UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION

IN RE:

SS&S SPECIALTIES, LLC, CASE NO.: 21-50124-KKS
CHAPTER: 11, Subchapter V

Debtor.
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ORDER DENYING *MOTION FOR RELIEF FROM DISCHARGE INJUNCTION AND/OR ORDER DISCHARGING DEBTS* (ECF No. 171)

THIS CASE came before the Court for hearing on July 9, 2024, on the *Motion for Relief from Discharge Injunction and/or Order Discharging Debts* ("Relief Motion," ECF No. 171) and the objection filed on behalf of Debtor, SS&S Specialties, LLC ("Debtor").[1] At the conclusion of the hearing, the Court gave the parties time within which to file briefs in support of their positions, which they have done.[2] Having reviewed the Relief Motion, Debtor's Objection, the briefs, the record, and applicable caselaw, and having heard argument of counsel, for the reasons set forth

[1] *Debtor's Response in Opposition and Memorandum of Law to Creditor's Motion for Relief from Discharge Injunction and/or Order Discharging Debts [Doc. No. 171]*, ECF No. 175 ("Debtor's Objection").

[2] *Creditor's Supplemental Brief*, ECF No. 179; *Debtor's Supplemental Brief in Response [Doc. No. 179]*, ECF No. 181. Because Houchins does not qualify as a "creditor" as that term is defined under the Code (11 U.S.C. § 101(10)), the Court denominates *Creditor's Supplemental Brief* as "Claimant's Brief."

below the Relief Motion is due to be denied.

Background – This Case.

Debtor filed its petition commencing this Subchapter V case under Chapter 11 of Title 11 on December 16, 2021.[3] Debtor was established in 2012 and provides services related to nonresidential construction, including installation of acoustical ceilings, metal stud framing, and drywall.[4] Debtor filed this case primarily to deal with a claim of the Internal Revenue Service ("IRS") in excess of $300,000.00.[5] By the time Debtor filed this case, the IRS had levied on Debtor's accounts receivable.[6]

Debtor filed its initial Subchapter V plan on March 16, 2022.[7] The IRS filed an objection to Debtor's initial plan on September 16, 2022.[8] Debtor filed monthly operating reports and the Court conducted various status hearings throughout the case. Debtor filed its First Amended Subchapter V Plan on May 10, 2023.[9] The Court conducted the

[3] *Voluntary Petition for Non-Individuals Filing for Bankruptcy*, ECF No. 1 ("Petition").
[4] *Subchapter V Debtor's Chapter 11 Case Management Summary*, ECF No. 11, ¶ I.
[5] *Id.* at ¶ VI.
[6] *Id.*
[7] *Plan of Reorganization for Small Business Under Chapter 11*, ECF No. 70.
[8] *Objection to Confirmation of Plan of Reorganization for Small Business Under Chapter 11*, ECF No. 113.
[9] *First Amended Plan of Reorganization for Small Business Under Chapter 11*, ECF No. 138.

confirmation hearing on June 28, 2023, and confirmed Debtor's first amended Subchapter V plan on a consensual basis by order dated July 24, 2023.[10]

Background – The Workers' Compensation Case.

Theodore Houchins ("Houchins") claims that in August of 2022 he suffered an on-the-job injury while employed by Debtor.[11] In October of 2022, Houchins, through counsel, filed a petition for workers' compensation benefits in the Office of the Judges of Compensation Claims (the "Workers' Compensation Court").[12]

The first Judge of Compensation Claims to preside over Houchins' Workers' Compensation Case, John P. Moneyham, held a hearing on February 17, 2023, at which appeared counsel for Houchins, counsel for Debtor's employee leasing company and insurance entities, and Scott Hudson, "the non-attorney owner of" Debtor ("Mr. Hudson").[13] At that

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[10] *Order Confirming First Amended Plan of Reorganization (Doc No. 138)*, ECF No. 154 ("Confirmation Order").

