn),  
27 205 B.R. 202, 208 (9th Cir. BAP 1996); Irons v. Santiago (In re  
28 Santiago), 175 B.R. 48, 50 (9th Cir. BAP 1994). Instead,  
Rule 4007(b) applies, and that rule states that the complaint can  
be filed “at any time.” See id.

1 In re Price, 871 F.2d at 97, the BAP held that seven days was  
2 enough time to permit Hanover to at least file an extension  
3 motion seeking more time to file its complaint. Thus, according  
4 to the BAP, Hanover could not assert a claim for relief under  
5 § 523(a)(3)(B) because § 523(a)(3)(B)'s actual knowledge clause  
6 precluded it from doing so. Id. at 850.

7 The Ninth Circuit reversed the BAP, holding that, in most  
8 cases, the creditor must have actual knowledge of the bankruptcy  
9 case at least thirty days before the Rule 4007(c) bar date in  
10 order to satisfy § 523(a)(3)(B)'s actual knowledge clause. As  
11 the Ninth Circuit put it, ". . . in the great majority of cases,  
12 30 days advance knowledge of the case is both necessary and  
13 sufficient to satisfy section 523(a)(3)(B)." In re Dewalt,  
14 961 F.2d at 851 (emphasis added).

15 The Dewalt court further opined that Price had not set forth  
16 any standards to enable a bankruptcy court to determine how long  
17 before the Rule 4007(c) bar date an unscheduled (or tardily  
18 scheduled) chapter 7 creditor must learn of the bankruptcy to  
19 fall within § 523(a)(3)(B). Id. at 850. As a result, the Dewalt  
20 court endeavored to set forth such standards. Id. at 850-51.  
21 Dewalt stated that thirty days was an appropriate benchmark for  
22 most cases as to "the minimum time within which it is reasonable  
23 to expect a creditor to act at penalty of default." Id. at 851.

24 Dewalt cautioned that, in the presence of certain  
25 "extraordinary circumstances," thirty days knowledge of the  
26 bankruptcy filing in advance of the bar date might not be enough  
27 time to satisfy § 523(a)(3)(B)'s actual knowledge clause. Id.  
28 According to Dewalt, one set of extraordinary circumstances that

1 might necessitate more than thirty days advance knowledge  
2 included: (1) an unsophisticated creditor, (2) unrepresented by  
3 counsel, (3) without apparent familiarity with the bankruptcy  
4 system, who (4) receives only the most sketchy notice that a  
5 bankruptcy has been filed. Id. On the other hand, Dewalt  
6 concluded that, even if extraordinary circumstances required more  
7 than thirty days advance knowledge of the bankruptcy, in no event  
8 would the creditor be entitled to actual knowledge of the  
9 bankruptcy filing more than eighty days in advance of the  
10 Rule 4007(c) bar date. Id. at 851 n.4.

11 In sum, Dewalt requires bankruptcy courts to count backward  
12 from the Rule 4007(c) bar date to determine how much in advance  
13 of the bar date the creditor had actual knowledge of the  
14 bankruptcy filing. In the vast majority of cases, a minimum of  
15 thirty days will be sufficient to satisfy § 523(a)(3)(B)'s actual  
16 knowledge clause.

17 Here, applying the standard set forth in Dewalt, Grant had  
18 between thirty-two and thirty-five days actual knowledge of the  
19 bankruptcy filings in advance of the Rule 4007(c) bar dates. We  
20 have made this calculation by counting back from the bar dates of  
21 June 4, 2010, and June 7, 2010, to May 3, 2010, when Grant  
22 obtained actual knowledge of the bankruptcy filings based on his  
23 admitted receipt of the May 2010 Notice. This meets Dewalt's  
24 standard for the thirty-day minimum amount of advance knowledge  
25 required in the vast majority of cases to satisfy  
26 § 523(a)(3)(B)'s actual knowledge clause. See Dewalt, 961 F.2d  
27  
28

1 at 851.<sup>9</sup>

2 We note that the bankruptcy court did not appear to consider  
3 whether any extraordinary circumstances existed which might have  
4 required longer advance notice to satisfy § 523(a)(3)(B)'s actual  
5 knowledge clause. But Grant did not challenge in his opening  
6 appeal brief the bankruptcy court's failure to consider  
7 extraordinary circumstances. Nor did he argue in his opening  
8 brief that such extraordinary circumstances existed.

