

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

IN RE: :  
: Chapter 11  
ANDERSON NEWS, LLC, : Bankr. Case No. 09-10695-CSS  
: :  
Debtor. :  
: :  
LINDA GAIL FRANKLIN, D/B/A :  
DOWNTOWN NEWSSTAND, :  
: :  
Plaintiff, :  
: :  
v. : Adv. Pro. No. 09-53275-CSS  
: :  
ANDERSON NEWS, LLC, :  
: :  
Defendant. :  
: :  
LINDA GAIL FRANKLIN, D/B/A :  
DOWNTOWN NEWSSTAND,<sup>1</sup> :  
: :  
Appellant, :  
: :  
v. : Civ. No. 10-664-LPS  
: :  
ANDERSON NEWS, LLC, :  
: :  
Appellee. :  
: :  
\_\_\_\_\_ :

**MEMORANDUM ORDER**

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<sup>1</sup>Linda Gail Franklin (“Ms. Franklin”), owner of the Downtown Newsstand in Clearwater, Florida and *pro se* appellant in this matter, has captioned the instant appeal (the “Appeal”) in various formats – sometimes naming another individual, her business partner, George Lawson Kelly (“Mr. Kelly”), as an additional *pro se* appellant, and sometimes naming various appellees in addition to debtor Anderson News, LLC (“Anderson News” or “Debtor”), including Anderson Media Corporation (“Anderson Media”), Holston Asset Management, LLC (“Holston”), and Suntrust Bank (“Suntrust”). (See D.I. 1, 3, 7, 16) For purposes of this Memorandum Order, all appellants will be referred to collectively as “Franklin” or “Appellant,” and all appellees will be referred to collectively as “Anderson” or “Appellee.”

At Wilmington this 26th day of November, 2012, this matter coming before the Court upon the appeal of Franklin from a determination of the Honorable Christopher S. Sontchi, U.S.B.J. (D.I. 1), and having considered the parties' papers submitted in connection therewith;

IT IS ORDERED that the Appeal is DISMISSED for the reasons that follow:

1. Anderson News was the subject of an involuntary petition filed by certain of its creditors in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on March 2, 2009 (Bankr. Case No. 09-10695-CSS). (See D.I. 11 at 3; D.I. 14 at 1-2) An order for relief was entered on December 30, 2009, and the bankruptcy case was converted from one under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, to one under Chapter 11. (See D.I. 11 at 3; D.I. 14 at 1-2)

2. On December 23, 2009, Franklin, an alleged net debtor of Anderson News,<sup>2</sup> commenced an adversary proceeding in the Bankruptcy Court against Anderson News, Anderson Media, Holston, and Suntrust (the "Adversary Proceeding") (Adv. Pro. No. 09-53275-CSS). (See D.I. 12 App. 1; *see also* D.I. 14 at 2 & n.1, 3)

3. Defendants Anderson Media, Anderson News, Holston, and Suntrust moved to dismiss the Adversary Proceeding for insufficiency of process, insufficiency of service of process, and failure to state a claim for which relief can be granted. (See D.I. 11 at 4; D.I. 14 at 3; D.I. 12 Apps. 9, 12)

4. On April 30, 2010, the Bankruptcy Court entered an order (the "Dismissal Order") dismissing the Adversary Proceeding for insufficiency of process and service of process. (See

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<sup>2</sup>According to the debtor-in-possession, Franklin – who is a newsstand retailer – had two accounts with Anderson News, with a combined net balance owed to Debtor of approximately \$4,351.38. (See D.I. 14 at 2 & n.1)

D.I. 12 App. 9 at 2 (“The Complaint is dismissed pursuant to Fed. R. Bankr. P. 7013(b)(4) and (5). Plaintiff has failed to obtain issuance of a summons by Bankruptcy Rule 7004(b), and therefore, there has been no issuance of process and service of process.”); *see also* D.I. 11 at 4; D.I. 14 at 4))

