

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

ROBERT WILLIAM WAZNEY, Pro-se (forced) - Petitioner

vs.

CHASE
~~Sharon Renee Wazney a/k/a Sharon Renee Chabassole~~ - Respondent

ON PETITION FOR A WRIT OF CERTIORARI

APPENDIX

ROBERT WILLIAM WAZNEY, Pro-se (forced)
990 Wisacky Hwy.
Bishopville, SC 29010
Indigent (forced)
Convict (forced)
Pro se (forced)
803-428-2800

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18A713 A
FILED: August 27, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1476
(3:17-cv-03216-HMH)
(17-90009-dd)

ROBERT WILLIAM WAZNEY, 2040 Hideaway Drive

Debtor - Appellant

v.

CHASE

Creditor - Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

18A73 A
UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 18-1476

ROBERT WILLIAM WAZNEY, 2040 Hideaway Drive,

Debtor - Appellant,

v.

CHASE,

Creditor - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Columbia. Henry M. Herlong, Jr., Senior District Judge. (3:17-cv-03216-HMH)

Submitted: August 23, 2018

Decided: August 27, 2018

Before DUNCAN and FLOYD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Robert Wazney, Appellant Pro Se. Nicholas Andrew Charles, Sarah Beth Nielsen, B. Rush Smith, III, NELSON MULLINS RILEY & SCARBOROUGH, LLP, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Robert Wazney appeals the district court's orders: (1) adopting the magistrate judge's recommendation to dismiss as untimely his appeal from the bankruptcy's court's order dismissing his bankruptcy court's proceeding, and (2) denying his motions to alter or amend the judgment, Fed. R. Civ. P. 59(e), and for reconsideration, Fed. R. Civ. P. 60(b). We have reviewed the record and find no reversible error. Accordingly, we deny Chase's motion to dismiss the appeal and affirm for the reasons stated by the district court. *Wazney v. Chase*, No. 3:17-cv-03216-HMH (D.S.C. Mar. 27, 2018; Apr. 16, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: October 30, 2018

19A713 B

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-1476
(3:17-cv-03216-HMH)
(17-90009-dd)

ROBERT WILLIAM WAZNEY

Debtor - Appellant

v.

CHASE

Creditor - Appellee

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Duncan, Judge Floyd, and Senior
Judge Hamilton.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE: 19A713

M/P No. 17-90009-DD

2040 Hideaway Drive,

Debtor(s).

ORDER

This matter is before the Court on a voluntary petition for non-individuals filing for bankruptcy filed by Robert W. Wazney. The petition lists the debtor's name as "2040 Hideaway Drive" and indicates the debtor is a corporation. According to the South Carolina Secretary of State, 2040 Hideaway Drive is not a registered business (See Exhibit A, accessed October 4, 2017).

The voluntary petition is signed by Robert W. Wazney, as attorney for the debtor. According to the South Carolina Bar Association, Robert W. Wazney is not a licensed attorney in South Carolina (See Exhibit B, accessed October 4, 2017). Further, according to the United States District Court District of South Carolina, Robert W. Wazney is not an attorney admitted to practice in the district (See Exhibit C, accessed October 4, 2017). Robert W. Wazney is not licensed as an attorney and cannot file a voluntary petition on behalf of a corporation as an attorney. Further, Mr. Wazney reports his address as 990 Wisacky Highway, Bishopville, South Carolina 29010. This is the address of Lee Correctional Institute, a penal institute within the South Carolina Department of Corrections.

Based on the foregoing, 2040 Hideaway Drive is not an eligible debtor, no relief is available under the petition, and the petition did not commence a bankruptcy case. The miscellaneous proceeding is dismissed.

AND IT IS SO ORDERED.

Business Entities Online

File, Search, and Retrieve Documents Electronically

15A713

Business Name Search

To Search

Enter the business name of the company you wish to view and click "Search." Find the business in the results below and click to view the official business profile and relevant information.

To File for an Existing Business

Enter the business name of the company for which you wish to file documents and click search. Find the business in the results below and click to view the official business profile. From your business's profile click the "Add Filing" button.

Results displayed will show entities that contain your search criteria.