[11] Relief Motion, ECF No. 171, ¶ 1. Debtor has consistently maintained that Houchins was not an employee and has denied any liability to Houchins on account of the alleged injury. *See Debtor's Objection,* ECF No. 175, p. 2, fn. 1; ¶¶ 16, 19.

[12] ECF No. 171, Ex. B*, Petition for Workers' Compensation Benefits*, State of Florida Division of Administrative Hearings, Office of the Judges of Compensation Claims, OJCC Case No. 22-024731JPM, p. 1 ("Workers' Compensation Case") (listing the Debtor as "Employer" and Lion Insurance Company as "Carrier.").

[13] *Id.*, Ex. C, *Order Suspending and Deferring Proceedings* ("Workers' Compensation Order"), OJCC Case No. 22-024731JPM, p. 1.

hearing, Judge Moneyham reviewed what he described as a "Notice of Chapter 11 Bankruptcy Case filed on February 14, 2023" that "provided that '[t]he filing of the case imposed an automatic stay against most collection activities.'"[14] As a result, on February 17, 2023, Judge Moneyham entered an order canceling the scheduled pretrial hearing, mediation conference and final hearing, and suspended and deferred the Workers' Compensation Case "until the bankruptcy stay is lifted in [Debtor's] bankruptcy case."[15] The Workers' Compensation Order provides that "[a]ny party may move to lift the suspend and defer period, at which time the undersigned will review said motion and rule on such request."[16]

Nothing further occurred in the Workers' Compensation Case until it was transferred to a new judge, Jonathan E. Walker, in March of 2023.[17] On July 5, 2023, Judge Walker issued an Order to Show Cause in which he stated: "it appears that [Debtor] originally petitioned the

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[14] *Id.*
[15] *Id.*
[16] *Id.* at pp. 2–3. Copies of the Workers' Compensation Order were furnished to Debtor at its business address and by email to Mr. Hudson, and counsel for Houchins, and the insurance agencies. *Id.* at pp. 2–3.
[17] The Court takes judicial notice of the Docket in the Worker's Compensation Case: Office of the Judges of Compensation Claims Docket, *Theodore Calvin Houchins vs. SS & S Specialties*, Case No. 22-024731JW, ("Workers' Compensation Case Docket") https://www.jcc.state.fl.us/JCC/searchJCC/case.asp (last visited Aug. 5, 2024).

bankruptcy court on December 16, 2021 for debt relief. This was over 18 months ago. At this time, I require written confirmation . . . that the bankruptcy stay remains in place."[18] Judge Walker issued this Order to Show Cause more than two weeks before this Court signed the confirmation order.

In October of 2023, Mr. Hudson sent correspondence to the Workers' Compensation Court in response to the Order to Show Cause, including a copy of a "Bankruptcy Order."[19] On November 11, 2023, Debtor's bankruptcy counsel submitted to the Workers' Compensation Court a notice of the entry of this Court's order confirming Debtor's Subchapter V plan.[20]

Judge Walker held a hearing on January 17, 2024, at which counsel for Houchins appeared along with Debtor's bankruptcy counsel.[21] At that hearing, Houchins' attorney sought more time to seek a ruling from this

[18] Relief Motion, ECF No. 171, Ex. D, *Order to Show Cause*, OJCC Case No. 22-024731JW, p. 1. This order was sent to Debtor "c/o Scott Hudson" by mail and email, and to counsel for Houchins, and the insurance entities. *Id.* at p. 2. The initials at the end of the Workers' Compensation Case number are different apparently due to the change in presiding judge.

[19] *See* Workers' Compensation Case Docket, *supra*, note 17, at docket entry dated 10/11/2023.

[20] *Id.* (Docket entry dated 11/14/2023. "Notice of Entry of Confirmation Order Providing for Discharge and Permanent Injunction filed by Jodi Daniel Dubose." This is the first entry on the docket showing an appearance of an attorney for Debtor in the Workers' Compensation Case in any capacity.).