5. Franklin had also filed a number of motions in the Debtor’s main bankruptcy case. On or about January 19, 2010, Franklin filed a Motion to Provide for Censure and Penalty; on or about March 22, 2010, Franklin filed an Amended Motion to Provide for Censure and Penalty (collectively, the “Censure and Penalty Motion”). (*See* D.I. 11 at 4-6; D.I. 12 Apps. 2 & 7; D.I. 14 at 3) Franklin also proceeded to serve (but apparently failed to file) Supplemental Remarks and Stipulations to be Orally Presented to the Court at the Scheduled June 17, 2010 Hearing on the Matter of the Amended Motion to Provide for Censure and Penalty (the “Supplemental Remarks”), as well as a Summary Judgment Motion. (*See* D.I. 11 at 6-7; D.I. 12 Apps. 10, 12, 13 (Notice of Second Amended Agenda of Matters Scheduled for Hearing on June 17, 2010 at 2:00 P.M.) & 14 (Transcript of June 17, 2010 Hearing) at 7; D.I. 14 at 3-4)

6. Franklin’s motions, which generally sought sanctions and other forms of relief against Anderson News based upon a judgment Debtor obtained in a Tennessee collection action against Franklin to recover the approximately \$4,351.38 in prepetition account receivables allegedly owed by Franklin to Anderson News, were objected to – and the Bankruptcy Court agreed with the objections. (*See, e.g.*, D.I. 11 at 4-6; D.I. 12 Apps. 8, 11, 12 & 14; D.I. 14 at 3, 5) At the June 17, 2010 hearing (the “Omnibus Hearing”) regarding Franklin’s Censure and Penalty Motion and Summary Judgment Motion, the Bankruptcy Court stated that “to say that the [D]ebtor should be censured for taking [its] position . . . is well beyond what the facts show at

this point;” the Bankruptcy Court denied Franklin’s Censure and Penalty Motion and Summary Judgment Motion. (D.I. 12 App. 14 at 25; *see also* D.I. 12 Apps. 13, 14 at 7 & 28; D.I. 14 at 5)<sup>3</sup>

7. Thereafter, Franklin filed an “Appeal on the Matter of the Dismissal of the Plaintiffs’ Motion for Censure and Penalty” (the “Notice of Appeal”) with the Bankruptcy Court in the Adversary Proceeding on July 8, 2010. (*See* Adv. Pro. No. 09-53275-CSS, D.I. 22) The Notice of Appeal was entered on the docket of this Court on August 9, 2010. (*See* D.I. 1) Although Franklin’s Notice of Appeal indicates that Franklin sought “[a]ppel as to the Order of the Court dismissing Plaintiff’s previously filed Motion for Censure and Penalty heard . . . on the 17<sup>th</sup> day of June, 2010” (D.I. 1 at 2; *see also* D.I. 3 at 1), Franklin attached to the Notice of Appeal a copy of the Bankruptcy Court’s Dismissal Order of April, 2010, which dismissed the Adversary Proceeding (*see* D.I. 1). However, attached to Franklin’s “memorandum” in support of the Notice of Appeal is, *inter alia*, a copy of the June 2010 Omnibus Hearing transcript. (*See* D.I. 3)

8. Appellee argues there are many deficiencies which require dismissal of the instant Appeal.

(a) As suggested above, Anderson observes that the record is confusing as to precisely which judicial determinations Franklin is appealing. (*See* D.I. 11 at 1-3; D.I. 14 at 6-7)<sup>4</sup>

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<sup>3</sup>The Bankruptcy Court did not enter a written order memorializing its ruling from the bench. (*See* D.I. 12 App. 14 at 25 (“THE COURT: Debtors submit an order. [COUNSEL]: We will, Your Honor.”); *see also* D.I. 1 at 4 (Appellant stating: “As it stands now, and as this is written, this Court has, or is about to, issue an order dismissing Appellant’s Motion for Censure and Penalty. Such an Order is expected to . . . ignore . . . the points, provisions and arguments presented in Appellant’s Motion for Censure and Penalty”))

<sup>4</sup>Anderson News contends:

Anderson argues that regardless of whether Franklin is appealing the April 30, 2010 Dismissal Order (entered in the adversary proceeding) or the June 17, 2010 denial of the request for censure and sanctions (in the bankruptcy proceeding), the Appeal is untimely. In Appellee's view, when the Appeal was filed, on July 7, 2010, more than 14 days had passed since the orders that are the subject of the Appeal, making the Appeal time-barred pursuant to Federal Rule of Bankruptcy Procedure 8002.<sup>5</sup> (*See* D.I. 11 at 7; D.I. 14 at 1, 6-8; D.I. 15 at 1)

