

UNITED STATES BANKRUPTCY COURT
for the
DISTRICT OF NEW HAMPSHIRE

In re:

Paula Martin Amirault,
Debtor

Bk. No. 99-11286-MWV
Chapter 7

MEMORANDUM OPINION

The Court has before it the Trustee's motion to show cause why the Debtor should not be held in contempt as well as the Debtor's motion to dismiss this Chapter 7 proceeding. A seven-hour hearing was held on January 4, 2001, primarily on the contempt and sanction issue at the end of which the Court heard arguments on the motion to dismiss.

Jurisdiction

This Court has jurisdiction of the subject matter and the parties pursuant to 28 U.S.C. §§ 1334 and 157(a) and the "Standing Order of Referral of Title 11 Proceedings to the United States Bankruptcy Court for the District of New Hampshire," dated January 18, 1994 (DiClerico, C.J.). This is a core proceeding in accordance with 28 U.S.C. § 157(b).

Discussion

This case was filed on April 16, 1999 at 3:33 p.m. in order to stop a foreclosure scheduled for 4:00 p.m. on the same day. Although the Debtor alleges that she always thought it was filed as a Chapter 13, it was filed as a Chapter 7. On June 1, 1999, it was converted to Chapter 13. On December 17, 1999, the case was converted back to a Chapter 7 on motion of the Chapter 13 trustee for the Debtor's failure to cooperate. Upon conversion to Chapter 7, Attorney Askenaizer was appointed the Chapter 7 trustee.

On February 28, 2000, following the 341 meeting, the Trustee sent a letter to Atty. Sheridan requesting the Debtor to amend her schedules and to provide the Trustee *within ten days* the documents listed in the letter which have been discussed. (See Plaintiff's Ex. 3.)

On June 16, 2000, *after* the Debtor failed to produce any documents other than an appraisal, the Trustee filed a motion for turnover of the Debtor's books and records and appearance at a 2004 examination. (See Court Doc. #45). The Court granted the motion on June 16, 2000, ordering the Debtor to appear on July 28, 2000, and produce the requested documents on the same date. (See Court Doc. #48).

On July 26, 2000, the Trustee agreed to postpone the 2004 examination until August 4, 2000 on the condition that the Debtor produce the requested documents by July 27, 2000. On July 28, 2000, Atty. Sheridan sent a letter agreeing to the terms offered by the Trustee. However, the documents were not provided. (See Court Doc. #60).

On August 8, 2000, the Trustee filed the contempt motion. In it, the Trustee described the Debtor's failure to produce documents and the Debtor's indication that she would not appear at the 2004 examination. (See Court Doc. #60).

On August 15, 2000, the Court held a hearing on the Trustee's motion and ordered the Debtor to produce the requested documents and appear at a 2004 examination under threat of apprehension by the United States Marshal. The Court reserved its order on sanctions, which was the subject of the January 4, 2001 hearing.

Pursuant to section 105(a) of the Bankruptcy Code, this Court is authorized to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. ..." 11 U.S.C. § 105(a). This authority includes the issuance of sanctions when appropriate. In re Pace, 67 F.3d 187 (9th Cir. 1995). This Court does not take the issue of sanctions lightly and, for this reason, conducted a seven-hour evidentiary hearing allowing the Debtor to put on whatever evidence she deemed appropriate to justify

her actions in not complying with the Trustee's request and this Court's June 16 order to produce books and records and appear at a 2004 examination.

This Court acknowledges that the Debtor has health problems, and it has tried to accommodate her. However, this does not excuse her disregard as a debtor to comply with the provisions of Title 11 and cooperate with the Trustee.

The Debtor alleges that in certain instances, she did not receive notice or letters from her attorneys and/or the Court. She further blames other parties for her failure to produce documents. However, it was her obligation to comply, and if unable to do so, bring it to the attention of the Court. This she failed to do.

This Court has had the opportunity to listen to and view the Debtor at the January 4 hearing as well as others and, simply put, her credibility is suspect. After obtaining protection from a foreclosure sale, she has since only nominally, at best, attempted to comply with the provisions of Title 11, both as a Chapter 7 debtor and a Chapter 13 debtor, in a case that has been pending for over eighteen months.

It is upon this background that the Court finds that the Debtor is in contempt and awards the following sanctions:

1. The sum of \$5,605.50 in legal fees to Attorney Askenaizer, as attorney for the Trustee, as indicated in the underlined portions of Exhibit A attached hereto, plus seven hours at the rate of \$200 per hour for the January 4, 2001 hearing. The Court does not feel it appropriate to charge the Debtor with the time spent on the compromise with Randall Martin, which this Court denied.
2. An additional \$117.79 in expenses, which amount is the same ratio to actual expenses requested as that used in awarding the attorney's fees in paragraph 1 above.
3. An additional \$2,500 as sanctions payable to the Trustee pursuant to section 105, which will partially compensate the Trustee for time spent needlessly because of the actions of the Debtor.

4. The Debtor is prohibited from filing a petition under Title 11 in this district for a period of twelve months from the date hereof.

The Court also has before it the Debtor's motion to dismiss, which this Court has refused to consider prior to the substantial production of documents as well as the Debtor's attendance at the 2004 examination. Unfortunately, this required time and effort by the Chapter 7 trustee. The major asset in this case concerns a prenuptial agreement and the Debtor's pending divorce proceeding and pending litigation in the superior court on that prenuptial agreement. There is essentially one creditor, Mr. Hudick, whose claim arose both prepetition and postpetition and to which claim the Debtor has objected. Mr. Hudick has brought an exception to discharge action under section 523, and the Trustee has brought a denial of discharge action under section 727. As indicated in open court, the major tenets of bankruptcy are to provide an honest debtor with a fresh start as well as to provide an equal distribution to creditors. At this point, a continuation of this case accomplishes neither. To continue a case to basically handle matters that can be adequately dealt with, and in the case of the divorce and prenuptial agreement, more adequately dealt with in the state court, in order to either punish the Debtor or provide full remuneration to the Trustee, is inappropriate. A dismissal at this time will leave the parties essentially where they were prior to the bankruptcy proceeding, i.e., with the right to proceed in the state court. The sanctions issued hereunder hopefully will provide the Trustee with partial remuneration and protection to creditors from a subsequent filing for a reasonable period of time. It is for this reason, this Court dismisses this Chapter 7 case as well as all pending adversary proceedings. Specifically, Adv. No. 00-1073, Michael S. Askenaizer, Chapter 7 Trustee v. Paul Martin Amirault, Adv. No. 00-1039, Michael Hudick v. Paula Martin Amirault, and Adv. No. 00-1158, Michael S. Askenaizer, Chapter 7 Trustee, through Debtor Paula Martin Amirault, Plaintiff v. Randall Martin, Defendant. However, this Court will retain jurisdiction for the purpose of enforcing the sanctions. The clerk shall place a copy of this opinion and order in each adversary proceeding and close them.

This opinion constitutes the Court's findings and conclusions of law in accordance with Federal Rule of Bankruptcy Procedure 7052. The Court will issue a separate order consistent with this opinion.

DATED this 5th day of January, 2000, at Manchester, New Hampshire.

Mark W. Vaughn
Chief Judge