[21] Relief Motion, ECF No. 171, Ex. F, *Order Suspending and Deferring Proceedings*, (noting that "Jodi Dubose, Esquire, appeared in a limited capacity regarding the bankruptcy proceedings involving the Employer.").

Court as to whether Houchins' workers' compensation claim "is affected by the discharge injunction issued by" this Court.[22] Both parties agreed that more time was needed for such a ruling, so on January 30, 2024, Judge Walker entered an order suspending and deferring the Workers' Compensation Case for another ninety (90) days.[23] Houchins filed the Relief Motion four (4) months later, on May 31, 2024.

The Relief Motion.

By the Relief Motion, Houchins seeks an order authorizing him to proceed with the Workers' Compensation Case, allowing his claim against Debtor (if any) as a post-petition administrative expense, and determining that any such claim has not been discharged by confirmation of Debtor's Subchapter V plan. Houchins raises several arguments, including that Debtor or its counsel persuaded him to take no action before filing the Relief Motion, that he has been denied due process, and that the Relief Motion should be considered timely due to excusable neglect.

[22] *Id.*

[23] *Id.* Another reason for the deferral of the Workers' Compensation Case was because Mr. Hudson had recently undergone heart surgery.

Debtor's Opposition.

Debtor's opposition to the Relief Motion is, essentially, that Houchins filed it too late. Debtor points out that the Confirmation Order states: "confirmation of the Plan discharges the Debtor from any debt that arose before confirmation."[24] Debtor also emphasizes that because its plan was consensually confirmed under 11 U.S.C. § 1191(a), Bankruptcy Code § 1141(d)(1)(A) applies. Section 1141(d)(1)(A) provides, in pertinent part: "Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—discharges the debtor from any debt that arose before the date of such confirmation . . . ."[25]

Discussion.

Debtor is correct. Houchins' Relief Motion is too late. Any claim Houchins may have against Debtor has been discharged by confirmation of Debtor's consensual Subchapter V plan. None of Houchins' arguments to the contrary pass muster.

Houchins' first and only action in this case was to file the Relief Motion on May 31, 2024. At no time between receiving notice of the

[24] Confirmation Order, ECF No. 154, p. 5.
[25] 11 U.S.C. § 1141(d)(1)(A).

instant Subchapter V case in February of 2023 and confirmation of Debtor's Subchapter V plan in July of 2023 did Houchins or his counsel make an appearance in this case or file anything with this Court. Between receiving actual notice of the confirmation of Debtor's Subchapter V plan in October of 2023 and filing the instant Relief Motion in May of 2024, Houchins and his counsel once again took no action in this Court. Neither Houchins nor his counsel filed anything in the Workers' Compensation Case during the same time periods. In short, Houchins did not actively pursue his alleged Workers' Compensation claim for fifteen (15) months after receiving notice of this case.[26]

Houchins' accusation—that Debtor's counsel took affirmative steps to delay him and caused Judge Moneyham to suspend the Workers' Compensation Case—is disingenuous, if not outright false.[27] In his February 17, 2023 order, Judge Moneyham listed all persons who were present at the February 2023 hearing; none were counsel to Debtor. Mr.

[26] Houchins' counsel relates that he attempted to resolve the matter informally with Debtor's counsel between December of 2023 and February of 2024. Claimant's Brief, ECF No. 179, ¶ 33.

[27] Claimant's Brief states that "Debtor through Counsel [sic] took affirmative steps to prevent [Houchins'] post-petition workers' compensation case from moving forward to final hearing . . . . More specifically Debtor's Counsel [sic] *appeared on the court docket and provided a copy of Doc. No. 17 [the 341 Meeting Notice] to the Judge of Compensation Claims* who in turn suspended and deferred the proceedings until the automatic 'stay is lifted in SS&S Specialties' bankruptcy case . . . .'" Claimant's Brief, ECF No. 179, ¶ 3 (emphasis added).

Hudson was the only person present at that hearing on behalf of Debtor. Since Debtor did not have counsel at that hearing, Debtor's counsel can hardly be blamed for, or accused of, convincing Judge Moneyham, or anyone else, of anything at that hearing.

