

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE: )  
 )  
Ted Rafeal Sauls, ) Case No. 12-80094C-13D  
 )  
Debtor. )  
 )

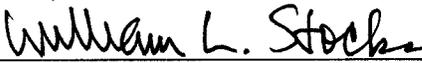
ORDER

The matter before the court is a motion by Universal Delights, Inc. ("Universal Delights") for an extension of time to and including July 16, 2012, within which to file a designation of record and issues on appeal ("Motion"). Having filed a notice of appeal to the district court on May 1, 2012, Universal Delights now is seeking an extension of the time specified in Bankruptcy Rule 8006 for filing and serving a designation of the items to be included in the record on appeal and a statement of the issues to be presented. While Bankruptcy Rule 8002(c)(1) permits the bankruptcy court to rule on motions to extend the time for filing the notice of appeal, no such authority is granted with respect to a motion to extend the time for filing the designation of items to be included in the record on appeal and the statement of issues to be presented on appeal. Once a notice of appeal has been filed, Bankruptcy Rule 8001 contains the procedures applicable to motions. Rule 8011(a) provides that a request for an order or other relief "shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal." (Emphasis supplied). Consistent with the requirement contained in Rule 8011

that motions be filed with the clerk of district court, it is the district court that is to decide what action is appropriate with respect to a failure to file the designation and statement required under Bankruptcy Rule 8006 in a timely manner, including whether to excuse a late filing. See Resolution Trust Corp. v. SPR Corp. (In re SPR Corporation), 45 F.3d 70, 74 (4th Cir. 1995) ("when a bankruptcy appellant is tardy in making a non-jurisdictional filing under Rule 8006, the district court must exercise its discretion under Rule 8001(a) in deciding whether or not to dismiss the appeal"). Bankruptcy Rule 8001(a) provides that an appellant's failure to take any step other than timely filing a notice of appeal does not affect the validity of the appeal, "but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal." (Emphasis supplied). As the court with authority to decide what action is appropriate in the event of an untimely filing, the district court, not the bankruptcy court, is the court to decide when an extension of time for filing the designation of items to be included in the record and the statement of issues on appeal should be granted. Accordingly, the Motion which requests that this court grant the extension shall be denied.

IT IS SO ORDERED.

This 9th day of August, 2012.

  
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WILLIAM L. STOCKS  
United States Bankruptcy Judge