

20004

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE  
WESTERN DISTRICT OF WISCONSIN

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In the Matter of

IN BANKRUPTCY

GARY J. LARSON and  
CAROL W. LARSON

No. 80-00145

Debtors

DANIEL TEPOEL and  
CHERYL TEPOEL, husband  
and wife

Plaintiffs

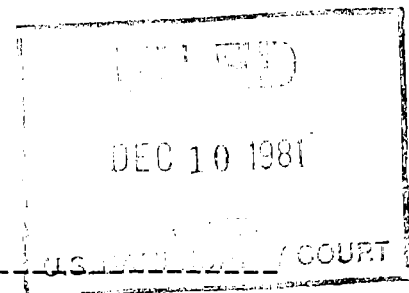
vs.

ADVERSARY PROCEEDING

GARY LARSON, d/b/a G.J.'s  
Real Estate, Ltd., f/d/b/a  
G.J.'s Real Estate, G.J.'s  
Real Estate Ltd., Lake  
Nebagamon Village Square  
Subdivision, Ltd.,

No. 80-0061

Defendants.



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ORDER DENYING EXTENSION OF TIME FOR APPEAL

The attorneys for the plaintiffs, Daniel TePoel and Cheryl TePoel, in the above entitled matter, having filed with the court a request for an extension of time for filing an appeal pursuant to Bankruptcy Rule 802(c) based upon excusable neglect; and affidavits having been filed; and the court having considered said motion and the memorandums of counsel, the affidavits, and upon all of the record and file herein, FINDS:

1. That the findings of fact, conclusions of law and order in the above adversary proceeding were duly filed and entered on the 26th day of October, 1981, and a copy thereof forwarded to the respective attorneys involved in said trial and litigation on said date.
2. That the period of time for the appeal from said order was a period of ten days pursuant to said Rule 802.

3. That the issue involved is whether or not the erroneous belief of the attorneys as to the period of time being thirty days rather than ten days and whether or not a notice of entry of judgment had to be served and mail delay was "excusable neglect."

4. That at the time of the original application the court was advised by one of the members of plaintiffs' law firm that the question was the period of time and had hoped for an extension of time ex parte.

5. That the application for the extension of time which was filed with the court on November 16, 1981, and the supporting affidavit refer to the mistake as to the time period, the mistaken belief of the appeal being the United States Circuit Court of Appeals instead of the United States District Court, a lack of notice of entry of judgment being received and a delay in hearing from their clients in Arizona authorizing said appeal.

6. That filed with the request for extension was a memorandum changing the entire position first stated as to the mistake of time and alleging that the delay was because the plaintiffs' copy of the order was not received for three days (October 29, 1981) and claiming that mail delays are excusable grounds.

7. That counsel for the defendants filed his brief herein opposing the extension of time, and thereafter on December 7, 1981, counsel for the appellants endeavored by filing an affidavit to excuse the default because of a letter from the court which had no bearing as to the case being decided, and was a reply to plaintiffs' attorney wanting a clarification of ethical responsibility.

8. That "notice of entry of judgment" is not required under the Bankruptcy Rules.

9. That plaintiffs' attorneys could have called their clients in Arizona; that the clients did not have to sign said appeal, and the attorneys did not need written authorization for said appeal.

10. That the delivery of the order on October 29, 1981, two days later than the expected delivery date from Eau Claire to Superior, was not a basis for "excusable neglect."

11. That the only true issue as to the granting of the extension of time is the time of appeal that counsel believed he had, and that the delay in the mail and the alleged belief that the court was holding up the final decision, for which there is no basis in fact whatsoever, are not material to the determination of the application for extension.

12. That counsel for the plaintiffs were aware of the completion of the trial, the arguments of counsel and the filing of briefs.

13. That counsel have tried to change from the question of time to appeal to both delay in the mail and the letter of the court relative to the ethical responsibilities raised by the attorneys for the plaintiffs.

14. That the grounds alleged as to the belief that the time was thirty days and a notice of entry of judgment would be served do not constitute excusable neglect under the Bankruptcy Code and the decisions therein interpreting it.

15. That the case cited in the memorandum of plaintiffs' attorney filed on November 16, 1981, does not support the position taken by counsel in the opinion of this court.

CONCLUSIONS OF LAW

That an order be entered finding that excusable neglect has not been shown, and that the plaintiffs' appli-

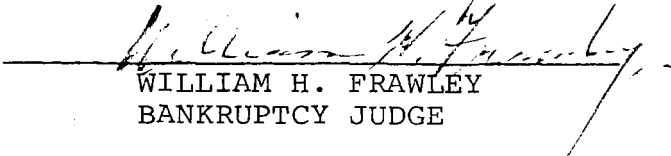
cation for an extension of time be denied with costs to the defendants. See Inwood Realty Company, (D.C.N.Y. 1980) 4 B.R. 459; 1 B.R. 419 (Bkrtcy. N.Y. 1979.) See Volume 13, Collier on Bankruptcy (14th Ed.) p. 8-38 and 8-39.

O R D E R

NOW, THEREFORE, IT IS ORDERED: That the motion and request for an extension of time to appeal as above stated are hereby denied in that the allegations of the plaintiffs do not support excusable neglect under the Bankruptcy Code, with costs to the defendants in the sum of \$100.00.

Dated: December 10, 1981.

BY THE COURT:

  
WILLIAM H. FRAWLEY  
BANKRUPTCY JUDGE