

July 13, 2016

In re Sheri Speer, No. 3:16-cv-61(RNC)

ORDER granting [12] Motion to Dismiss.

Bankruptcy debtor Sheri Speer, proceeding pro se, seeks review of a bankruptcy court order granting appellee DLJ Mortgage Capital's motion for relief from the automatic stay for the purpose of pursuing a foreclosure action against one of Ms. Speer's properties. DLJ has moved to dismiss the appeal on the grounds that the appeal is untimely, interposed for delay, and frivolous in nature. Ms. Speer has not responded to the argument that the appeal is untimely.

Under Federal Rule of Bankruptcy Procedure 8002(a), "a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed." Id. "[T]he time limit contained in Rule 8002(a) is jurisdictional, and . . . in the absence of a timely notice of appeal in the district court, the district court is without jurisdiction to consider the appeal, regardless of whether the appellant can demonstrate 'excusable neglect.'" In re Siemon, 421 F.3d 167, 169 (2d Cir. 2005). There is no dispute that the order appealed from was entered on December 11, 2015. Ms. Speer's notice of appeal was docketed with the bankruptcy court on December 28, 2015, seventeen days after the entry of the order. Because the appeal is untimely, the motion to dismiss must be granted.

Accordingly, the appeal is hereby dismissed. The Clerk may close the case.

So ordered.

/s/ RNC
Robert N. Chatigny
United States District Judge