Houchins' other explanation for filing the Relief Motion so late is believable: the delay was "in part" a mistake of law.[28] On this point Houchins argues excusable neglect under Fed. R. Bankr. P. 9006(b). But a mistake of law does not constitute excusable neglect.[29]

Houchins next suggests that the Court should grant the Relief Motion under Fed. R. Civ. P. 60, citing *In re Michelson*.[30] Houchins' citation of, reliance on, and quotes from *Michelson* are misplaced. In *Michelson*, the bankruptcy court granted the creditors committee's request to revoke the Chapter 11 confirmation order due to *actual fraud:* the debtor failed to disclose that the individual selected as a key manager and turnaround specialist to implement the debtor's plan had been

[28] Claimant's Brief, ECF No. 179, ¶ 32 ("The reason for the delay was in part a mistake on the part of [Houchins'] counsel regarding the applicability of the discharge to post-petition claims under Subchapter V.").
[29] *See generally In re Harrison*, 599 B.R. 173, 188 (Bankr. N.D. Fla. 2019); *see also In re Sehman*, 632 B.R. 853, 854 (Bankr. N.D. Fla. 2021); *Advanced Estimating Sys. v. Riney*, 130 F.3d 996, 997 (11th Cir. 1997) ("Guided by the decision in *Pioneer* and decisions in this circuit, we hold that, as a matter of law, the lawyer's failure to understand clear law cannot constitute excusable neglect.").
[30] ECF No. 179, ¶¶ 28–30.

indicted for mail fraud and was said to have built a company that grossed $5 million per year, but then filed chapter 7.[31] The facts in *Michelson* do not even remotely resemble the facts here.

Houchins bases much of his excusable neglect argument on the seminal case of *Pioneer Inv. Serv. Co. v. Brunswick Assoc. Ltd. P'ship.*[32] In *Pioneer*, the Supreme Court stated, "[t]o justify relief under subsection (6) [of Rule 60(b)], a party must show 'extraordinary circumstances' suggesting that the party is faultless in the delay."[33] Houchins is not faultless in his delay.[34]

Houchins maintains that he received inadequate notice and has been deprived of due process. Here, Houchins is also mistaken. In support of this argument, Houchins relies on bankruptcy rules and case law pertaining to creditors with claims. But Houchins is not a creditor. The Bankruptcy Code defines "creditor" as an "entity that has a claim against

[31] *Off. Comm. of Unsecured Creditors v. Michelson (In re Michelson)*, 141 B.R. 715, 716 (Bankr. E.D. Cal. 1992). Additionally, the creditor's committee in *Michelson* brought an adversary proceeding to revoke the confirmation order within the 180-day deadline proscribed in § 1144. *Id.*
[32] *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380 (1993).
[33] *Id.* at 393.
[34] *See Ellis v. W Wind Down Co. LLC (In re Westinghouse Elec. Co. LLC)*, Case No. 1:22–cv–1739–GHW, 2023 WL 2561589, at *7 (S.D.N.Y. Mar. 17, 2023) (upholding bankruptcy court's denial of a motion to allow late administrative claim where claimant "was on notice that the most prudent course of action would be to file a protective claim in the Bankruptcy Court, and that he could have done so.").

the debtor *that arose at the time of or before* the order for relief concerning the debtor . . . ."[35] Houchins' claim, assuming he has one, clearly arose post-petition.[36] Regardless, Houchins received more than adequate notice of Debtor's case. Once on notice of this case, Houchins effectively had notice of the plan and confirmation date(s).[37] In fact, Judge Moneyham invited the parties present at the February 2023 hearing, which included Houchins' counsel, to take action to lift the automatic stay: he suspended the Workers' Compensation Case "until the bankruptcy stay is lifted in [Debtor's] bankruptcy case."[38] It appears Houchins did not even look at the bankruptcy docket to determine the status of this case.[39] Had he done so upon learning Debtor was in bankruptcy, he could have asserted his administrative claim well before confirmation of Debtor's plan.

