

DEC 26 2017

SUSAN M. SPRAUL, CLERK
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NOT FOR PUBLICATION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.	NV-17-1135-BHTa
6	RICHARD DOMINGO,)	Bk. No.	15-14153-ABL
7	Debtor.)	Adv. No.	15-01178-ABL
8	_____)		
9	RICHARD DOMINGO,)		
10	Appellant,)		
11	v.)	MEMORANDUM¹	
12	VICTOR O. PORTUGUES-SANTANA,)		
13	Appellee.)		
	_____)		

Submitted Without Argument on December 1, 2017,

Filed - December 26, 2017

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable August B. Landis, Bankruptcy Judge, Presiding

Appearances: Joseph H. Reinhardt on brief for appellant, Richard Domingo.²

Before: BRAND, HOULE³ and TAYLOR, Bankruptcy Judges.

¹ 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.

² Appellee Victor O. Portugues-Santana did not file a brief or otherwise appear in this appeal.

³ Hon. Mark D. Houle, Bankruptcy Judge for the Central District of California, sitting by designation.

1 Chapter 7⁴ debtor Richard Domingo appeals a judgment
2 determining that a prepetition debt owed to Victor O. Portugues-
3 Santana ("Portugues") was excepted from Domingo's discharge under
4 § 523(a)(2)(A) on the basis of issue preclusion after trial. In
5 addition, Domingo appeals: (1) the order granting his motion to
6 dismiss the original complaint under Civil Rule 12(b)(5) due to
7 Portugues's failure to comply with Civil Rule 4(m) but with leave
8 to amend, which allowed Portugues to file an amended complaint
9 after the statute of limitations under Rule 4007(c) had expired;
10 (2) the orders denying the motion to dismiss the amended complaint
11 and reconsideration of that order; and (3) the order denying an
12 additional motion to dismiss the amended complaint.

13 We conclude that the dischargeability judgment is void
14 because the bankruptcy court lacked personal jurisdiction over
15 Domingo. Accordingly, the judgment is VACATED.

16 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

17 A. Prepetition events

18 Domingo is a 76-year-old veteran who now lives on a military
19 pension, social security benefits, and wages from various part-
20 time jobs. Portugues resides in Puerto Rico, where he operates a
21 Heineken beer distributorship and Zen Spa, an upscale spa
22 business.

23 In 2006, Portugues decided to make a foray into the women's
24 clothing retail industry by opening a Victoria's Secret franchise
25 in Puerto Rico. To that end, he sought the assistance of Domingo,

26
27 ⁴ Unless specified otherwise, all chapter, code and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 who at that time was a business broker and conducted his business
2 operations through his entity, Rekomdiv International, Inc., in
3 Washington D.C. ("Rekomdiv"). Domingo also had a relationship
4 with former U.S. Senator, Birch Bayh, as a special assistant to
5 Bayh. At the time, Bayh was a partner at the Washington D.C. law
6 firm of Venable, LLC and a board member of a large, national
7 shopping mall owner.

8 Domingo recommended that Portugues work with Bayh to assist
9 him in establishing a business relationship with Victoria's
10 Secret. Domingo explained to Portugues that "Victoria's Secret
11 owed many favors to Bayh" so "this was, for all purposes, a done
12 deal." Domingo told Portugues that he had to retain both the
13 Venable firm and Rekomdiv to complete the deal. Portugues met
14 with Domingo and Bayh in Washington D.C. to discuss the
15 establishment of a Victoria's Secret franchise in Puerto Rico to
16 be operated by Portugues.

17 Portugues paid a \$400,000 retainer fee to Venable and a
18 \$100,000 business broker's fee to Rekomdiv. Portugues later paid
19 another \$125,000 to Rekomdiv in pursuit of the business venture.
20 After entering into the retainer agreements and after the money
21 had flowed from Portugues to Rekomdiv, Portugues was advised that
22 no Victoria's Secret franchise could be established in Puerto Rico
23 because Victoria's Secret did not offer store franchises.
24 Nevertheless, Domingo assured Portugues that other business
25 opportunities were available aside from Victoria's Secret that
26 could be pursued on his behalf, including a women's clothing store
27 franchise called Mango or establishing franchises for Zen Spa. No
28 other business opportunities panned out for Portugues.