Search by Business Name

2040 hideaway drive

This name is available

No Results

For filing questions please contact us at **803-734-2158**

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18A713 C
Exhibit B



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18A713 C
Exhibit C

UNITED STATES DISTRICT COURT
District of South Carolina

WHAT'S NEW LINKS FORMS GENERAL INFORMATION RECORDS RULES STANDING ORDERS

SEARCH

Enter Last Name:

No records found

Exhibit A: p.7 of 13 3:17-3216-HMH-KFM

18A713 C

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 17-90009-dd

Order Dismissing Miscellaneous Proceeding

The relief set forth on the following pages, for a total of 5 pages including this page, is hereby ORDERED.

FILED BY THE COURT
10/04/2017



Entered: 10/05/2017



David R. Duncan
Chief US Bankruptcy Judge
District of South Carolina

Exhibit A: p.8 of 13 3:17-3216-HMH-KFM

OFFICE OF THE CLERK
UNITED STATES BANKRUPTCY COURT
District of South Carolina
J. Bratton Davis U.S. Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

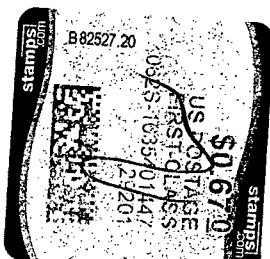
OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

ROBERT W WAZNEY
LEE CORRECTIONAL INSTITUTE
990 WISACKY HIGHWAY F21139 363679
BISHOPVILLE SC 29010

Sign &
Rec'd
Nov. 9, 2017

NOV 08 2017

1139



19A713
United States Bankruptcy Court
District of South Carolina

Case Number: 17-90009-dd

Chapter: 0

In re:
2040 Hideaway Drive

Entered By The Court
10/13/17

ORDER CONCERNING DOCUMENT

Filed By The Court
10/13/17
Laura A. Austin
Clerk of Court
US Bankruptcy Court

To: 2040 Hideaway Drive

On 10/12/2017 you filed with the Clerk of Court a document entitled **Enlargement of Time**, which was filed in a:

Dismissed Case
 Closed Case

Accordingly,

IT IS ORDERED that no further action will be taken and no relief granted with respect to the above referenced document.

AND IT IS SO ORDERED.



Chief United States Bankruptcy Judge

18A713 D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

| | | |
|---------------------------------|---|----------------------------|
| Robert William Wazney, #363679, |) | |
| |) | |
| Appellant, |) | C.A. No. 3:17-3216-HMH-KFM |
| |) | |
| vs. |) | OPINION & ORDER |
| |) | |
| Chase, |) | |
| |) | |
| Appellee. |) | |

This matter is before the court with the Report and Recommendation of United States Magistrate Judge Kevin F. McDonald, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 of the District of South Carolina.¹ The Appellant, a state prisoner proceeding pro se, filed this appeal from an order issued by the United States Bankruptcy Court for the District of South Carolina dismissing his miscellaneous proceeding. In his Report and Recommendation, Magistrate Judge McDonald recommends dismissing this appeal for lack of jurisdiction.

The Appellant filed objections to the Report and Recommendation. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

18A713 D

Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that the Appellant's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his arguments. Therefore, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge McDonald's Report and Recommendation and incorporates it herein by reference.

It is therefore

ORDERED that this appeal is dismissed for lack of jurisdiction. It is further

ORDERED that Appellant's motion for leave to proceed in forma pauperis, docket number 6, is denied as moot. It is further

ORDERED that Appellant's motion for appointment of counsel, docket number 11, is denied as moot.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
March 26, 2018

NOTICE OF RIGHT TO APPEAL

Appellant is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

UNITED STATES DISTRICT COURT

for the

District of South Carolina

14A713 E
Robert William Wazney

)

Appellant

)

v.

)

Chase

)

Appellee

Civil Action No. 3:17-cv-3216-HMH

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

the plaintiff (name) _____ recover from the defendant (name) _____ the amount of _____ dollars (\$__), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____ recover costs from the plaintiff (name) _____.

other: The appeal is dismissed for lack of jurisdiction.

This action was (check one):

tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

tried by the Honorable _____ presiding, without a jury and the above decision was reached.

decided by the Honorable Henry M. Herlong, Jr.