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[35] 11 U.S.C. § 101(10)(A) (emphasis added).
[36] *See Christopher v. Am. Universal Ins. Grp., Inc. (In re Christopher)*, 148 B.R. 832, 835 (Bankr. N.D. Tex. 1992) (holding "[t]here is no requirement in the Bankruptcy Code or Rules for a debtor-in-possession to serve a notice of the Chapter 11 proceedings upon parties with whom it deals postpetition.").
[37] This Court scheduled and rescheduled the confirmation hearing numerous times. *See* ECF Nos. 75, 81, 90, 92, 103, 105, 109, 116, 118, 121, 126, 131, 135, 142, 145, and 152.
[38] Workers' Compensation Order, *supra* note 13, p. 1.
[39] Houchins and his counsel could have accessed the docket in this case at any time through PACER (Public Access to Court Electronic Records), which "provides electronic public access to federal court records. PACER provides the public with instantaneous access to more than 1 billion documents filed at all federal courts.") PACER, https://pacer.uscourts.gov/ (last visited Aug. 15, 2024).

Houchins protests, with no citation of authority, that "Debtor had an affirmative obligation to provide copies of [the plan solicitation package] directly to [Houchins or his] Counsel [sic] . . . ."[40] Houchins complains, again without citation of authority, that "Debtor has repeatedly failed to meet its duties under Title 11 of the United States Code with respect to notice and therefore the due process rights of [Houchins] have been violated."[41] These grievances are unsubstantiated. Upon receiving notice that Debtor had filed this case, Houchins, not the Debtor, had a duty to act.[42] Had Houchins' counsel merely filed a notice of appearance upon learning of this case, he would have received all notices in this case from that date forward.

Courts in cases with similar facts have rejected belated attempts to change the outcome of such inaction. In *In re Christopher*, a party held a

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[40] Claimant's Brief, ECF No. 179, ¶ 7.

[41] *Id.*

[42] *See In re O'Shaughnessy*, 252 B.R. 722, 730 (Bankr. N.D. Ill., 2000) ("A party with actual notice of a bankruptcy case must act diligently to protect its interest . . . ." (citing *In re Marino*, 195 B.R. 886, 893 (Bankr. N.D. Ill. 1996) ("A creditor, who knows of the proceeding but has not received formal notice, should be prevented from standing back and allowing the bankruptcy action to proceed and then asserting that the debt is nondischargeable."))); *see also Raj & Raj Realty Ltd. v. Difficile Realty Corp. (In re Sun Prop. Consultants, Inc.)*, 629 B.R. 682, 704 (Bankr. E.D.N.Y. 2021) ("A party 'who independently acquires knowledge of a pending action that will affect its rights cannot sit idly by, let time pass and assert its rights at a later date when it may be impossible or impractical to unwind earlier actions that affect the rights of others.'" (quoting *In re Queen Elizabeth Realty Corp.*, Case No. 13-12335 (SMB), 2017 WL 1102865, at *5 (Bankr. S.D.N.Y. Mar. 24, 2017), *aff'd*, 586 B.R. 95 (S.DN.Y. 2018))).

post-petition claim against an individual Chapter 11 debtor.[43] There, the claimant had actual notice of the debtor's ongoing bankruptcy case, but no actual notice of specific dates, including the date of the confirmation hearing.[44] In affirming the bankruptcy court's discharge of the claim, the court stated:

> The [claimant] contends that due process entitled it to formal notice of the date of the hearing on confirmation of [debtor's] plan of reorganization. We have already seen that due process requires only notice that is both adequate to apprise a party of the pendency of an action affecting its rights and timely enough to allow the party to present its objections.[45]

In *In re P.R. Hosp. Supply, Inc.*, a creditor ("SCC") filed a claim in excess of $5 million in a Chapter 11 case.[46] SCC's claim was disallowed

