UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In re:	:	
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MIRYAM SATINOFF,	:	Case No. 06-bk-10112-JKO
	:	
Debtor.	:	Chapter 7
_____	:	

ORDER ON TRUSTEE'S AND DEBTOR'S JOINT MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. § 521(e)(2) AND TO REINSTATE CASE

This case came on for hearing on May 1, 2006, on the Trustee's and Debtor's joint motion (the "Motion") to dismiss this chapter 7 case pursuant to 11 U.S.C. § 521(e)(2) and to reinstate the case under § 350(b).

The Motion was filed to address a peculiar provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Under the clear and unambiguous language of new section 521(e)(2)(A)(i) of Title 11, a debtor is required to provide to the trustee a copy of the debtor's most recent federal income tax return "not later than 7 days before the date first set for the meeting of creditors." In the event the debtor fails to comply, § 521(e)(2)(B) provides that "the

court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor."

The facts here are simple. The Debtor delivered her tax return to her counsel in time to comply with the 7-days-prior rule. The Debtor's counsel had an office slip-up,[1] and the tax return was given to the Trustee at the § 341 meeting of creditors rather than seven days prior to that meeting.[2] No prejudice whatever resulted from the minor delay; the Trustee is fully satisfied with the Debtor's conduct and honesty. The Trustee and the Debtor have jointly moved for dismissal of the case because (a) they believe that the statute provides no discretion, and (b) they are concerned as a policy matter that a party in interest could invoke the statute at a later date to force the dismissal of a case because of non-compliance with the 7-days-prior rule – and that the mandatory dismissal in some other case could have serious adverse consequences. Indeed, § 349(b) provides a host of consequences which flow from dismissal of a case "unless the court, for cause, orders otherwise."

The Trustee and Debtor suggest that the Court dismiss the case, as to which they believe the Court has no discretion under the statute, and then immediately reinstate it under 11 U.S.C. § 350(b), which provides that "a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." The Court certainly has the authority to reopen cases. *See, e.g., In re Hunter,* 283 B.R. 353 (Bankr. M.D. Fla. 2002), although

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[1]The Court is fully satisfied that this was a case of excusable neglect within the meaning of *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership,* 507 U.S. 380 (1993).

[2]The delivery of tax returns to the trustee at § 341 meetings of creditors has long been the accepted good practice in the Southern District of Florida.

by its terms, § 350(b) applies to the reopening of cases which have been closed and does not address the reinstatement of cases which have been dismissed.

An alternative solution to deal with the 7-day-prior rule has been adopted by the Bankruptcy Court in the District of Oregon. In *In re Duffus*, 339 B.R. 746 (Bankr. D. Ore. 2006), the Court ruled that trustees have "prosecutorial discretion" to decline to file motions seeking dismissal under § 521(e)(2) if doing so would serve no useful purpose. The debtors' counsel in *Duffus* gave their most recent tax return to their trustee four days before the § 341 meeting rather than the statutorily mandated seven days prior.[3] The *Duffus* court noted that

> It is the Trustee's principal duty to accumulate assets for distribution to creditors. These obligations are not necessarily trumped by a perceived duty to police every other aspect of the case.

The Court noted that "nothing in § 521 suggests that the Trustee's motion was required." The Court then determined that the Trustee's motion to dismiss was contrary to the best interests of the estate, and that it should be denied as an abuse of prosecutorial discretion.

There is much to commend in the *Duffus* court's ruling. Application of the *Duffus* holding would mean that trustees would only file § 521 motions when there was a purpose to be served, and generally speaking, that would be if a debtor failed to deliver a copy of his or her tax return at or prior to the § 341 meeting. Of course the debtor should comply with the time strictures of § 521(e)(2)(A), but if a debtor delivers the tax return in time for the trustee to make use of it, why should the trustee be required to seek dismissal?

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[3]As in this case, the debtors' lawyer had the tax return in his office in time to make timely delivery.

At the hearing in this case, counsel for the United States Trustee advised the Court that the Office of the United States Trustee has been instructed to direct panel trustees to seek dismissal of cases if debtors do not comply with the 7-days-prior rule in § 521(e)(2)(A), evidently as part of a policy requiring strict compliance with BAPCPA's mandates. This instruction is not required by the statutory language and appears to this Court to be perfectly ridiculous. The Court hereby requests the United States Trustee to reconsider this instruction to panel trustees, and to instruct panel trustees that they should file motions to dismiss under § 521(e)(2)(A) only if the debtor's delay in delivering the applicable tax return or transcript of that return impedes the orderly administration of the case. Until the United States Trustee's ill-advised policy is rescinded, its existence unfortunately undercuts the rationale for the *Duffus* court's solution to the problem[4] and puts this Court in the position of having to solve the problem by a different route, since it is clear that the Court has no discretion under § 521(e)(2)(B): if a trustee files a § 521(e)(2) motion, this Court is mandated by the plain meaning of the statute to dismiss the case absent "circumstances beyond the control of the debtor."[5]

The solution proposed by the Motion will create unnecessary, even pointless, work by trustees, courts, and clerks' offices. Nonetheless, because it is consistent both with the frivolous mandate that debtors who fail to comply with the 7-days-prior rule have their cases dismissed and

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[4]The *Duffus* court notes, 339 B.R. at 748, n. 1, that the United States Trustee had declined "to comment one way or the other" on whether panel trustees were required to file such motions.

[5]It may be that the debtor's timely delivery of the tax return to his or her counsel and counsel's failure to deliver the return 7days prior to the § 341 meeting may be a "circumstance beyond the control of the debtor" within the meaning of § 521(e)(2)(B). Subsequent case law may follow this path, which would solve the problem in this case, as it would have solved the *Duffus* court's problem.

with the overall purpose of the bankruptcy laws, the Court will reluctantly grant the Motion in part. The Court is concerned that reinstatement pursuant to § 350(b) may not be available here, and so will reinstate the case after its dismissal under the Court's inherent powers in § 105(a) so as to avoid the abuse of process which would result from the purposeless dismissal of the case. The Court finds that in the circumstances of this case, it would be inappropriate for any of the effects of dismissal set forth in § 349(b) to occur upon the dismissal of the case, and the Court will therefore, for cause, order that the dismissal of this case will not trigger any of the consequences provided for in § 349(b).

The Court finds this remedy to be cumbersome and will happily adopt a more elegant solution in the future if one is suggested.

Although the Court is troubled by the notion that a single order could in one decretal paragraph dismiss the case, and in the next decretal paragraph reinstate it, there is risk in having separate orders: something could intervene which materially adversely affects the estate or the debtor. And a single order dismissing and reinstating the case is no more a creature of Alice in Wonderland than the statutory provision which triggered the Motion in the first place.

For the foregoing reasons, it is ORDERED:

1. The Motion is GRANTED in part.

2. This case is DISMISSED pursuant to the requirements of 11 U.S.C. § 521(e)(2)(B). The dismissal of this case shall not (1) reinstate (A) any proceeding or custodianship superseded under 11 U.S.C. § 543; or (B) any transfer avoided under 11 U.S.C. §§ 522, 544, 545, 547, 548, 549, or 724(a), or preserved under 11 U.S.C. §§ 510(c)(2), 522(i)(2), or 551; (2) vacate any order, judgment, or transfer ordered, under 11 U.S.C. §§ 522(i)(1), 542, 550, or 553; or (3) revest the

property of the estate in the entity in which such property was vested immediately before the commencement of the case under Title 11.

3. This case is hereby REINSTATED pursuant to the provisions of 11 U.S.C. § 105(a) for normal administration of the estate.

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Copies provided to:

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