Date: March 27, 2018

CLERK OF COURT

s/Kathy Rich, deputy clerk

Signature of Clerk or Deputy Clerk

104713 F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Robert William Wazney, #363679,)
)
)
 Appellant,) C.A. No. 3:17-3216-HMH-KFM
)
)
 vs.) OPINION & ORDER
)
)
Chase,)
)
)
 Appellee.)

This matter is before the court on Robert William Wazney's ("Wazney") pro se motion to alter or amend the judgment pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. After consideration, the court denies Wazney's motion.

The court previously adopted the Report and Recommendation and dismissed this appeal for lack of jurisdiction in an order dated March 26, 2018. (Mar. 26, 2018 Order, ECF No. 20.) On April 9, 2018,¹ Wazney filed the instant motion to alter or amend the judgment. (Mot. Alter or Amend, ECF No. 30.) This matter is now ripe for consideration.

A motion to alter or amend the judgment under Rule 59(e) may be made on three grounds: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). "Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance

¹ Houston v. Lack, 487 U.S. 266 (1988).

18A713 F

of the judgment” Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). “In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” Id. (internal citation and quotation marks omitted).

Upon review, Wazney’s motion fails to identify any intervening change in controlling law, new evidence, or clear error of law. Further, Wazney is attempting to generally reallege his arguments. Based on the foregoing, Wazney’s motion is denied.

Therefore, it is

ORDERED that Wazney’s motion to alter or amend, docket number 23, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
April 13, 2018

NOTICE OF RIGHT TO APPEAL

The Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

18A713 G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Robert William Wazney, #363679,)
)
 Appellant,) C.A. No. 3:17-3216-HMH-KFM
)
 vs.) OPINION & ORDER
)
Chase,)
)
 Appellee.)

This matter is before the court on Robert Wazney's ("Wazney") pro se motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. After consideration, the court denies Wazney's motion.

The court previously adopted the Report and Recommendation and dismissed this appeal for lack of jurisdiction in an order dated March 26, 2018. (Mar. 26, 2018 Order, ECF No. 20.) On April 9, 2018,¹ Wazney filed a motion to alter or amend the judgment, which the court denied on April 13, 2018. (Mot. Alter or Amend, ECF No. 30.) Wazney filed the instant motion for reconsideration on April 12, 2018.² This matter is now ripe for consideration.

Rule 60(b) "invest[s] federal courts with the power in certain restricted circumstances to vacate judgments whenever such action is appropriate to accomplish justice." Compton v. Alton S.S. Co., 608 F.2d 96, 101-02 (4th Cir. 1979) (internal quotation marks omitted). "The remedy

¹ Houston v. Lack, 487 U.S. 266 (1988).

² Id.

18A713 5

provided by the Rule, however, is extraordinary and is only to be invoked upon a showing of exceptional circumstances.” Id. at 102. Rule 60(b) “does not authorize a motion merely for reconsideration of a legal issue.” United States v. Williams, 674 F.2d 310, 312 (4th Cir. 1982). “Where the motion is nothing more than a request that the district court change its mind . . . it is not authorized by Rule 60(b).” Id. at 313.

Upon review of Wazney’s Rule 60(b) motion, Wazney reasserts his arguments and fails to show any exceptional circumstances or defects in the court’s decision. Based on the foregoing, Wazney’s motion is denied.

Therefore, it is

ORDERED that Wazney’s motion for reconsideration pursuant to Rule 60(b), docket number 26, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
April 16, 2018

NOTICE OF RIGHT TO APPEAL

The Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

181713
R.18 REQ.

UNITED STATE BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:) M/P No. 17-90009-DD
2040 HIDEAWAY DRIVE,) Chapter 7
Debtor.)

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):
2040 HIDEAWAY DRIVE

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

Plaintiff
 Defendant
 Other (describe) _____

For appeals in a bankruptcy case and not in an adversary proceeding.

Debtor
 Creditor
 Trustee
 Other (describe) _____

Part 2: Identify the subject of this appeal

1. Describe the judgment, order, or decree appealed from: Order, Dismissal

2. State the date on which the judgment, order, or decree was entered: 10-5-17

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: CHASE Attorney: CHASE
PO Box 183222
Columbus, OH 43218

2. Party: ROBERT WILLIAM WAZNEY Attorney: EDWARD L. WAZNEY JR.
622 Lone Pine Loop
Euguary Varina, NC 27526

3. Party: 2040 HIDEAWAY DRIVE Attorney: ROBERT WILLIAM WAZNEY
990 Wisacky Highway
Bishopville, SC 29010

18A713 H
R.18. REQ.