1 Portugues filed suit against Domingo and Rekomdiv in the
2 United States District Court for the District of Puerto Rico,
3 alleging that Domingo's false representations about the
4 availability of a Victoria's Secret franchise fraudulently induced
5 him to enter into the retainer agreements with Venable and
6 Rekomdiv. The alleged claim, known as "dolo" in Puerto Rico, is
7 essentially a claim for "fraud in the inducement."⁵

8 Following a seven-day trial, the jury returned its verdict
9 against Domingo and Rekomdiv for "dolo." The jury assessed
10 damages in favor of Portugues and against Domingo and Rekomdiv for
11 \$625,000, the full amount of money Portugues had paid toward the
12 Victoria's Secret venture.

13 On April 28, 2010, the District Court entered a judgment in
14 accordance with the jury's verdict ("Puerto Rico Judgment").
15 Domingo appealed the Puerto Rico Judgment to the First Circuit
16 Court of Appeals, which affirmed the dolo claim and Domingo's and
17 Rekomdiv's liability to Portugues. Portugues-Santana v. Rekomdiv
18 Int'l, Inc., 657 F.3d 56 (1st Cir. 2011).

19 **B. Postpetition events**

20 **1. The original dischargeability complaint**

21 After Domingo filed his chapter 7 bankruptcy case, Portugues
22 filed a timely dischargeability complaint on October 21, 2016,
23 alleging that the Puerto Rico Judgment was nondischargeable under
24 § 523(a)(2)(A).

25
26 ⁵ "Dolo" can take two forms: (1) dolo in the formation of a
27 contract; or (2) dolo in the performance of contractual
28 obligations. Domingo and Rekomdiv were found liable for dolo in
the formation of contracts between Portugues and Rekomdiv and
Venable.

1 The bankruptcy court issued a summons on October 21, 2015.
2 Copies of the summons and complaint were served on Domingo's
3 bankruptcy counsel at his Las Vegas office by certified mail on
4 October 29, 2015. Domingo's bankruptcy attorney retired just two
5 days later on October 31, 2015.

6 Despite not being served with the summons and complaint,
7 Domingo, with the assistance of adversary counsel, filed a timely
8 answer to the complaint. In his affirmative defenses, Domingo
9 asserted insufficient service of process. He raised this same
10 affirmative defense in his later-filed amended answer.

11 The 120-day period for Portugues to serve Domingo with the
12 dischargeability complaint expired February 18, 2016.

13 **2. Motion to dismiss the original complaint**

14 On February 22, 2016, Domingo moved to dismiss Portugues's
15 complaint under Civil Rule 12(b)(5)⁶ for insufficient service of
16 process and Civil Rule 12(b)(6) for failure to state a claim upon
17 which relief could be granted (the "Motion to Dismiss"). Domingo
18 maintained that service failed because Portugues did not serve him
19 with the summons and complaint within the 120 days prescribed
20 under Civil Rule 4(m)⁷; mailing them to his former bankruptcy
21

22 ⁶ Civil Rule 12(b)(5), applicable here by Rule 7012,
23 provides:

24 (b) Every defense to a claim for relief in any pleading must
25 be asserted in the responsive pleading if one is required.
26 But a party may assert the following defenses by motion:

27 (5) insufficient service of process[.]

28 ⁷ Civil Rule 4(m) in effect at the time and applicable here
by Rule 7004(a) stated:

(continued...)

1 counsel was insufficient, especially since no evidence established
2 that Domingo consented to such service. Domingo further contended
3 that no good cause existed to extend the service deadline.
4 Domingo maintained that the dischargeability complaint had to be
5 dismissed "with prejudice" because the 60-day statute of
6 limitations under Rule 4007(c) had run on October 26, 2015.
7 Alternatively, Domingo contended that dismissal was proper because
8 the complaint failed to plead a claim under § 523(a)(2)(A).

9 In opposition, Portugues argued that service of the summons
10 and complaint was effective because it was made on Domingo's
11 former bankruptcy counsel within the 120 days.

12 In its oral ruling, the bankruptcy court granted Domingo's
13 Motion to Dismiss under Civil Rule 12(b)(5) for insufficient
14 service of process, because Domingo had not been served with the
15 summons and complaint within the 120-day period as required under
16 Civil Rule 4(m). The court also granted Domingo's Motion to
17 Dismiss under Civil Rule 12(b)(6), because the dischargeability
18 complaint failed to state sufficient facts to support a claim
19 under § 523(a)(2)(A). However, the court dismissed the complaint

21 ⁷(...continued)

22 Time Limit for Service. If a defendant is not served within
23 120 days after the complaint is filed, the court – on motion
24 or on its own after notice to the plaintiff – must dismiss
25 the action without prejudice against that defendant or order
26 that service be made within a specified time. But if the
27 plaintiff shows good cause for the failure, the court must
28 extend the time for service for an appropriate period. This
subdivision (m) does not apply to service in a foreign
country under Rule 4(f), 4(h)(2), or 4(j)(1).

