

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20082

In The Matter of HARVEN MICHAEL MCKENZIE,

Debtor.

HARVEN MICHAEL MCKENZIE,

Appellant,

VERSUS

KUKUI, Inc., and W. STEVE SMITH, Trustee,

Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(H-97-CV-3311)

February 9, 2000

Before POLITZ, DAVIS, Circuit Judges, and RESTANI,* Judge.

PER CURIAM:**

In this appeal, we consider Harven Michael McKenzie's challenges to the district court's denial of his discharge in

* The Honorable Jane A. Restani, Judge, United States Court of International Trade, sitting by designation.

** Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

bankruptcy, pursuant to 11 U.S.C. § 727.¹ McKenzie argues that the bankruptcy court, and thus the district court, lacked jurisdiction to consider the Trustee's objection to his discharge because the Trustee failed to file an objection within the statutory time period. McKenzie also contends that KUKUI, Inc., a creditor of the bankruptcy estate, released all claims against the agents and employees of GlobeGasBV, McKenzie's alleged employer.

We find that, under the circumstances, the bankruptcy court properly exercised jurisdiction over the Trustee's section 727 objection. Section 105 of the Bankruptcy Code provides the court with vast equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title . . . or to prevent an abuse of process." 11 U.S.C. § 105. This section certainly provides the district court with the power to exercise jurisdiction over an objection where an objecting party has relied on the court's scheduling orders, even where those orders contain incorrect deadlines. See In re Theymy, 6 F.3d 688, 690 (10th Cir. 1993) ("although the burden of protecting one's rights is ordinarily placed on the creditor . . . when the court's act affirmatively misleads the creditor as to a deadline, the court bears responsibility for correcting its error. A creditor should be entitled to rely on the court's

¹ 11 U.S.C. § 727 provides, in relevant part, that "[t]he court shall grant the debtor a discharge unless . . . the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information . . . unless such act or failure to act was justified under all of the circumstances in the case."

orders."); In re Anwiler, 958 F.2d 925, 929 (9th Cir. 1992)("Allowing a court to correct its mistakes is not inconsistent with the purpose of the Bankruptcy Rules 4004 and 4007. . . . The intent behind the rules is not circumvented by allowing an untimely complaint to stand when a party relied on a court document sent before the deadline had expired."); Cf. Neeley v. Murchison, 815 F.2d 345, 347 n.5 (5th Cir. 1987)(holding that a creditor must adhere to the sixty-day deadline regardless of whether he received formal notice but noting that "today's case is not one in which the clerk gave an affirmative but erroneous notice of a bar date upon which the creditor might reasonable have relied").

Furthermore, we find that the district court did not err, either legally or factually, in holding that KUKUI's settlement agreement with GlobeGas did not release KUKUI's claims against McKenzie.

For the foregoing reasons, the judgment of the district court is AFFIRMED.