Debtor Appeals the Order of 10/05/2017 (Attached). Attorney for Debtor, ROBERT WILLIAM WAZNEY, received notice of the 10/05/2017 Order on 11/09/2017.

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below


Signature of attorney for appellant(s) (or appellant(s) if not represented by an attorney).

Date: November 21, 2017

Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney):

ROBERT WILLIAM WAZNEY
990 Wisacky Highway
Bishopville, SC 29010

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

18A713 H
R.18 REQ.

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: **17-90009-dd**

Order Dismissing Miscellaneous Proceeding

The relief set forth on the following pages, for a total of 5 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
10/04/2017**



David R. Duncan

David R. Duncan
Chief US Bankruptcy Judge
District of South Carolina

Entered: 10/05/2017

18A713
R.18 REQ.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:) M/P No. 17-90009-DD
2040 HIDEAWAY DRIVE,) Chapter 7
Debtor.) CERTIFICATE OF SERVICE
)

The undersigned hereby certifies that on November 21, 2017, true and correct copies of the:

1) NOTICE OF APPEAL AND STATEMENT OF ELECTION;
were properly served, by mailing first class postage pre-paid, to the parties listed below:

ROBERT W. WAZNEY c/o EDWARD L. WAZNEY JR.
622 Lone Pine Loop
Fuquay Varina, NC. 27526

CHASE
PO Box 183222
Columbus, OH 43218

Laura Austin
U.S. Bankruptcy Court
1100 Laurel Street
Columbia, SC 29201

United States District Court
300 East Washington Street
Room 239
Greenville, SC 29601

/s/

ROBERT WILLIAM WAZNEY
990 Wisacky Hwy.
Bishopville, SC 29010
Attorney for Debtor
803-428-2800

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

| | |
|----------------------------------|------------------------------------|
| Robert Williams Wazney, #363679, |) C/A No. 3:17-3216-HMH-KFM |
| |) |
| Appellant, |) |
| |) |
| v. |) REPORT AND RECOMMENDATION |
| |) |
| Chase, |) |
| |) |
| Appellee. |) |
| |) |

Robert Williams Wazney ("Appellant"), proceeding *pro se*, filed this appeal from an order issued by the United States Bankruptcy Court for the District of South Carolina ("Bankruptcy Court") dismissing his miscellaneous proceeding. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), the assigned United States Magistrate Judge is authorized to review the appeal and submit findings and recommendations to the district judge.¹ For the reasons that follow, the court recommends that the district judge dismiss this appeal.

I. Factual and Procedural Background

On October 2, 2017, Appellant filed a Voluntary Petition for Non-Individuals Filing for Bankruptcy ("Petition"), naming the debtor as "2040 Hideaway Drive" (the "Debtor") and the Debtor's principal place of business as 990 Wisacky Highway, Bishopville, SC 29010—the address of Lee Correctional Institution, operated by the South Carolina Department of Corrections—where Appellant is incarcerated. See *In re 2040 Hideaway Drive*, Bankr. Case No. 3:17-mp-90009-dd, doc. 2 at 2. Appellant stated in the Petition that the Debtor was a corporation (*id.*). Appellant signed the Petition, under penalty of perjury,

¹ Pursuant to statute, district courts have jurisdiction to hear appeals from "final judgments, orders, and decrees" of bankruptcy courts. 28 U.S.C. § 158(a)(1).

as "attorney for [D]ebtor". See *In re 2040 Hideaway Drive*, Bankr. Case No. 3:17-mp-90009-dd, doc. 2 at 5.