The 120-day service rule has since been reduced to 90 days,
effective December 1, 2015. However, the bankruptcy court applied
the former rule because the adversary proceeding was commenced on
October 21, 2015. We agree that the former rule applied here.

1 "with leave to amend" and to allow completion of service of the
2 amended complaint within a reasonable time. The court did not
3 address the fact that the 60-day period within which to file
4 Portugues's complaint under Rule 4007(c) had expired.

5 The order for the Motion to Dismiss (the "May 31 Order")
6 provided that the motion was granted, without prejudice, under
7 Civil Rules 12(b)(5) & (6) and that Portugues could file an
8 amended complaint within 14 days from the date of entry of the
9 order. In addition, the amended complaint had to be "personally
10 served" on Domingo within 28 days from the date of entry of the
11 order.⁸

12 **3. The amended dischargeability complaint and related**
13 **motions to reconsider and to dismiss**

14 Portugues timely filed an amended dischargeability complaint,
15 again alleging that the Puerto Rico Judgment was nondischargeable
16 under § 523(a)(2)(A). The bankruptcy court issued a summons for
17 the amended complaint on June 14, 2016, which expired on June 21,
18 2016. Rule 7004(e).

19 The process server for Portugues filed a return of service
20 and affidavit indicating that she had attempted to serve Domingo
21 personally at his last known address at least five times between
22 June 7 and June 16 to no avail.⁹ Ultimately, a copy of the
23

24 ⁸ The May 31 Order was later amended on June 22, 2016, to
25 correct the error stating that Domingo's counsel had appeared for
26 Portugues at the hearing on the Motion to Dismiss. All other
terms of the order remained unchanged.

27 ⁹ Curiously, the process server attempted to serve Domingo
28 three times before the court even issued the summons, on June 7, 9
and 11.

1 summons and amended complaint was mailed to Domingo on June 27,
2 2016, six days after the summons had expired.

3 In his answer to the amended complaint, Domingo challenged
4 the service of process, arguing that service of the amended
5 complaint with an expired summons was ineffective.

6 Prior to filing his answer to the amended complaint, Domingo
7 moved to dismiss the amended complaint on the basis that he was
8 not "personally served" with the summons and complaint by the
9 deadline of June 28, 2016, as instructed in the May 31 Order
10 ("Motion to Dismiss the FAC").

11 Portugues opposed the Motion to Dismiss the FAC, arguing that
12 timely service on Domingo by mail on June 27, 2016, was acceptable
13 despite the May 31 Order's directive to serve him "personally."

14 In reply, Domingo argued that service by mail was contrary to
15 the May 31 Order and was ineffective because he was served with an
16 invalid summons; the summons expired on June 21, 2016, but he was
17 not served with it until June 28, 2016.

18 The bankruptcy court denied the Motion to Dismiss the FAC,
19 ruling that, by diligently attempting to serve Domingo personally
20 with the summons and amended complaint and eventually completing
21 service on Domingo by mail on June 27, 2016, before the deadline
22 of June 28, 2016, Portugues had complied with the May 31 Order's
23 directive and Rule 7004(b)(2). The court did not address the
24 expired summons issue.

25 Domingo timely moved for reconsideration of the court's order
26 denying the Motion to Dismiss the FAC. He argued that service of
27 the amended complaint was invalid, contrary to what the court had
28 found, because the summons was expired when it was served and no

1 alias summons had been requested or issued.

2 The bankruptcy court denied the motion to reconsider, stating
3 only that Domingo presented no grounds for reconsideration.

4 Meanwhile, on July 28, 2016, Domingo filed another motion to
5 dismiss the amended dischargeability complaint ("Second Motion to
6 Dismiss the FAC"). This motion was filed as a back-up in case the
7 court was to deny the Motion to Dismiss the FAC, which it later
8 did on September 7. Domingo was now seeking dismissal of the
9 amended complaint on the basis of untimely filing. Domingo argued
10 that the bankruptcy court had abused its discretion by dismissing
11 the original complaint without prejudice and allowing Portugues to
12 file and serve an amended complaint after the 60-day statute of
13 limitations under Rule 4007(c) had run. Domingo argued that such
14 ruling was an impermissible, sua sponte retroactive extension of
15 the 60-day deadline for filing a § 523(c) complaint.