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[43] *Sequa Corp. v. Christopher (In re Christopher)*, 28 F.3d 512, 516–17 (5th Cir. 1994).
[44] *Id.*
[45] *Id.* at 519 (citing *In re Sam*, 894 F.2d 778, 778 (5th Cir. 1990)). *See also Raymond James & Assocs. v. Jalbert (In re German Pellets, La., L.L.C.)*, 91 F.4th 802 (5th Cir. 2024) (Indemnity claim of creditor not listed on debtor's schedules but which had actual notice and knowledge of debtor's Chapter 11 case was discharged by confirmation of plan, holding "[i]f an interested party has 'notice or actual knowledge' of the bankruptcy, that party must 'come forward and protect their enhanced rights . . . or lose their rights through the sweeping discharge of Chapter 11.' . . . In this context, the 'notice requirement is satisfied when the creditor has actual knowledge of the case in time to permit [it] to take steps to protect its rights.'" (quoting *Christopher*, 28 F.3d at 519)); and *Byrd v. Alton (In re Alton)*, 837 F.2d 457, 461 (11th Cir. 1988) (per curiam) ("We conclude that there was no due process violation. At a time when he could have protected himself, creditor Byrd received actual written notice of the bankruptcy proceeding, a notice adequate 'to apprise [him] of the pendency of the action and afford [him] an opportunity to present [his] objections.'" (quoting *Mullane v. Cent. Hanover Tr. Co.*, 339 U.S. 306, 314 (1950))).
[46] *In re P.R. Hosp. Supply Inc.*, 2020 WL 7133165, at *1 (Bankr. D.P.R. Dec. 4, 2020) (the creditor was the Special Claims Committee of the Financial Oversight Management Board for the Commonwealth of Puerto Rico).

after SCC failed to timely respond to the debtor's objection.[47] SCC moved to vacate the order disallowing its claim on the basis of excusable neglect: its attorneys claimed they missed the objection to and order disallowing SCC's claim because their practice was operating on a skeleton crew as a result of the Covid-19 pandemic.[48] The bankruptcy court denied SCC's motion to vacate the order disallowing its claim, stating:

> The alleged reason for the delay, as explained by the SCC, was that the notification of the *Objection* and the *Order* were, allegedly, scanned and deleted, and, therefore, [neither] the attorney for the SCC nor its team received it. However, the Court notes that . . . [n]o one on behalf of the SCC signed up for notices under the Court's CM/ECF system and no one on their [sic] behalf filed a notice of appearance, requesting all notices . . . .
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> An attorney has an ongoing responsibility to inquire into the status of a case . . . and "an exceptional justification" must be something more than an attorney's failure to monitor the court's electronic docket.[49]

In a Chapter 13 case, *In re Pence*, a bank had a mortgage on the debtor's business assets and a separate mortgage on the debtor's home.[50] The bank did not object to the debtor's plan, which was confirmed.[51]

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[47] *Id.* at *1.
[48] *Id.* at *2.
[49] *Id.* at *6 (citing *Davila-Alvarez v. Escuela de Medicina Universidad Cent. del Caribe*, 257 F.3d 58, 65 (1st Cir. 2001), and (quoting *Santos-Santos v. Torres-Centeno*, 842 F.3d 163, 169 (1st Cir. 2016))).
[50] *In re Pence*, 905 F.2d 1107, 1108 (7th Cir. 1990).
[51] *Id.*

Under the confirmed plan the bank received the business assets, valued at $58,500, in exchange for release of its mortgage on the debtor's home.[52] After the plan was confirmed, it became clear that the business assets were worth far less than $58,500.[53] The bank moved to revoke the confirmation order, in part arguing that it never received written notice of the confirmation hearing.[54] The bankruptcy and district courts held that the bank had produced no evidence that it had not received notice of the confirmation hearing.[55] On appeal, the Seventh Circuit agreed, but held that even had the bank produced such evidence the ruling would be the same, stating:

> [E]ven assuming that [the bank] failed to receive written notice of the confirmation hearing, it is still not entitled to avoid the binding effects of the reorganization plan. Due process does not always require formal, written notice of court proceedings; informal actual notice will suffice. In this case, [the bank], a sophisticated and organized creditor, had knowledge of [the debtor's] bankruptcy petition and should have known that a reorganization plan would have to be filed . . . . Creditors . . . must follow the administration of the bankruptcy estate to determine what aspects of the proceeding they may want to challenge . . . . [The bank] was not entitled to stick its head in the sand and pretend it would

[52] *Id.* (The bank was owed $47,000 on the loan secured by the business assets. The bank held a separate $18,000 mortgage on debtor's home.).
[53] *Id.* at 1109 (a prospective buyer was willing to pay only $30,000.00).
[54] *Id.*
[55] *Id.*

not lose any rights by not participating in the proceedings.[56]

In addition to lack of due process, Houchins urges that considerations of timeliness should not bar him from asserting an administrative claim against Debtor at this late date. Houchins is wrong again. No bar date for administrative claims is required in a Chapter 11 case.[57] Bankruptcy courts have held administrative expense claims for post-petition, preconfirmation debts to be untimely under a variety circumstances.[58] For example, in *Taco Bueno Rests.*, the confirmed plan contained an explicit administrative claims bar date.[59] The claimant had notice of the administrative claims bar date.[60] Before the administrative claims bar date expired, the claimant attempted to assert its administrative claim by filing Official Form 410, the "Proof of Claim"

[56] *Id.* (citing *In re Torres*, 15 B.R. 794, 797 (Bankr. E.D.N.Y. 1981) and *Sam*, 894 F.2d at 778 (tort claim barred by bankruptcy discharge where claimant knew of bankruptcy case and could have taken action to protect his rights.)).

[57] *See Collins v. J&N Rest. Assoc., Inc. (In re Mendolia)*, Case No. 12–60219, AP No. 14–80002, 2015 WL 4759666, at *8 (Bankr. N.D.N.Y. Feb. 3, 2015), *aff'd sub nom. Collins v. J&N Rest. Assoc., Inc.*, Case No. 3:15–cv–178 (BKS), 2016 WL 1248888 (N.D.N.Y. Mar. 28, 2016) ("absent a creditor's lack of due process, confirmation of a plan generally 'discharges the debtor from *any* debt that arose before the date of such confirmation.'" (citing 11 U.S.C. § 1141(d) (emphasis added))).

[58] *See, e.g., Deere Credit, Inc. v. Wiley (In re Wiley)*, No. 10–12007–SDB, 2014 WL 294330 (Bankr. S.D. Ga. Jan. 24, 2014); *Mendolia*, 2015 WL 475966; *In re Taco Bueno Rests., Inc.*, 606 B.R. 289 (Bankr. N.D. Tex. 2019).

[59] *Taco Bueno Rests.*, 606 B.R. at 293.

[60] *Id.* at 295.

form.[61] About three months after the administrative claims bar date the claimant filed an application for approval and payment of its administrative claim.[62] When the debtor objected, the claimant argued that its administrative claim request was timely because it related back to the Proof of Claim and should be allowed "for cause."[63] The bankruptcy court disagreed, sustained the debtor's objection and denied the administrative claim.[64] As to timeliness, the bankruptcy court in *Taco Bueno Rests.* stated:

> [R]eorganized debtors have a keen interest in obtaining finality sooner rather than later with regard to administrative-expense claims. The reason debtors have an interest in such finality derives from the special treatment afforded to administrative expenses. An administrative-expense claimant is generally entitled to cash in full on the effective date of a plan. . . . The debtor and reorganized debtor need to be able to ascertain an amount such entities must have in cash due to pay administrative expenses and must ensure the availability of an amount in cash to pay existing creditors on the effective date of the plan or soon thereafter.[65]

Like in the instant case, in *In re Wiley* there was no bar date for filing administrative claims.[66] Nonetheless, the bankruptcy court in

[61] *Id.* at 296.
[62] *Id.*
[63] *Id.*
[64] *Id.* at 2.
[65] *Id.* at 302–03.
[66] *Wiley*, 2014 WL 294330 at *5.