(b) Anderson further contends that the Appeal is frivolous and should be dismissed for reasons including Franklin's failure to file a designation of record and opening brief, in violation of Bankruptcy Rules 8006 and 8009(a)(1). (*See* D.I. 11 at 1, 7-12; D.I. 14 at 1, 6, 8-13; D.I. 15 at 1-2)<sup>6</sup>

9. Appeals from the Bankruptcy Court to this Court are governed by 28 U.S.C. § 158. Pursuant to 28 U.S.C. § 158(a)(1) & (3), district courts have mandatory jurisdiction to hear appeals "from final judgments, orders, and decrees," as well as discretionary jurisdiction

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The Appeal complains of the dismissal of the Plaintiff's Motion for Censure and Penalty. The Plaintiff's Censure and Penalty Motion was filed in the Main Bankruptcy Case (No. 09-10695), but the Appeal was filed in the Adversary Proceeding (No. 09-53275). Thus, the Appeal appears on the District Court Docket, as appealing the April 30, 2010 Dismissal Order, which dismissed the Adversary Proceeding. In reality, the Appeal is appealing the oral ruling of dismissal of the Plaintiff's Censure and Penalty Motion, from the Omnibus Hearing (June 17, 2010), for which a formal written order was never entered . . . .

(D.I. 14 at 6-7; *see also* D.I. 11 at 3 (other appellees' analysis of issues presented on appeal))

<sup>5</sup>Alternatively, Appellee argues that Franklin's attempt to appeal the dismissal of the Censure and Penalty Motion is premature, because no formal written order of dismissal was ever entered. (*See* D.I. 14 at 7)


<sup>6</sup>Anderson asks the Court to deem the Appeal frivolous and award the Debtor damages and counsel fees pursuant to Bankruptcy Rule 8020. (*See* D.I. 14 at 1, 6, 11-13)

“from other interlocutory orders and decrees.” Federal Rule of Bankruptcy Procedure 8002(a) requires such appeals to be filed “within 14 days of the date of the entry of the judgment, order or decree appealed from.” Moreover, “[a] notice of appeal filed after the announcement of a decision or order but before entry of the judgment, order, or decree shall be treated as filed after such entry and on the day thereof.” Fed. R. Bankr. P. 8002(a). Compliance with this fourteen-day limitations period is jurisdictional, and the failure to timely file an appeal deprives the reviewing court of jurisdiction. *See In re Caterbone*, 640 F.3d 108, 111-12 (3d Cir. 2011) (“[T]he prescribed timeline within which an appeal from a bankruptcy court must be filed is mandatory and jurisdictional . . .”). Thus, failure to file a timely notice of appeal amounts to a jurisdictional defect and bars district court review.

10. Bankruptcy Rule 8002(c) allows for an extension of time for filing a notice of appeal beyond the 14 days provided for in Rule 8002(a). To obtain an extension under Rule 8002(c), an appellant must request the extension in the Bankruptcy Court “by written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 21 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect.”

11. Here, regardless of whether Franklin’s Appeal is construed as appealing the April 30, 2010 Dismissal Order (*see* Adv. Pro. No. 09-53275-CSS, D.I. 16) or the June 17, 2010 Order denying Franklin’s Censure and Penalty Motion (*see* D.I. 12 App. 14 (Transcript of June 17, 2010 Hearing) at 7; D.I. 14 at 3-4), the Notice of Appeal was filed later than 14 days after entry of the order(s) being appeal from. Franklin did not request, by written motion, an extension of time for filing an appeal.

12. Because the Notice of Appeal was untimely, the Court lacks subject matter jurisdiction over the appeal from the Bankruptcy Court. Therefore, the Appeal must be and hereby is DISMISSED.<sup>7</sup>



UNITED STATES DISTRICT JUDGE

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<sup>7</sup>Accordingly, it is unnecessary to reach the parties' additional arguments. Anderson's request that the Court declare the Appeal frivolous and award it damages and attorneys' fees is denied.