On October 6, 2017, the Bankruptcy Court entered an order ("Order") dismissing the Petition. See *In re 2040 Hideaway Drive*, Bankr. Case No. 3:17-mp-90009-dd, doc. 3. The Bankruptcy Court held that although Petition identified the Debtor as a corporation, there was no such corporation registered with the South Carolina Secretary of State. See *id.*, doc. 3 at 2 and Exhibit A. In addition, although the Appellant had signed the Petition as attorney for the Debtor, records of the South Carolina Bar Association showed that Appellant was not a licensed attorney in South Carolina and was not admitted to practice in the District of South Carolina. See *id.*, doc. 3 at 2 and Exhibits B & C. The Bankruptcy Court held that because Appellant was not a licensed attorney, he was not permitted to file a voluntary petition on behalf of a corporation as its attorney. See *id.*, doc. 3. The Bankruptcy Court dismissed the Petition, concluding: "2040 Hideaway Drive is not an eligible debtor, no relief is available under the petition, and the petition did not commence a bankruptcy case." (D.) The Order was mailed from the Bankruptcy Noticing Center on October 7, 2017, to the Debtor at "2040 Hideaway Drive, 990 Wisacky Hwy [sic], Bishopville, SC 29010-1775." See *In re 2040 Hideaway Drive*, Bankr. Case No. 3:17-mp-90009-dd, doc. 4 at 6. A Record of Returned Mail filed in the Bankruptcy Court's docket indicates that the Order was returned to the Bankruptcy Court on October 31, 2017. See *id.* at doc. 8.

On November 22, 2017, Appellant appealed the Order by mailing a Notice of Appeal to the Bankruptcy Court. See Bankr. Case No. 3:17-mp-90009-dd, doc. 10 at 2. The

Notice of Appeal was filed on November 27, 2017. See Bankr. Case No. 3:17-mp-90009-dd, doc. 10 at 1. Appellant specifically stated that he received the Order on November 9, 2017. See Bankr. Case No. 3:17-mp-90009-dd, doc. 10 at 2. On November 29, 2017, the Bankruptcy Clerk transmitted the Notice of Appeal to the Clerk of this Court, which docketed the appeal. See Bankr. Case No. 3:17-mp-90009-dd, doc. 13.

II. Discussion

A. Standard of Review

The Appellant is a *pro se* litigant, and thus his pleadings are accorded liberal construction. See *Erickson v. Pardus*, 551 U.S. 89, 90-95 (2007) (per curiam). When a federal court is evaluating a *pro se* complaint or petition, the allegations are assumed to be true. *Merriweather v. Reynolds*, 586 F. Supp. 2d 548, 554 (D.S.C. 2008). Even under this less stringent standard, the complaint is subject to summary dismissal. The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

B. Analysis

“Federal courts are courts of limited jurisdiction, ‘constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute.’” *Wilson v. Moss*, C.A. No. 5:15-2230-MBS, 2015 WL 4257121, at *2 (D.S.C. July 13, 2015) (quoting *In re Bulldog Trucking, Inc.*, 147 F.3d 347, 352 (4th Cir. 1998)). “Accordingly, a federal court is required, *sua sponte*, to determine whether a valid basis for

jurisdiction exists, 'and to dismiss the action if no such ground appears.'" *Id.* (quoting *In re Bulldog Trucking, Inc.*, 147 F.3d at 352).

In considering an appeal from the Bankruptcy Court, a federal court first must determine whether the notice of appeal has been timely filed. *Wilson*, 2015 WL 4257121, at *2 (citing *Reig v. Wells Fargo Bank, N.A.*, No. PWG-12-3518, 2013 WL 3280035, at *1 (D. Md. June 26, 2013)). If the notice of appeal has not been timely filed, the district court is without jurisdiction. *Smith v. Dairymen, Inc.*, 790 F.2d 1107, 1109 (4th Cir. 1986).

Rule 8003(a)(1) of the Federal Rules of Bankruptcy Procedure states that "[a]n appeal from a judgment, order, or decree of a bankruptcy court to a district court . . . may be taken only by filing a notice of appeal with the bankruptcy clerk within the time allowed by Rule 8002." Fed. R. Bankr. P. 8003(a)(1). Rule 8002 requires that "a notice of appeal must be filed with the bankruptcy clerk within 14 days of the entry of the judgment, order or decree being appealed." Fed. R. Bankr. P. 8002(a)(1); see also 28 U.S.C. § 158(a)(1) (requiring appeal to "be taken . . . in the time provided by Rule 8002 of the Bankruptcy Rules"). Fourteen days means 14 calendar days, excluding the date of entry of the Order and including intervening Saturdays, Sundays, and holidays. See Fed. R. Bankr. P. 9006(a)(1).

