

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT HAMMOND

IN RE:)
MARCELLA PEARL HASEK)
) BANKRUPTCY NO. 06-60743
)
Debtor)

MEMORANDUM OPINION
AND
ORDER DISMISSING CASE
PURSUANT TO § 521(i)(2)

_____The Court takes judicial notice that the Debtor filed her Chapter 13 Bankruptcy Petition on April 25, 2006. The last day, or the 45th day, for the Debtor to file schedules and statements required by § 521(a)(1) was June 10, 2006 pursuant to § 521(i)(I). However, no signed Schedules have been filed to date, although the Debtor did file a signed Statement of Affairs on June 22, 2006.

Section 521(i)(I) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), which is applicable to this case, states as follows:

(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall automatically dismissed effective on the 46th day after the date of the filing of the petition. (emphasis supplied).

Section 521(i)(I) was implemented by General Order of the Court No. 2006-01, Local Procedures to Help Implement the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which provides, in part, as follows:

In order to implement the provisions of the Bankruptcy Abuse Prevention and Consumer protection Act of 2005, it is hereby ORDERED that:

(a) If an individual debtor in a voluntary case under Chapter 7 or 13 fails to file documents containing the information required by 11 U.S.C. § 521(a)(1)(A) and (B)(I-iii, v, vi) within 45 days following the date of the petition, unless that deadline has been extended or the trustee files an appropriate motion, the court will issue a notice reflecting the dismissal of the case pursuant to § 521(i)(1) on the 46th day after the date of the petition or as soon thereafter as may be practicable. A debtor or other party in interest who contends such a notice was issued in error may seek relief under Rule 9024(a) of the Federal Rules of Bankruptcy Procedure. In addition to the requirements of Local Bankruptcy Rule B-9023-1, any such motion shall specifically indicate where in the record documents containing the required information may be found, describe how those documents provide all the information required and state the date upon which they were filed.

(b) The absence of a notice reflecting dismissal of the case pursuant to § 521(i)(1) indicates that the court believes the debtor has filed the required information, and constitutes a presumption that such a dismissal has not occurred and that the case may continue to proceed. Notwithstanding the absence of such a notice, a party in interest that contends § 521(i)(1) requires dismissal of the case may file a motion for an order dismissing the case pursuant to § 521(i)(2)....

The Clerk on behalf of the Court failed to issue a Notice of Dismissal of this case on the 46th day after the Debtor filed her Petition pursuant to § 521(i)(I) and General Order No. 2006-01, notwithstanding the fact that the record clearly indicated that the Debtor had not timely filed the information required by § 521(a)(1).

As stated by the Court in In re Fawson, 338 B.R. 505, (Bankr. D. Utah):

The section provides that the case is automatically dismissed on the 46th day if an individual debtor fails to file the § 521(a)(1) papers within 45 days of the filing petition. Automatic means “acting or operating in a manner essentially independent of external influence or control.” Section 521(i)(l) does not contemplate any independent action by the Court or any other party-the case is merely dismissed by operation of the statute itself. There is no ambiguity.

Id. 338 B.R. at 510 (footnotes omitted). See also 4 Collier on Bankruptcy, Par.

521.24, P. 522-83 (15th Ed. Rev. 2005).

The Court also takes judicial notice that the Debtor on June 22, 2006 filed a Motion to Extend Time to File Schedules, Plan, and Other Relevant Documents, which was filed over 45 days after the Petition was filed. Due to mistake and inadvertence by the Court, the Court pursuant to Order dated June 22, 2006, erroneously granted the Debtor to and including June 22, 2006 to file Schedules and Statements. On July 19, 2006 the Debtor filed Schedules and Statements; however they were not signed by the Debtor, although the Debtor did sign the signature page for the Summary of Schedules filed on June 22, 2006. However, § 521(i)(3) states as follows:

Subject to paragraph (4) and upon request of the debtor made within 45 days after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing. (emphasis supplied).