9 Grant obviously was aware of Dewalt and its standards  
10 because he discussed Dewalt extensively in his opening appeal  
11 brief. Yet he made no attempt to address the portion of Dewalt  
12 dealing with extraordinary circumstances. Consequently, he has  
13 waived the issue; arguments not specifically and distinctly made

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14  
15 <sup>9</sup>If we were to count back to the March 2010 Notice, Grant  
16 would have had between 81 and 84 days knowledge of the bankruptcy  
17 filings in advance of the bar dates. Based on Dewalt, this would  
18 have exceeded the amount of advance knowledge any creditor under  
19 any circumstances needs to have in order to satisfy  
20 § 523(a)(3)(B)'s actual knowledge clause. Furthermore, the March  
21 2010 Notice likely is subject to application of the "mailbox  
22 rule," as the only items of evidence we could find in the record  
23 concerning receipt of the March 2010 Notice were: (1) the proofs  
24 of service each Debtor executed indicating that they mailed the  
25 March 2010 Notice to Grant; and (2) a declaration of Grant in  
26 which he indicated that he did not receive the March 2010 Notice.  
27 Under the "mailbox rule," a litigant's declaration of non-receipt  
28 is insufficient by itself to overcome the presumption of receipt  
arising from valid proof of service. In re Bucknum, 951 F.2d at  
206-07 & n.1; CUNA Mut. Ins. Grp. v. Williams (In re Williams),  
185 B.R. 598, 599 (9th Cir. BAP 1995). Simply put, if the  
bankruptcy court had chosen to focus on the March 2010 Notice,  
Grant would have failed to overcome the mailbox rule presumption  
by presenting "'clear and convincing evidence that the mailing  
was not, in fact, accomplished.'" Berry v. U.S. Trustee  
(In re Sustaita), 438 B.R. 198, 209 (9th Cir. BAP 2010), aff'd,  
460 Fed.Appx. 627 (9th Cir. 2011) (quoting In re Bucknum,  
951 F.2d at 207).

1 in the appellant's opening brief are deemed waived. Brownfield  
2 v. City of Yakima, 612 F.3d 1140, 1149 n.4 (9th Cir. 2010)  
3 (citing Greenwood v. F.A.A., 28 F.3d 971, 977 (9th Cir. 1994));  
4 Cashco Fin. Servs., Inc. v. McGee (In re McGee), 359 B.R. 764,  
5 774 (9th Cir. BAP 2006) (citing Doty v. County of Lassen, 37 F.3d  
6 540, 548 (9th Cir. 1994)); see also Wilcox v. C.I.R., 848 F.2d  
7 1007, 1008 n.2 (9th Cir. 1988) (holding that even pro se  
8 litigants must brief arguments on appeal, or they will forfeit  
9 them).

10 In short, because Grant had sufficient actual knowledge of  
11 the bankruptcy filings within the meaning of § 523(a)(3)(B)'s  
12 actual knowledge clause, Grant was not entitled to pursue a claim  
13 for relief under § 523(a)(3)(B). Instead, he was limited to the  
14 claims subject to § 523(c) for relief, and these types of claims  
15 are subject to the strict Rule 4007(c) bar date. Thus, the  
16 bankruptcy court correctly dismissed as untimely Grant's § 523(c)  
17 claims for relief.

18 None of Grant's arguments on appeal persuade us otherwise.  
19 Grant argues that the orders granting his motions to reopen the  
20 Debtors' bankruptcy cases ("Reopening Orders") explicitly  
21 permitted him to file his untimely § 523(c) complaints. But  
22 Grant has not explained how or why the Reopening Orders, if they  
23 did purport to set new bar dates, could trump the explicit  
24 prohibition against granting extensions of Rule 4007(c) bar dates  
25 after the bar dates have expired. In any event, the bankruptcy  
26 court declined to interpret its own Reopening Orders in a manner  
27 that would bring them into conflict with Rule 4007(c). We will  
28 defer to the bankruptcy court's interpretation of its own orders.

