

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
PIERRE LYDELL SIMMONS,) CASE NO. 07-23342 JPK
) Chapter 13
Debtor.)

ORDER REGARDING AUTOMATIC DISMISSAL OF CASE

This case was initiated by a petition filed on December 7, 2007. As docket record entry #1 discloses, Schedules of assets and liabilities, and a schedule of current income and current expenditures, were not filed at the inception of the case. On December 20, 2007, the debtor's counsel filed a Motion Requesting Additional Time, requesting until January 16, 2008 to "file missing documents." That motion was granted by order entered on December 21, 2007, by utilization of a form of order provided by the debtor's counsel. Unfortunately, this form of order granted the debtor until January 16, 2008 "to file outstanding tax returns." This is actually the Court's processing error for failure to correct the form order submitted by the debtor's counsel, and thus the Court deems the December 21, 2007 order to have granted the debtor until January 16, 2008 to file "missing documents." On January 11, 2008, a number of documents were filed; however, this filing did not include Schedule E or Schedule F. On January 17, 2008, the Court issued a Notice of Noncompliance, stating that Schedules E and F had not been filed. This notice further stated that the failure to file the documents required by 11 U.S.C. § 521(a)(1), including those listed in the Notice "will result in the dismissal of the case, by operation of law, without further notice or hearing." By operation of 11 U.S.C. § 521(h)(1), this case was automatically dismissed because Schedules E and F had not been filed within 45 days after the date of filing of the petition, i.e., by January 21, 2008.

11 U.S.C. § 521(i)(1) makes clear the fact that the failure "to file all of the information required under subsection (a)(1) within 45 days after the date of filing of the petition" results in

an automatic dismissal without further notice, hearing, or even order of the Court. As stated by docket record entry number 23, entered on January 23, 2008, the Court does not enter an order of dismissal under this circumstance, but rather merely enters a notice that dismissal has otherwise taken place by operation of law. If this result is sought to be avoided, 11 U.S.C. § 521(i)(3) provides that if the debtor so requests within 45 days after the date of the filing of the petition, the Court may allow the debtor an additional period of time to require the documents required by § 521(a)(1); no such request was made in this case. 11 U.S.C. § 521(i)(4) provides that if the trustee in the case files a motion before the expiration of the 45 day period, the Court may decline to dismiss the case – after notice and hearing, upon making certain findings specified in that subsection; no such motion was filed in this case. It is also clear that the automatic dismissal was properly designated, in that the debtor did not “file all of the information required under subsection (a)(1) within 45 days after the date of filing of the petition”: § 521(a)(1)(B)(i) provides for the filing of a schedule of assets and liabilities, which includes the missing Schedules E and F.

Thus, the automatic dismissal provided for by 11 U.S.C. § 521(i)(1) was effected by operation of law in this case.

On January 29, 2008, the debtor’s counsel filed docket record entries #25 and #26, which on the Court’s docket are designated as certificates of service, but which are in fact essentially duplicate filings of a document designated as “Notice of Motion and Opportunity to Object”. This Notice states that a copy of some form of motion has been attached to it; however, that motion is nowhere to be found on the Court’s record. In addition, no motion has been separately filed. The Court also notes that if any motion to reinstate the case were filed, it would not be effective, in that the case has been dismissed by operation of law and given the lack of Schedules E and F in the record by the end of the 45 day period following the filing of the petition, no ground for reinstating the case could be asserted anyway.

IT IS ORDERED that whatever matter was sought to be presented to the Court by docket record entries #25 and #26 is denied.¹

Dated at Hammond, Indiana on February 7, 2008.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
All Creditors
All Parties-in-Interest

¹ The Court notes that if the debtor files a subsequent petition to initiate another case under the Bankruptcy Code, the provisions of 11 U.S.C. § 362(c)(3) will apply.