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Subject:05-01247-s Doc#: 31 Rapid Temps, Inc. v. Lamon

-- Order on Motion to Extend/Shorten Time

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U.S. BANKRUPTCY COURT

New Mexico

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Docket Text:

Order Denying Motion to Extend/Shorten Time (Related Doc # [26]), Denying Motion to Extend Time to Appeal Under Rule 8002(c) (Related Doc # [29]) (jeb)

The following document(s) are associated with this transaction:

Document description: Main Document

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[STAMP bkecfStamp\_ID=1021991579 [Date=4/19/2007] [FileNumber=997773-0] [64200b98ac5e0b717551232b6c46d16d5d18d21bfbe01d658298a63c540b128860blaa29f175780978284c1460da2e64a82267b81a3d220afac1255e2bf9e0f7]]

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In re:

LINDA GAIL LAMON,  
Debtor.

No. 7-05-16328 SA

RAPID TEMPS, INC.,  
Plaintiff,  
v.

Adv. No. 05-1247 S

LINDA GAIL LAMON,  
Defendant.

**ORDER DENYING MOTION TO EXTEND TIME WITHIN  
WHICH TO FILE A NOTICE OF APPEAL**

This matter came before the Court upon the Motion of the Debtor to extend the time for filing a Notice of Appeal herein ("Motion"). The Court finds that the Memorandum Opinion and Partial Judgment were entered in the adversary proceeding on April 3, 2007. Debtor's Motion was filed in the main bankruptcy case on April 16, 2007. When Debtor realized the Motion was filed in the incorrect case file, she refiled it as an Amended Motion seeking the same relief in the adversary proceeding on April 18, 2007<sup>1</sup>.

Federal Rule of Bankruptcy Procedure 8002 deals with the timing of appeals and motions for extension. Rule 8002(a) requires that the notice of appeal be filed with the clerk within 10 days of the entry of the judgment, order, or decree appealed

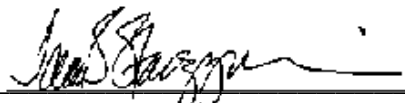
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<sup>1</sup>Because the proper parties were identified in the Motion, and the Motion identified that it was to be an appeal from the ruling on the injunction, the Amended Motion likely would relate back to the filing of the original Motion. See Locke v. Mallette (In re Mallette), 1994 WL 507410, \*2 (N.D. Cal. 1994).

from. Rule 8002(c) permits the Bankruptcy Court to enlarge the time for taking an appeal upon "written motion filed before the time for filing a notice of appeal has expired, except that such a motion filed not later than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect."

In this case, Debtor's first Motion was filed 13 days after the entry of the judgment being appealed from, and was therefore untimely. Debtor has not alleged excusable neglect. Therefore, the Motion should be denied.

IT IS ORDERED that Debtor's Motion to Extend Time in which to File a Notice of Appeal is denied.

  
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Honorable James. S. Starzynski  
United States Bankruptcy Judge

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