1 See Officers for Justice v. Civil Serv. Comm'n of City and County  
2 of San Francisco, 934 F.2d 1092, 1094 (9th Cir. 1991); see also,  
3 Zinchiak v. CIT Small Bus. Lending Corp. (In re Zinchiak),  
4 406 F.3d 214, 224 (3rd Cir. 2005) (noting that the bankruptcy  
5 court "was well suited to provide the best interpretation of its  
6 own order."); Graefenhain v. Pabst Brewing Co., 870 F.2d 1198,  
7 1203 (7th Cir. 1989) ("Few persons are in a better position to  
8 understand the meaning of a [court order] than the [bankruptcy]  
9 judge who oversaw and approved it.")

10 Moreover, Grant's argument betrays a fundamental  
11 misunderstanding of the limited significance of the reopening of  
12 the Debtors' bankruptcy cases. Generally speaking, an order  
13 granting a motion to reopen typically does not alter the rights  
14 and liabilities of the parties involved. See Menk v. Lapaglia  
15 (In re Menk), 241 B.R. 896, 916-17 (9th Cir. BAP 1999). More to  
16 the point, an order granting a motion to reopen entered in a no  
17 asset chapter 7 case does not change the rights and liabilities  
18 of a creditor holding an unfiled § 523(c) claim for relief.  
19 Regardless of the reopening, either: (1) the creditor had  
20 sufficient notice/knowledge and the claim was discharged before  
21 the bankruptcy case was closed, or (2) the creditor had  
22 insufficient notice/knowledge and the creditor still has an  
23 alternate claim for relief under § 523(a)(3)(B). See  
24 In re Beezley, 994 F.2d at 1434.

25 Grant's other arguments on appeal are similarly  
26 unpersuasive. For instance, Grant argues that the Debtors'  
27 allegedly fraudulent and evasive conduct, both before and after  
28 he started litigating with them, justified an extension of the

1 Rule 4007(c) bar date. There are two obvious problems with this  
2 argument: (1) Grant presented no evidence to the bankruptcy court  
3 to support his allegations of fraudulent and evasive conduct, and  
4 (2) even if he had presented such evidence, Rule 4007(c) simply  
5 did not permit the bankruptcy court to give Grant an extension of  
6 the bar date under these types of circumstances when Grant did  
7 not request the extension before the bar date expired. See  
8 In re Gordon, 988 F.2d at 1001; In re Hill, 811 F.2d at 486.

9 Finally, Grant argues that he was denied due process by the  
10 bankruptcy court's application of § 523(a)(3)(B)'s actual  
11 knowledge clause. But the Ninth Circuit, and many other courts,  
12 have repeatedly upheld this clause against such due process  
13 challenges. As one leading treatise puts it:

14 The exception in section 523(a)(3) for creditors who do  
15 not receive notice of the case but otherwise acquire  
16 actual knowledge has been consistently upheld against  
17 challenges based on due process.

18 4 Collier on Bankruptcy ¶ 523.09[4][a] (Alan N. Resnick and Henry  
19 J. Sommer eds., 16th ed. 2012) (citing, among other cases,  
20 In re Price, 871 F.2d at 97).

#### 21 CONCLUSION

22 For all of the reasons set forth above, we AFFIRM the  
23 bankruptcy court's summary judgment dismissing Grant's  
24 nondischargeability complaints as untimely.<sup>10</sup>

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25  
26 <sup>10</sup>In their responsive brief, the Debtors requested that  
27 sanctions be imposed against Grant for filing a frivolous  
28 appeal. That request is hereby ORDERED DENIED. Pursuant to  
Rule 8020, sanctions requests must be made by separately-filed  
motion.