16 The bankruptcy court denied the Second Motion to Dismiss the
17 FAC, noting that it had already considered the issues raised in
18 the motion.

19 **4. Trial on the amended complaint and judgment**

20 After a one-day trial, the bankruptcy court issued its oral
21 ruling on Portugues's § 523(a)(2)(A) claim. Overall, the court
22 did not find Domingo's testimony credible. Ultimately, the court
23 determined that issue preclusion applied to the Puerto Rico
24 Judgment and found that the dolo claim met each of the elements
25 for a claim under § 523(a)(2)(A). The court entered an order and
26 judgment consistent with its oral ruling. The Puerto Rico
27 Judgment of \$625,000 was excepted from Domingo's discharge under
28 § 523(a)(2)(A). Domingo timely appealed.

1 **II. JURISDICTION**

2 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
3 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

4 **III. ISSUES**

5 1. Did the bankruptcy court's ruling granting the Motion
6 to Dismiss with leave to amend create an impermissible,
7 retroactive extension of the deadline for filing dischargeability
8 complaints under Rules 4007(c) and 9006(b)(3)?

9 2. Did the bankruptcy court err by implicitly ruling that
10 service of the amended complaint on Domingo was sufficient despite
11 the expired summons?

12 3. Did the bankruptcy court err in applying issue preclusion to
13 the Puerto Rico Judgment to determine that the debt was
14 nondischargeable under § 523(a)(2)(A)?

15 **IV. STANDARDS OF REVIEW**

16 The bankruptcy court's interpretations of the Federal Rules
17 of Civil Procedure and the Bankruptcy Rules are a question of law
18 reviewed de novo. Mann v. Am. Airlines, 324 F.3d 1088, 1090 (9th
19 Cir. 2003) (Civil Rules); Unioil v. Elledge (In re Unioil, Inc.),
20 962 F.2d 988, 990 (10th Cir. 1992) (Bankruptcy Rules).

21 We review de novo the bankruptcy court's determination that
22 issue preclusion was available. Plyam v. Precision Dev., LLC
23 (In re Plyam), 530 B.R. 456, 461 (9th Cir. BAP 2015). If issue
24 preclusion was available, we review the bankruptcy court's
25 application of it for an abuse of discretion. Id.

26 We review for an abuse of discretion the bankruptcy court's
27 decision to deny a reconsideration motion under Civil Rule 59.
28 Ybarra v. McDaniel, 656 F.3d 984, 998 (9th Cir. 2011); Cruz v.

1 Stein Strauss Tr. # 1361, PDQ Invs., LLC (In re Cruz), 516 B.R.
2 594, 601 (9th Cir. BAP 2014).

3 A bankruptcy court abuses its discretion if it applies the
4 wrong legal standard, misapplies the correct legal standard, or if
5 its factual findings are illogical, implausible, or without
6 support in inferences that may be drawn from the facts in the
7 record. TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820,
8 832 (9th Cir. 2011).

9 V. DISCUSSION

10 **A. The bankruptcy court's ruling granting Portugues leave to**
11 **amend the original complaint despite dismissal under Civil**
12 **Rule 12(b)(5) for failure to comply with Civil Rule 4(m)**
13 **created an impermissible, retroactive extension of the**
14 **deadline for Portugues to file his dischargeability**
15 **complaint.**

16 Portugues's original complaint was timely filed on
17 October 21, 2015, before the October 26, 2015 deadline, but
18 Domingo was not served with the summons and original complaint
19 within the 120-day period prescribed in Civil Rule 4(m). Although
20 Domingo's bankruptcy counsel was timely served by certified mail,
21 the bankruptcy court determined, and we agree, that service solely
22 on Domingo's bankruptcy counsel was insufficient given Rule
23 7004(b)(9).¹⁰ Portugues made no further efforts to serve Domingo
24 within the 120 days, even in light of Domingo's timely-filed
25 answer raising the affirmative defense of insufficient service of

26 ¹⁰ Rule 7004(b)(9) provides for service in the instance of an
27 adversary proceeding against the debtor. It provides:

28 (9) Upon the debtor, after a petition has been filed, . . .
by mailing a copy of the summons and complaint to the debtor
at the address shown in the petition or to such other address
as the debtor may designate in a filed writing.

1 process.

2 Thus, it is undisputed that service of the summons and
3 original complaint was not in compliance with Civil Rule 4(m).
4 That is why the bankruptcy court granted Domingo's Motion to
5 Dismiss under Civil Rule 12(b)(5) and dismissed the complaint,
6 which it was free to do.

