

ORDERED.

Dated: June 12, 2023



Tiffany P. Geyer
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re:

2 Monkey Trading, LLC, and
Lucky Shot USA, LLC,

Case No. 6:22-bk-04099-TPG
Chapter 11

Debtors.

BenShot, LLC,

Plaintiff,

Adversary No. 6:23-ap-00007-TPG

v.

2 Monkey Trading, LLC, and
Lucky Shot USA, LLC,

Defendants.

**ORDER GRANTING APPELLANT’S MOTION AND CERTIFYING
DIRECT APPEAL TO THE ELEVENTH CIRCUIT COURT OF APPEALS**

On April 28, 2023, the Court entered an order granting Defendants’ motion to dismiss Plaintiff’s amended complaint for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) (the “Order”), concluding that, as a matter of law, Plaintiff could not maintain an action for denial of discharge under 11 U.S.C. § 523(a)(6) against the

Debtors/Defendants, who are proceeding under Subchapter V of Chapter 11, because they are not “individuals” but rather are limited liability corporations. (Doc. No. 17 at 3-5.) On May 12, 2023, Plaintiff filed a notice of appeal (Doc. No. 19), and on May 26, 2023, Plaintiff filed its “Motion to Certify Order for Direct Appeal Pursuant to 28 U.S.C. § 158” (the “Motion”) (Doc. No. 26). On June 9, 2023, Defendants timely filed their response opposing the Motion. (Doc. No. 26.)

Federal Rule of Bankruptcy Procedure 8006 provides the procedure for certifying a direct appeal to the court of appeals. Subsection b of Rule 8006 states that the certification must be filed where the matter is pending, and “[f]or purposes of this rule, a matter remains pending in the bankruptcy court for 30 days after the effective date under Rule 8002 of the first notice of appeal from the . . . order . . . for which direct review is sought.” After those thirty days, the matter is pending in either the district court or with the bankruptcy appellate panel. Fed. R. Bankr. P. 8006(b).

Because the notice of appeal was filed on May 12, 2023, this matter remains pending in this Court until June 12, 2023. Although the thirty-day period ended on Sunday, June 11, 2023, under Federal Rule of Bankruptcy Procedure 9006(a)(1)(C), “if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.” Therefore, this Court has jurisdiction to certify the appeal through the end of today.

The Court finds that this appeal should be certified under 28 U.S.C. § 158(d)(2)(A)(i), which states that if the bankruptcy court certifies that “the . . . order . . . involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the

Supreme Court of the United States, or involves a matter of public importance[,]” then the appropriate court of appeals has jurisdiction if it authorizes the direct appeal.¹

Defendants argue that because this appeal involves “at least one question of law that is controlled by a decision of the Eleventh Circuit or the Supreme Court, then the Court must deny the Motion” (Doc. No. 31 at 3.) In support, Defendants state that the Eleventh Circuit “broadly held” that § 523 is *not* applicable to corporate debtors, citing *Spring Valley Farms, Inc. v. Crow (In re Spring Valley Farms, Inc.)*, 863 F.2d 832 (11th Cir. 1989). (Doc. No. 31 at 4.) However, *Spring Valley Farms* was decided in 1989, before Subchapter V to Chapter 11 was enacted, so the statute at issue here, 11 U.S.C. § 1192(2), did not yet exist.

Plaintiff relied on *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC)*, 36 F.4th 509 (4th Cir. 2022), in which the Fourth Circuit Court of Appeals held that section 523(a) *does* apply to corporate debtors that proceed under Subchapter V. (Doc. No. 6 at 5-8.) This Court rejected Plaintiff’s argument, instead following *Nutrien Ag Solutions, Inc. v. Hall, et al. (In re Hall)*, Ch. 11 Case No. 3:22-bk-01326-BAJ, Ch. 11 Case No. 3:22-bk-01341-BAJ, Adv. No. 3:22-AP-00062-BAJ, 2023 WL 2927164 (Bankr. M.D. Fla. Apr. 13, 2023), and four other bankruptcy courts’ rulings that § 523(a) does not apply to corporate debtors that file for relief under Subchapter V.² (Doc. No. 17 at 3-5.)

¹ There are two other bases for court of appeals’ jurisdiction under 28 U.S.C. § 158(d)(2)(A): “(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or (iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken”

² *Avion Funding, LLC v. GFS Indus., LLC (In re GFS Indus., LLC)*, 647 B.R. 337, 344 (Bankr. W.D. Tex. 2022), *motion to certify appeal granted*, No. 22-50403-CAG, 2023 WL 1768414 (Bankr. W.D. Tex. Feb. 3, 2023); *Jennings v. Lapeer Aviation, Inc. (In re LaPeer Aviation, Inc.)*, No. 21-31500-JDA, Adv. No. 22-03002, 2022 WL 1110072 (Bankr. E.D. Mich. Apr. 13, 2022); *Catt v. Rtech Fabrications, LLC (In re Rtech Fabrications, LLC)*, 635 B.R. 559 (Bankr. D. Idaho 2021); *Gaske v. Satellite Rests. Inc. (In re Satellite Rests. Inc.)*, 626 B.R. 871 (Bankr. D. Md. 2021).

As stated in Plaintiff's "Statement of Issues on Appeal from Bankruptcy Court," the issue in this case is "[w]hether the exception to discharge for debts 'of the kind specified in section 523(a) of this title' contained in 11 U.S.C. §1192(2) applies to all debtors or only individual debtors?" (Doc. No. 27 at 2.) This question of law has not been determined by the Eleventh Circuit or the Supreme Court of the United States. Thus, certification is appropriate under 28 U.S.C. § 158(d)(2)(A)(i).

Accordingly, it is **ORDERED** as follows:

1. The Motion (Doc. No. 26) is **GRANTED**;
2. The Court certifies that a direct appeal of the Order is appropriate under 28 U.S.C. § 158(d)(2)(A)(i).

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The Clerk is directed to serve a copy of this order on all interested parties in accordance with Federal Rule of Bankruptcy Procedure 8003(c)(1). *See* Fed. R. Bankr. P. 8006(f)(5).