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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

5	In re:)	BAP No.	CC-14-1444-KuPeTa
)		
6	NABILSI YUNES ABUD,)	Bk. No.	08-25451
	aka Yunes Adub Nabilsi,*)		
7)	Adv. No.	13-01383
	Debtor.)		
8	_____)		
)		
9	RAM SAXENA,)		
)		
10	Appellant,)		
)		
11	v.)	MEMORANDUM**	
)		
12	NABILSI YUNES ABUD,)		
	aka Yunes Adub Nabilsi,)		
13)		
	Appellee.)		
14	_____)		

Submitted Without Oral Argument
on July 23, 2015***

Filed - September 3, 2015

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

Honorable Deborah J. Saltzman, Bankruptcy Judge, Presiding

*It appears the debtor's name is "Yunes Abud Nabilsi" and not "Nabilsi Yunes Abud" as listed on the BAP and Bankruptcy Court dockets. We refer to the Debtor as "Yunes Abud Nabilsi" herein.

**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 8024-1.

***On March 30, 2015, this Panel issued an order finding this appeal suitable for submission without oral argument.

1 Appearances: Appellant Ram Saxena, pro se, on brief.****

2
3 Before: KURTZ, PERRIS**** and TAYLOR, Bankruptcy Judges.

4 **INTRODUCTION**

5 Ram Saxena, M.D. filed a nondischargeability complaint under
6 11 U.S.C. § 523(a)(2)(A)¹ against debtor Yunes Abud Nabilsı.
7 After an evidentiary hearing, the bankruptcy court dismissed
8 Saxena's adversary proceeding. Saxena filed an appeal from the
9 bankruptcy court's dismissal order, but this Panel dismissed that
10 appeal as untimely.

11 Shortly thereafter, Saxena filed in the bankruptcy court a
12 motion seeking relief from the bankruptcy court's adversary
13 proceeding dismissal order. The bankruptcy court treated
14 Saxena's motion as a request for relief under Civil Rule 60(b)
15 and denied the motion because Saxena had not demonstrated any
16 appropriate grounds for relief. We agree with the bankruptcy
17 court, so we AFFIRM.

18 **FACTS**

19 This is not Saxena's first experience with the Panel. In
20 2009 and 2010, he successfully appealed the bankruptcy court's
21

22 ****Appellee Yunes Abud Nabilsı has not actively participated
23 in this appeal.

24 ****Hon. Elizabeth L. Perris, United States Bankruptcy Judge
25 for the District of Oregon, sitting by designation.

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

1 order dismissing his involuntary petition against Nabilsi. On
2 remand, the bankruptcy court entered a chapter 7 order for relief
3 against Nabilsi in accordance with the Panel's mandate.

4 On May 9, 2012, after entering the order for relief, the
5 bankruptcy court issued its notice of first meeting of creditors
6 pursuant to § 341. Among other things, that notice advised
7 parties in interest of the August 20, 2012 deadline for filing
8 nondischargeability complaints.² The certificate of service for
9 the § 341 meeting notice indicates that Saxena was served at the
10 same address that he is still using in his current appeal filings
11 - 446 W. Spruce St., Compton, CA 90220.

12 Notwithstanding the August 20, 2012 deadline, Saxena did not
13 file his nondischargeability complaint until March 22, 2013.
14 Nabilsi filed an answer and a motion to dismiss. In both,
15 Nabilsi asserted that Saxena's complaint was untimely under
16 § 523(c) and Rule 4007(c). Saxena opposed the dismissal motion,
17 and the bankruptcy court held an evidentiary hearing after which
18 it entered an order granting Nabilsi's dismissal motion. Saxena
19 filed an appeal from the adversary proceeding dismissal order,
20 but the appeal also was untimely. As a result, this Panel
21 dismissed the appeal for lack of jurisdiction.

22 Upon receipt of our appeal dismissal order, Saxena filed in
23 the bankruptcy court his motion seeking relief from the
24

25 ²We have exercised our discretion to review the bankruptcy
26 court's case and adversary proceeding dockets and the imaged
27 documents included therein. Francis v. Wallace (In re Francis),
28 505 B.R. 914, 916 n.3 (9th Cir. BAP 2014) (citing O'Rourke v.
Seaboard Sur. Co. (In re E.R. Fegert, Inc.), 887 F.2d 955, 957-58
(9th Cir. 1989)).

1 bankruptcy court's adversary proceeding dismissal order. Saxena,
2 who filed the motion in pro per, did not state any legal grounds
3 in support of the motion. Instead, he provided a rambling
4 narrative, which he claimed justified relief from the adversary
5 proceeding dismissal order. Nabilsa did not file any written
6 opposition to the motion.