7 It is also undisputed that, prior to the expiration of the
8 60-day deadline set forth in Rule 4007(c),¹¹ Portugues never sought
9 an extension of that deadline. Moreover, the bankruptcy court
10 could not extend the deadline sua sponte and certainly could not
11 extend the deadline after it had expired. See Willms v.
12 Sanderson, 723 F.3d 1094, 1100 (9th Cir. 2013).

13 Domingo argues that it was reversible error for the
14 bankruptcy court to dismiss the original complaint "without
15 prejudice." He argues that, because the 60-day statute of
16 limitations under Rule 4007(c) had run prior to the dismissal of
17 the original complaint for failure to comply with Civil Rule 4(m),
18 Portugues was barred from bringing any dischargeability claims
19 against him. Thus, the original complaint should have been
20 dismissed "with prejudice." Domingo argues that when the court
21 entered the May 31 Order with the caveat "without prejudice" and

22 _____
23 ¹¹ Rule 4007(c) provides for an extension of the deadline
24 within which to file a complaint to determine dischargeability of
a debt under § 523(c). It provides, in relevant part:

25 On motion of a party in interest, after hearing on notice,
26 the court may for cause extend the time fixed under this
subdivision. The motion shall be filed before the time has
expired.

27 See also Rule 9006(b)(3), which provides that the court may
28 enlarge the time for taking action under Rule 4007(c), but only to
the extent and under the conditions stated in that rule.

1 granted Portugues leave to amend the complaint, it constituted a
2 sua sponte retroactive extension of the 60-day deadline in
3 violation of Rule 4007(c) and Ninth Circuit law.

4 Domingo's argument that the May 31 Order dismissing the
5 original complaint "without prejudice" was erroneous is not well
6 taken. Civil Rule 4(m) mandates that, if the court dismisses the
7 action for failure to comply with the rule, it must be dismissed
8 "without prejudice." In fact, it would have been error for the
9 bankruptcy court to have dismissed the original complaint "with
10 prejudice" for insufficient service of process. Thomas v. Furness
11 (Pac.) Ltd., 171 F.2d 434, 435 (9th Cir. 1948). This is
12 consistent with the general rule that a dismissal for insufficient
13 service of process under Civil Rule 12(b)(5) is not a dismissal on
14 the merits. 5B Charles A. Wright & Arthur R. Miller, Federal
15 Practice and Procedure § 1353, at 345-46 (3d. ed. 2004).

16 However, we agree with the rest of Domingo's argument.
17 Granting Portugues leave to amend in this case was reversible
18 error. While a Civil Rule 4(m) dismissal is a dismissal without
19 prejudice, a dismissal "without prejudice" does not mean "without
20 consequence." Powell v. Starwalt, 866 F.2d 964, 966 (7th Cir.
21 1989). "The 'without prejudice' condition permits a plaintiff to
22 refile the complaint as if it had never been filed." Vasquez v.
23 N. Cty. Transit Dist., 292 F.3d 1049, 1061 (9th Cir. 2002), as
24 amended (Aug. 7, 2002) (quoting Mendez v. Elliot, 45 F.3d 75, 78
25 (4th Cir. 1995)). A Civil Rule 4(m) dismissal does not, however,
26 give the plaintiff the right to refile without the consequence of
27 time defenses, such as the statute of limitations. Mendez,
28 45 F.3d at 78; Powell, 866 F.2d at 966 (applying former Civil

1 Rule 4(j)).

2 A plaintiff is precluded from refileing a case that was
3 dismissed without prejudice for failure to perfect service of
4 process where the statute of limitations has run, even if the
5 dismissal was without prejudice. Petrucelli v. Bohringer &
6 Ratzinger, 46 F.3d 1298, 1304 n.6 (3d. Cir. 1995) (applying former
7 Civil Rule 4(j)); Lambert v. United States, 44 F.3d 296, 298 (5th
8 Cir. 1995) (district court's order dismissing plaintiff's suit
9 without prejudice for failure to comply with Civil Rule 4(m) left
10 plaintiff in same position as if the first suit had never been
11 filed, and the second suit filed beyond the statute of limitations
12 was time barred); Powell, 866 F.2d at 966 (applying former Civil
13 Rule 4(j)); Gartin v. Par Pharm. Cos., 561 F. Supp. 2d 670, 682
14 (E.D. Tex. 2007). See also Mann, 324 F.3d at 1091 (failure to
15 serve process within Civil Rule 4(m)'s 120-day period does not
16 affect the tolling of the statute of limitations unless the
17 failure to serve process caused the court to dismiss the action).