Wiley stated: "confirmation of a plan . . . acts as a 'timeliness' bar precluding requests for payment of preconfirmation administrative expenses which could have been addressed preconfirmation."[67] As the *Wiley* court recognized, even when the court has set no deadline for filing administrative claims, "the time for filing a request for payment of administrative expenses does not continue indefinitely."[68]

As the court in *Wiley* also noted, the confirmation process is primarily an inquiry into the viability of the proposed plan; once the viability issue is resolved, the terms of a confirmed plan are binding on all parties.[69] In the instant case, Debtor's confirmed plan provides payment of 100% of administrative and unsecured claims.[70] By confirming Debtor's amended plan the Court necessarily determined it was viable. The confirmed amended plan, which had been on the docket

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[67] *Id.* (quoting *Aspen Limousine Servs. v. Aspen Limousine Serv. (In re Aspen Limousine Serv.)*, 193 B.R. 325, 338–39 (D. Colo. 1996)); *see also Collins*, 2016 WL 1248888 at *7 (holding that where no administrative bar date has been set, the plan confirmation date controls for the assertion of all claims, including administrative claims. (citing *Wiley*, 2014 WL 294330 at *5)).

[68] *Wiley*, 2014 WL 294330 at *5 (holding that "'timeliness' under § 503(a) provides a judge with the discretion to deny a request for payment of administrative expenses filed so late in the case as to risk prejudicing other, more attentive, parties in interest." (citing *Aspen Limousine Serv.*, 193 B.R. at 338–39)).

[69] *Id.* at *5 (citing *Claremont McKenna Coll. v. Asbestos Settlement Tr. (In re Celotex Corp.)*, 613 F.3d 1318, 1322 (11th Cir. 2010)).

[70] *First Amended Plan of Reorganization for Small Business Under Chapter 11*, ECF No. 138, Ex. A, *Liquidation Analysis in Connection with First Amended Plan of Reorganization of SS&S Specialties, LLC*, p. 19.

in this case for over a year before Houchins filed the Relief Motion, is abundantly clear that all claims against Debtor that arose before confirmation are discharged.[71] To allow Houchins to recommence his efforts to liquidate his claim at this date, and then to exempt it from discharge, would completely derail Debtor's consensually confirmed plan.

Conclusion.

As it would be with any claimant similarly situated, it was incumbent on Houchins to take some action in this case long ago. Houchins' ample notice of this case and of confirmation of Debtor's plan provided him a generous amount of time within which to have timely asserted an administrative expense claim, sought stay relief or clarification that the stay did not apply, participated in this case, and objected to confirmation of Debtor's plan. This ruling does not just affect Houchins. Debtor has been operating under and its creditors have been relying on the confirmed plan since the confirmation order became final on August 7, 2023. Granting the Relief Motion would essentially undo Debtor's consensual Subchapter V plan, thus prejudicing Debtor and

[71] *Id.* at p. 14 ("**Article 9: Discharge, Exculpation, and Injunction**, 9.01 **Discharge** – The Debtor will be discharged from any debt that arose before confirmation of this Plan, to the extent and at the time specified in Sections 1141(d)(1)(A) and 1192 of the Bankruptcy Code.") (emphasis in original).

other parties, particularly creditors, that participated in the confirmation process and have been relying on the confirmed plan. Such a result, on these facts, would be inequitable.

For the reasons stated, it is

ORDERED: The *Motion for Relief from Discharge Injunction and/or Order Discharging Debts* (ECF No. 171) is DENIED.

DONE and ORDERED on August 15, 2024.

KAREN K. SPECIE
Chief U.S. Bankruptcy Judge

cc: Counsel for Movant Houchins is directed to serve a copy of this Order on interested parties and file a proof of service within three (3) days of entry of the Order.