7 The bankruptcy court held a hearing on the motion, at which
8 Saxena appeared and argued. According to the court, the motion
9 could be treated either as an untimely motion under Rule 9023
10 (making Civil Rule 59 applicable in bankruptcy cases and
11 adversary proceedings) or as a timely motion under Rule 9024
12 (making Civil Rule 60 applicable in bankruptcy cases and
13 adversary proceedings). The court opted to treat the motion as a
14 timely request for relief under Rule 9024 and Civil Rule 60(b).
15 The court ruled that Saxena had not demonstrated cause for relief
16 under any of the six grounds for relief enumerated in Civil
17 Rule 60(b). Based on that ruling, the bankruptcy court entered
18 its order denying the motion, and Saxena timely appealed from
19 that order.

20 **JURISDICTION**

21 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.
22 §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C.
23 § 158.

24 **ISSUE**

25 Did the bankruptcy court err when it denied Saxena's motion?

26 **STANDARD OF REVIEW**

27 We review the bankruptcy court's ruling on a motion for
28 relief under Civil Rule 60(b) for an abuse of discretion. United

1 States v. Estate of Stonehill, 660 F.3d 415, 443 (9th Cir. 2011);
2 Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l
3 Fibercom, Inc.), 503 F.3d 933, 939 (9th Cir. 2007). The
4 bankruptcy court does not abuse its discretion unless it applies
5 an incorrect legal rule or it makes findings of fact that are
6 illogical, implausible or without support in the record. United
7 States v. Hinkson, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

8 **DISCUSSION**

9 Rule 9024 makes Civil Rule 60(b) applicable in adversary
10 proceedings. In turn, Civil Rule 60(b) identifies several
11 grounds for relief from final judgments and orders. The rule
12 provides as follows:

13 On motion and just terms, the court may relieve a party
14 or its legal representative from a final judgment,
order, or proceeding for the following reasons:

15 (1) mistake, inadvertence, surprise, or excusable
16 neglect;

17 (2) newly discovered evidence that, with reasonable
18 diligence, could not have been discovered in time to
move for a new trial under Rule 59(b);

19 (3) fraud (whether previously called intrinsic or
20 extrinsic), misrepresentation, or misconduct by an
opposing party;

21 (4) the judgment is void;

22 (5) the judgment has been satisfied, released or
23 discharged; it is based on an earlier judgment that has
been reversed or vacated; or applying it prospectively
is no longer equitable; or

24 (6) any other reason that justifies relief.

25 Fed.R.Civ.P. 60(b).

26 Here, the bankruptcy court ruled that Saxena had not
27 established any of the grounds for relief under Civil Rule 60(b).
28 On this record, we cannot say that the bankruptcy court's ruling

1 was clearly erroneous; instead, it was logical, plausible and
2 supported by the record. See Hinkson, 585 F.3d at 1262.

3 On appeal, Saxena argues that he and his attorney Raj D. Roy
4 did not know "when & where . . . case is happening." But
5 Saxena's disclaimer of knowledge of the trial date in his appeal
6 brief is not evidence. What evidence there is in the record
7 indicates to the contrary - that Saxena and his counsel knew the
8 date set for trial in the adversary proceeding. Indeed, Roy
9 filed in the adversary proceeding a number of papers listing the
10 trial date on the caption page.³

11 Saxena also claims that Roy received a bribe from Nabils. i
12 Again, Saxena offered no competent evidence in support of his
13 bribery claim. Moreover, Saxena did not present any evidence
14 tying either assertion to the reason his adversary proceeding was
15 dismissed. The record indicates that the dismissal was based on
16 the untimeliness of the nondischargeability complaint, and
17 nothing in the record establishes that any additional knowledge
18 regarding the trial date or the absence of the alleged bribery
19 would have resulted in a different outcome. The complaint still
20 would have been untimely. In fact, the record suggests that
21 Saxena did not even retain Roy to file the nondischargeability

22 _____
23 ³It also is worth noting that the bankruptcy court issued a
24 tentative ruling on the motion for relief in which the court
25 stated that both Saxena and Roy appeared in the bankruptcy court
26 at the trial. While we could find nothing in the record
27 corroborating this statement, it was incumbent on Saxena to point
28 to evidence in the record to the contrary if he disagreed with
the court on this issue. For instance, Saxena could have ordered
the transcript from the April 14, 2014 trial if he wanted to
establish who attended and what was said, but Saxena apparently
did not order the transcript.

1 complaint until after the deadline for filing the complaint had
2 already passed. As of February 15, 2013, Saxena was still filing
3 papers in the bankruptcy court on his own behalf, without the
4 assistance of counsel. See Motion to Reopen Closed Case
5 (Feb. 15, 2013), Bk. Dkt. No. 08-25451, Doc. No. 45.