18 The 60-day statute of limitations under Rule 4007(c) was
19 tolled when Portugues filed his original complaint on October 21,
20 2015. See Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103 (9th
21 Cir. 2003) (statute of limitations for a suit based on federal law
22 is tolled when complaint is filed per Civil Rule 3, applicable
23 here by Rule 7003). However, once his complaint was dismissed
24 under Civil Rule 12(b)(5) for failure to comply with the service
25 requirements of Civil Rule 4(m), it was as though the original
26 complaint had never been filed and the statute of limitations ran
27 on October 26, 2015. Thus, even though the dismissal was
28 nominally "without prejudice," it was effectively "with prejudice"

1 because a new action was barred by the statute of limitations.
2 United States v. Kenner Gen. Contractors, Inc., 764 F.2d 707, 709
3 (9th Cir. 1985), superceded by rule as stated in Oyama v. Sheehan
4 (In re Sheehan), 253 F.3d 507, 512 (9th Cir. 2001).

5 Unfortunately, because the bankruptcy court dismissed the
6 original complaint under Civil Rule 12(b)(5) for failure to comply
7 with Civil Rule 4(m), it could not grant Portugues leave to amend
8 the complaint, and its doing so impermissibly extended the statute
9 of limitations deadline in Rule 4007(c). Hence, the amended
10 complaint filed several months after the deadline was time
11 barred.¹²

12 The service of process issue was brought by Domingo together
13 with a motion to dismiss under Civil Rule 12(b)(6), which is odd
14 procedurally, and confused the issue. If service of the original
15 complaint had been perfected and the matter before the court was
16 only a motion to dismiss that complaint under Civil Rule 12(b)(6),
17 the court could have granted leave to amend and the amended
18 complaint would have related back and avoided the statute of
19 limitations problem. See Civil Rule 15(c)(1)(B), made applicable
20 here by Rule 7015; Morrissey Constr. Co. v. Gantes (In re Gantes),

21
22 ¹² The U.S. Supreme Court recently held that appeals-filing
23 deadlines established by statute are jurisdictional and may not be
24 waived or forfeited, whereas a "court-made" rule setting an
25 appeals-filing deadline is a claim-processing rule that can be
26 waived or forfeited and does not determine a federal appeals
27 court's jurisdiction. Hamer v. Neighborhood Hous. Servs. of Chi.,
28 U.S., 2017 WL 5160782 (Nov. 8, 2017). This case turns on
whether Domingo was served with the original complaint in
compliance with Civil Rule 4(m) and the expiration of the time
period for filing a dischargeability action as a result thereof.
But, to the extent Hamer applies, Domingo did not waive or forfeit
his right to assert the expiration of the limitations period or
the lack of timely service, as he asserted these defenses in his
answers and in motions to dismiss.

1 2016 WL 1169124, at *5-6 (9th Cir. BAP Mar. 23, 2016); In re Chaus
2 Sec. Litig., 801 F. Supp. 1257, 1263 (S.D.N.Y. 1992).

3 A federal court is without personal jurisdiction over a
4 defendant unless the defendant has been served in accordance with
5 Civil Rule 4. Jackson v. Hayakawa, 682 F.2d 1344, 1347 (9th Cir.
6 1982). "Neither actual notice, nor simply naming the person in
7 the caption of the complaint, will subject defendants to personal
8 jurisdiction if service was not made in substantial compliance
9 with Rule 4." Id. Because Domingo was not served with the
10 summons and original complaint in accordance with Civil Rule 4,
11 the bankruptcy court lacked personal jurisdiction over him. As a
12 result, the nondischargeability judgment is void. Tuli v.
13 Republic of Iraq (In re Tuli), 172 F.3d 707, 712 (9th Cir. 1999)
14 (judgment entered without personal jurisdiction over the parties
15 is void).

16 Because the § 523(a)(2)(A) judgment is void, we need not
17 address the other issues raised by Domingo or the pretrial orders
18 denying Domingo relief, including the bankruptcy court's decision
19 to deny reconsideration of the order denying the Motion to Dismiss
20 the FAC.

21 **VI. CONCLUSION**

22 For the foregoing reasons, we VACATE the judgment determining
23 that the Puerto Rico Judgment was excepted from Domingo's
24 discharge under § 523(a)(2)(A).

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28