

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

IN RE:)
WILLIAM SCOTT)
MARY SCOTT) BANKRUPTCY NO. 08-21447
)
Debtors)

MEMORANDUM OPINION
AND
ORDER

This Chapter 13 case is before the Court on a Motion filed by the Debtors on July 15, 2008 to “Reinstate Chapter 13”.

The Court takes judicial notice that the Debtors filed their Chapter 13 Petition on May 12, 2008. Thus, this case was subject to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which generally became effective to all Petitions filed after October 16, 2005. Pub. L. 109-08, 119 Stat. 23 (April 20, 2005) (“BAPCPA”).

The Court takes further judicial notice that on June 3, 2008, the Clerk issued a Notice of Noncompliance to the Debtors that the following documents had not been filed as required:

1. Schedules A through J. Fed. R. Bk. P. 1007(b)(1).
2. Statement of Financial Affairs. Fed. R. Bk. P. 1007(b)(1).
3. Statement of Current Monthly Income. Fed. R. Bk. P. 1007(b)(4)(5) or (6).
4. Chapter 13 Plan. Fed. R. Bk. P. 3015(h).
5. Summary of Schedules. Fed. R. Bk. P. 1007 (h)(I).

Said Notice advised the Debtors that the failure of the Debtors to file those items required by §521(a)(1), including numbers 1 and 2 as set out above, will result in the dismissal of the case, by operation of law, without further notice and hearing.

The Court takes further judicial notice that the Debtors did not file any of the documents as

set out in the Clerk's Notice of Noncompliance as set out above, nor did they file a Motion to Extend the Time to file any of the above documents pursuant to §521(i)(3).

Section 521(i)(1) provides that subject to Paragraph (2) and (4), if an individual debtor in a voluntary case under Chapter 7 or 13 fails to file all the information required under Subsection (a)(1) within 45 days after the date of filing of the petition, the case shall automatically be dismissed effective on the 46th day after the date of the filing of the Petition.

Section 521(i)(1) has been supplemented by General Order 2006-01 issued by this Court on February 7, 2006. This Order provides that if an individual debtor in a voluntary case 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 of the filing of the petition, unless the 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)(I) on the 45th day after the date of the petition or as soon as thereafter as may be practicable.

Accordingly, on June 27, 2008, or on the 46th day after the Petition by the Debtors was filed, the Clerk (not the Court) issued a Notice of Automatic Dismissal (not a Court Order) that the Debtors had failed to file all the documents required by §521(a)(1) and that this case was dismissed by operation of law.

The Motion by the Debtors erroneously asserts that the Court entered an Order dismissing this case. No such Order was issued by the Court as noted above. This case was statutorily dismissed by operation of law pursuant to §521(i)(I) automatically, and without a Court Order. The Clerk then issued a Notice of Dismissal as required by General Order 2006-01.

The Motion by the Debtors further alleges that the attorney for the Debtor encountered an unspecified "difficulty" in timely filing a repayment Plan, that all difficulties have been resolved,

and that all Schedules and a Plan can be promptly filed at this time.

The Motion does not allege that the record of the Debtors' case shows that the documents required by §521(a)(1) were filed and that thus the Notice of Dismissal issued by the Clerk pursuant to §521(i)(I) was erroneously entered. The Court in taking judicial notice of the record in the Debtors' case finds that the required documents were not filed by the Debtors prior to the Notice of Dismissal by the Clerk. Thus, the Notice of Dismissal by the Clerk was correctly issued.

General Order 2006-01 also provides that a debtor or other party in interest who contends that a Notice of Dismissal was issued in error may seek relief under Fed. R. Bk. P. 9024(a), and that in addition to the requirements of N. D. Ind. L.B.R. 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. N. D. Ind. L.B.R. B-9023-1 requires that any motion pursuant to Fed. R. Bk. P. 9024 shall be accompanied by a separate supporting brief and any appropriate affidavits or other materials in support thereof. No supporting brief was filed by the Debtors. In addition, N. D. Ind. L.B.R. B-9023-1(c) applies N. D. Ind. L.B.R. 7007-2(a), which provides that any motion may be determined by the Court without argument or hearing.

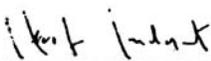
The Court also decides that in a case filed under BAPCPA, the Bankruptcy Court has no discretion to enlarge the time limitations in §521(i)(1), after the time limitations have expired, based on "excusable neglect" on the part of the debtor or debtor's counsel. "Section 521(i)(1) does not contemplate any independent action by the Court or any other party. The case is merely dismissed by operation of the statute itself, there is no unambiguity." In re Ott, 343 B.R. 264, 267 (Bankr.D. Colo. 2006) (quoting In re Fawson, 338 B.R. 505, 510 (Bankr. D. Utah 2006) (footnotes omitted).

Thus, Bankruptcy Courts cannot grant the Relief requested by the Debtors because the “excusable neglect” exception has been effectively legislated out of the hands of the Court. After the expiration of the specified periods set further in §521(i)(I), there are no exceptions, no excuses, only dismissal and the consequences that flow therefrom. In re Ott, 343 B.R. at 267-68. (citing, In re Williams, 339 B.R. 794,795 (Bankr. M.D. Fla 2006) (the Court has no discretion to extend filing deadline on motion to extend that was not filed until after 45 day deadline has expired). See also In re Fawson, 338 B.R. at 513-514 (time to file required documents cannot be enlarged by Fed. R. Bk. P. 9006 (b)(1) based on excusable neglect where by operation of §522(i)(1) the debtor’s case was automatically dismissed before the motion to enlarge time was filed). Based on the record in this case, and the applicable law, as discussed above, the Motion by the Debtors must be denied. It is therefore,

ORDERED , ADJUDGED, and DECREED, that the Motion to Reinstate Chapter 13 by the Debtors should be and is hereby **DENIED**.

The Clerk shall enter this Order upon a separate document pursuant to Fed. R. Bk. P. 9021.

Dated: July 28, 2008



JUDGE, U. S. BANKRUPTCY COURT

Distribution:
Debtors
Attorney for Debtors
Trustee
U. S. Trustee