6 Pursuant to Rule 4007(c), a nondischargeability complaint
7 filed under § 523(c) must be filed within sixty days of the date
8 set for the § 341(a) first meeting of creditors. While
9 Rule 9006(b) generally permits bankruptcy courts to enlarge many
10 deadlines, Rule 9006(b)(3) permits the courts to enlarge the time
11 for filing nondischargeability complaints "only to the extent and
12 under the conditions stated" in Rule 4007(c). In turn,
13 Rule 4007(c) mandates that any motion to extend the deadline to
14 file a § 523(c) complaint must be filed before the complaint
15 filing deadline expires. We have enforced the strict terms of
16 Rule 4007(c) numerous times. See, e.g., Shull v. Wells (In re
17 Wells), 2010 WL 6259961, at *3 (Mem. Dec.) (9th Cir. BAP Dec. 2,
18 2010) (citing cases); Johnson v. Safarian (In re Safarian),
19 2010 WL 6259763, at *5 (Mem. Dec.) (9th Cir. BAP Apr. 13, 2010)
20 (same).

21 Simply put, the bankruptcy court correctly dismissed
22 Saxena's nondischargeability complaint as untimely filed. Saxena
23 did not timely request an extension of the filing deadline under
24 Rule 4007(c), and Saxena's factual assertions regarding his
25 alleged lack of knowledge of the trial date and the alleged
26 bribery of his attorney Roy do not alter the fact that his
27 complaint was untimely filed.

28 Saxena also has not explained how his alleged lack of

1 knowledge of the trial date or the alleged bribery of Roy in any
2 way established his entitlement to Civil Rule 60(b)(1) relief.
3 To the contrary, as a matter of law, the conduct of his counsel
4 (whether negligent or intentional) would not have permitted the
5 bankruptcy court to grant under § 60(b)(1) an extension of time
6 to file the nondischargeability complaint absent a timely-filed
7 motion seeking the extension. Herndon v. De La Cruz (In re De La
8 Cruz), 176 B.R. 19, 24-25 (9th Cir. BAP 1994); Schunck v. Santos
9 (In re Santos), 112 B.R. 1001, 1008 (9th Cir. BAP 1990); see also
10 Latshaw v. Trainer Wortham & Co., 452 F.3d 1097, 1101 (9th Cir.
11 2006) ("For purposes of [Civil Rule 60(b)(1)], parties should be
12 bound by and accountable for the deliberate actions of themselves
13 and their chosen counsel. This includes not only an innocent,
14 albeit careless or negligent, attorney mistake, but also
15 intentional attorney misconduct.").

16 All of the other Civil Rule 60(b) grounds for relief also
17 are inapplicable. Relief under Civil Rule 60(b)(2) - relief
18 based on newly discovered evidence - requires: (1) newly
19 discovered evidence, (2) due diligence, and (3) evidence
20 significant enough that its discovery earlier likely would have
21 altered the outcome of the litigation. Feature Realty, Inc. v.
22 City of Spokane, 331 F.3d 1082, 1093 (9th Cir. 2003). Saxena did
23 not present evidence establishing any of these facts.

24 Relief under Civil Rule 60(b)(3) - relief based on fraud on
25 the court - requires proof by clear and convincing evidence:
26 (1) that the court's ruling was obtained by fraud,
27 misrepresentation or other misconduct, and (2) that the
28 misconduct prevented the movant from fully and fairly presenting

1 his or her case. Casey v. Albertson's Inc, 362 F.3d 1254, 1260
2 (9th Cir. 2004). Saxena did not present evidence establishing
3 any of these facts.

4 Relief under Civil Rule 60(b)(4) - relief from a void
5 judgment - requires either a fundamental and egregious
6 jurisdictional error or the absence of due process. United
7 Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 270-71 (2010).
8 Saxena did not present evidence or law meeting either of these
9 criteria.

10 Relief under Civil Rule 60(b)(5) - relief based on changed
11 circumstances - requires either satisfaction of the judgment,
12 release of the judgment, discharge of the judgment, reversal of
13 the judgment or a subsequent change in circumstances rendering it
14 inequitable to enforce the judgment prospectively. Flores v.
15 Huppenthal, 789 F.3d 994, 1001 (9th Cir. 2015). Saxena did not
16 present evidence establishing any of these facts.

17 Finally, relief under Civil Rule 60(b)(6) - relief based on
18 other grounds - requires extraordinary circumstances: (1) beyond
19 the movant's control, (2) which prevented the movant from taking
20 timely action, and (3) which must be rectified to prevent or
21 correct an erroneous judgment. In re Int'l Fibercom, Inc.,
22 503 F.3d at 941. Saxena did not present evidence or law meeting
23 any of these criteria.

24 Saxena's other contentions on appeal suffer from the same
25 fatal infirmities. He claims that Nabilsa is a criminal, has
26 committed fraud, has not paid his taxes, and attempted to kill
27 him (Saxena). He also vaguely claims some sort of misconduct by
28 the bankruptcy court and the chapter 7 trustee. Even if Saxena

1 had supported any or all of these contentions with competent
2 evidence (which he did not), Saxena has not linked any of them to
3 the untimeliness of his nondischargeability complaint or to his
4 asserted entitlement to Civil Rule 60(b) relief. Consequently,
5 we reject all of these contentions.

6 **CONCLUSION**

7 For the reasons set forth above, we AFFIRM the bankruptcy
8 court's order denying Saxena's motion for relief from the
9 bankruptcy court's adversary proceeding dismissal order.

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