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JUL 24 2006

U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

<p>10 In re:</p> <p>11 THE ROMAN CATHOLIC CHURCH OF</p> <p>12 DIOCESE OF TUCSON <i>aka</i> THE</p> <p>13 DIOCESE OF TUCSON, an Arizona</p> <p>corporation sole,</p> <p style="text-align: center;">_____ Debtor.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>No. 4-04-bk-04721-JMM</p> <p>Adversary No. 4-05-ap-00197-JMM</p>
<p>14 PHILIP GREGORY SPEERS,</p> <p style="text-align: center;">Plaintiff,</p> <p>15 vs.</p> <p>16</p> <p>17 THE ROMAN CATHOLIC CHURCH OF</p> <p>18 DIOCESE OF TUCSON <i>aka</i> THE</p> <p>DIOCESE OF TUCSON, an Arizona</p> <p>corporation sole,</p> <p style="text-align: center;">_____ Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>MEMORANDUM DECISION</p>

Before the court is a procedural issue, over which the trial court has jurisdiction, even though an appeal has been filed from a denial of a Rule 60 motion (or a motion for reconsideration which the court treated as a FED. R. CIV. P. 60 motion). The order denying that motion was entered on the bankruptcy court docket on June 15, 2006 (Dkt. #56). The notice of appeal was docketed June 28, 2006.

1 Philip G. Speers has filed a pleading entitled "Motion to Determine Timely Filing or
2 Alternatively to Extend Time to File Notice of Appeal." The court retains jurisdiction to consider a
3 motion to extend time for appeal, even though a "protective " notice of appeal has now been filed. As
4 the order appealed from was docketed on June 15, 2006, the ten-day appeal period of FED. R. BANKR. P.
5 8002 commenced on June 16, 2006. The tenth and last day to appeal, therefore, fell on Sunday, June 25,
6 and by rule the last day to appeal became Monday, June 26, 2006. FED. R. BANKR. P. 9006(a).

7 Here, the Plaintiff, through a friend and a relative, attempted to file the notice of appeal
8 on June 23, 2006 - within the ten-day period - but sought to file it not at the Bankruptcy Court Clerk's
9 Office, but at the U.S. District Court Clerk's Office.

10 For some reason, rather than simply accept the notice, and then route it to the Bankruptcy
11 Clerk's Office, the District Court clerk on duty refused to accept it, thereby causing an unnecessary delay
12 in filing the simple notice. Ultimately, the notice of appeal was accepted and docketed on June 28, 2006,
13 within 30 days of the order appealed from.

14 The Bankruptcy Court is a unit of the U.S. District Court. FED. R. BANKR. P. 8002(a)
15 actually contemplates exactly what happened here. It provides, in pertinent part:

16
17 If a notice of appeal is mistakenly filed with the district court . . .
18 the clerk of the district court . . . shall note thereon the date on
19 which it was received and transmit it to the clerk [of the
20 bankruptcy court] and it shall be deemed filed with the
21 [bankruptcy court] clerk on the date so noted.

20 By rejecting the filing, the District Court clerk thereby caused unnecessary confusion as
21 to which clerk or court was the proper one, and the Plaintiff's agents were understandably perplexed.
22 More importantly, rejection of the pleading caused the Plaintiff to miss filing his notice of appeal by the
23 critical date.

24 Now, the Plaintiff has filed the proper motion, with the able assistance of counsel,
25 supported by credible affidavits, to simply gain an extension for the filing of a notice of appeal, and, in
26

1 doing so has shown, to the court's satisfaction, the necessary "excusable neglect." FED. R. BANKR. P.
2 8002(c)(2).

3 Therefore, an order will be entered which grants the motion to extend time to file notice
4 of appeal. Thus, the notice of appeal now being timely, it is unnecessary to determine whether the notice
5 was timely filed in the first place. The appeal may proceed.

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7 DATED: July 24, 2006.

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9 
10 JAMES M. MARLAR
UNITED STATES BANKRUPTCY JUDGE

11 COPIES served as indicated below this 24th
12 day of July, 2006, upon:

13 Susan G. Boswell and Kasey C. Nye Quarles & Brady Streich Lang LLP One South Church Avenue, Suite 1700 Tucson, Arizona 85701-1621 sboswell@quarles.com knye@quarles.com Attorneys for Debtor	14 Lowell E. Rothschild and Michael McGrath Mesch, Clark & Rothschild, P.C. 259 North Meyer Avenue Tucson, Arizona 85701-1090 lrothschild@mcrazlaw.com mmcgrath@mcrazlaw.com Attorneys for Roman Catholic Parishes
17 C. Taylor Ashworth and Alisa C. Lacey Stinson Morrison Hecker LLP 1850 North Central Avenue, Suite 2100 Phoenix, Arizona 85004-4584 tashworth@stinsonmoheck.com rmcgee@stinsonmoheck.com Attorneys for Plaintiffs	18 Christopher J. Pattock Office of the U.S. Trustee 230 North First Avenue, Suite 204 Phoenix, Arizona 85003-1706 christopher.j.pattock@usdoj.gov
21 Lynne M. Cadigan and Kim E. Williamson Cadigan & Williamson, PLLC 504 South Stone Avenue Tucson, Arizona 85701 lmcadigan@qwest.net kewilliamson@uswest.net Attorneys for Plaintiffs	22 Sally M. Darcy McEvoy, Daniels & Darcy, P.C. 4560 East Camp Lowell Drive Tucson, Arizona 85712 darcysm@aol.com Attorneys for Unknown Claims Representative

<p>1 Charles L. Arnold 2 Frazer Ryan Goldberg Arnold & Gittler 3 3101 North Central Avenue, Suite 1600 4 Phoenix, Arizona 85012-2615 <u>carnold@frgaglaw.com</u> Guardian Ad Litem</p>	<p>A. Bates Butler Fennemore Craig, P.C. One South Church Avenue, Suite 100 Tucson, Arizona 85701 <u>bbutler@fclaw.com</u> Unknown Claims Representative</p>
<p>5 G. David DeLozier 6 J. Lawrence Dunlavey 7 G. David DeLozier, P.C. 4016 East Forest Pleasant Place Cave Creek, AZ 85331 <u>gddeLozier@aol.com</u></p>	<p>Gerard R O'Meara Gust Rosenfeld PLC One S. Church Ave., #1900 Tucson, Arizona 85701 <u>gromeara@gustlaw.com</u></p>

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9 By /s/ M.B. Thompson
10 Judicial Assistant

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