An exception to Rule 8002(a)(1) is set forth in Bankruptcy Rule 8002(c)(1), which provides:

If an inmate confined in an institution files a notice of appeal from a judgment, order, or decree of a bankruptcy court, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing. If the institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule. . . .

Fed. R. Bankr. P. 8002(c)(1). In the present case, the Order was entered on Thursday, October 5, 2017, and Appellant had 14 days—until Thursday, October 19, 2017—to deposit his appeal in the prison’s internal mail system. The record reflects that Appellant deposited his Notice of Appeal in the Lee Correctional Institution mail on November 22, 2017, as evidenced by the prison mail system’s stamp on the envelope. See Bankr. Case No. 3:17-mp-90009-dd, doc. 10-2. Appellant’s Notice of Appeal was not timely filed. See Fed. R. Bankr. P. 8008(a) (A “filing is not timely unless the papers are received by the clerk within the time fixed for filing[.]”).

As previously noted, Appellant claims he did not receive the Order until November 9, 2017. The Bankruptcy Rules, however, specifically state: “Lack of notice of the entry [of an order] does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.”² Fed. R. Bankr. P. 9022(a). The timely filing of a notice of appeal is mandatory. *In re Warrick*, 275 B.R. 182, 185 (9th Cir. BAP 2002). “[T]he failure to file a timely notice of appeal from a bankruptcy court’s order constitutes a jurisdictional defect.” *In re Poddar*, 507 F. App’x 773, 775 (10th Cir. 2013) (quoting *In re Lattice*, 605 F.3d 830, 832 (10th Cir.

² Bankruptcy Rule 8002(d) provides in part:

Extending the time to appeal

(1) When the time may be extended

... the bankruptcy court may extend the time to file a notice of appeal upon a party’s motion that is filed:

(A) within the time prescribed by this rule; or
(B) within 21 days after that time, if the party shows excusable neglect.

—Fed. R. Bankr. P. 8002.

2010)). The failure to file a timely notice requires an appeal be dismissed for lack of jurisdiction. *In re LBL Sports Ctr., Inc.*, 684 F.2d 410, 412 (6th Cir. 1982) (per curiam).

Finally, Appellant's *pro se* status does not excuse his failure to timely file his Notice of Appeal because the latitude afforded to a *pro se* litigant with regard to pleading standards does not extend to procedural deadlines governed by the Federal Rules of Civil Procedure. Although the United States Supreme Court has instructed federal courts to permit some leniency regarding pleadings filed by *pro se* litigants, "the grant of leniency is not without its limitations." *In re Cilwa*, No. 15-0263-HB, 2016 WL 828284, at *3 (Bankr. D.S.C. Mar. 2, 2016) (*citing In re Loy*, 448 B.R. 420, 438 (Bankr. E.D. Va. 2011)). This leniency does not mean that "procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel." *In re McCain*, 353 B.R. 452, 459-61 (Bankr. E.D. Va. 2006) (quoting *McNeil v. United States*, 508 U.S. 106, 113 (1993) (*citing Haines v. Kerner*, 404 U.S. 519, 520 (1972))); see also *In re Hopkins*, 06-50684-SCS, 2009 WL 1789334, at *9 (Bankr. E.D. Va. June 22, 2009) ("Although civil litigants who represent themselves ("*pro se*") benefit from various procedural protections not otherwise afforded to attorney represented litigant[s] . . . *pro se* litigants are not entitled to a general dispensation from the rules of procedure or court-imposed deadlines.") (*citing In re Schram*, No. 00 A 00607, 2001 WL 837927, at *3 (Bankr. N.D. Ill. July 24, 2001)).

In the present case, Appellant failed to timely file his appeal. Therefore, the Court lacks jurisdiction and it is recommended that Appellant's appeal be dismissed for lack of jurisdiction. Appellant's Application to Proceed Without Prepayment of Fees and Affidavit,

which is construed as a Motion for Leave to Proceed *in forma pauperis* (doc. 6), should be denied as moot. Likewise, Appellant's Motion for Appointment of Counsel (doc.11) should be denied as moot.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

March 6, 2018
Greenville, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
300 East Washington Street, Room 239
Greenville, South Carolina 29601

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).