Under BAPCPA, the bankruptcy court has no discretion pursuant to § 521(i)(3) to enlarge the time limitation set forth in § 521(i)(I) governing a debtor's failure to file all required information pursuant to § 521(a)(I), after expiration of those time limitations, regardless of any "excusable neglect" on the part of the debtor or debtor's counsel. In re Ott, 343 B.R. 264, 267 (Bankr. D. Colo 2006). After the expiration of the specified period set forth in § 521(i)(I), there are no exceptions, no excuses, only dismissal and the consequences that flow therefrom. Id. 343 B.R. at 268. Because the Debtor filed her Motion to Extend the Time to File Schedules and Statements over 45 days after the Petition was filed the Court was mistaken in granting said Motion.

A Bankruptcy Court has the inherent power pursuant to 11 U.S.C. §105(a) to correct its own mistakes. In re Themy, 6 F.3d 688, 690 (10th Cir. 1993); In re Isaacman, 26 F.3d 629, 632-33 (6th Cir. 1994); In re Anwiler, 958 F.2d 925, 928-29 (9th Cir. 1992). See also, Fed. R. Civ. P. 60(b)(1), as made applicable by Fed. R. Bk. P. 9024. “Although FRCP 60(b) provides that a Court may relieve a party from a final order upon motion, it does not prohibit a bankruptcy judge from reviewing, sua sponte a previous order.” In re Cisneros, 994 F.2d 1463, 1466 + N. 4 (9th Cir. 1993) (quoting, In re Lenox, 902 F.2d 737, 740 (9th Cir. 1990)); In re IBI Security Service, Inc., 133 F.3d 205, 209-10 (2nd Cir. 1998) (a Bankruptcy Court has the power to reverse its prior orders pursuant to either its general equitable powers or Fed. R. Bk. P. 9024).

Pursuant to §105(a), the Bankruptcy Court has the power to reconsider, modify, or vacate previous orders so long as no intervening rights have become vested in reliance on the orders. This power has been formalized in Bankruptcy Rule 9024, which make Fed. R. Civ. P. 60 applicable to bankruptcy cases. Lenox, 902 F.2d at 739-740. Therefore, the Court on its own initiative corrects its Order of June 22, 2006 granting the Debtor additional time to file her Schedules and Statements and the same will be voided without notice.

General Order No. 2006-1 (b) states that the absence of a notice reflecting dismissal of a case pursuant to §521(i)(1) indicates that the Court believes the Debtor has filed the required information and constitutes a presumption that said dismissal has not occurred and the case may proceed. However, that General Order also states that notwithstanding the absence of such notice, a party in interest that contends §521(i)(I) requires a dismissal of the

case may file a motion for an order dismissing the case pursuant to § 521(i)(2), which states as follows:

(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

Section 105(a) of the Bankruptcy Code provides as follows:

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Section 105(a) authorizes the Court to dismiss a case sua sponte for failure by the Debtor to file the documents required by § 521. See In re Tennant, 318 B.R. 860, 869 (9th Cir. BAP 2004). Based upon an examination of the record, it is clear that notwithstanding the absence of a Notice by the Clerk reflecting an automatic statutory dismissal of this case, the presumption that a dismissal of the case has not occurred and the case may proceed pursuant to General Order No. 2006-1(b) has been rebutted. Accordingly, the Court pursuant to § 521(i)(2) and § 105(a) shall dismiss this case sua sponte. It is therefore,

ORDERED, that the Order dated June 22, 2006 granting the Debtor's Motion for Additional Time to File Schedules and Statement is hereby voided by the Court pursuant to Fed R. Bk. P. 9024 and § 105(a) as being erroneous and void in that the Motion by the Debtor was filed beyond the 45 days period contrary to § 521(i)(3). And it is further,

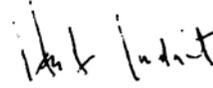
ORDERED, that pursuant to § 521(i)(2) and § 105(a) the Court hereby sua sponte

dismisses the case.

The Clerk shall enter these Orders on a separate document pursuant to Fed. R. Bk.

P. 9021 and serve all creditors.

Dated: August 3, 2006



JUDGE, U. S. BANKRUPTCY COURT

Distribution:

Debtor

Attorney for Debtor

Trustee

U.S. Trustee