

ORDERED in the Southern District of Florida on

*June 16, 2006*



*Laurel Myerson Isicoff*

Laurel Myerson Isicoff, Judge  
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE

CASE NO. 05-44664-BKC-LMI

KEYLA MARIE MARTINEZ-HELD,

Chapter 7

Debtor.

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**ORDER DENYING TRUSTEE'S ORE TENUS MOTION TO CONDITION VOLUNTARY DISMISSAL ON PAYMENT OF THE TRUSTEE'S ATTORNEY'S FEES**

This matter came before the Court on May 31, 2006 on the Trustee's *ore tenus* Motion and Memorandum In Support Of Conditioning Voluntary Dismissal of Case on Payment of Trustee's Attorneys' Fees (CP # 49). The Court having considered the record, the ore tenus Motion, the arguments of counsel and pro se debtor, the Memorandum and Response thereto, and being otherwise fully advised in the matter, denies the ore tenus Motion To Condition Voluntary Dismissal for the reasons set forth below.

**FACTUAL BACKGROUND**

The Debtor, Keyla Marie Martinez-Held, petitioned for relief under Chapter 7 of the United States Bankruptcy Code on October 14, 2005. Joel L. Tabas was subsequently appointed as trustee for the estate of Keyla Marie Martinez-Held. After several

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unsuccessful attempts to obtain documents and information relating to income, assets, and exemptions, from the debtor, the Trustee filed a Motion To Employ Attorney Stacey Soloff (CP #22) on April 3, 2006, along with his Objection to Debtor's Claimed Exemptions and Motion to Compel (CP #23). The Trustee later filed a Motion for The Enlargement of Time to File Complaint Objecting to Debtor's Discharge (CP #36).

On April 10, 2006, the Debtor filed her Motion to Dismiss Voluntary Bankruptcy Petition or in the Alternative Transfer Jurisdiction to the Middle District of Florida (CP #26), indicating that she had been unable to obtain tax returns and bank statements within the time requested by the Trustee. The Debtor further advised that she, and her non-filing spouse, had relocated to the Middle District of Florida to pursue more lucrative employment opportunities and wished to make payment arrangements with her creditors outside of bankruptcy. In her Response to the Trustee's Motion to Compel and Request for a Telephonic Hearing (CP #27) and at the hearing on the Objection and Motions, the Debtor explained that she had been unemployed in 2004, lost many of her financial records while relocating to the Middle District, and owns no real or personal property of significance, beyond an engagement ring worth less than \$100.00.

At the May 31, 2006 hearing on the Objection and Motions, the Trustee's counsel made no objection to the dismissal of the voluntary Chapter 7 case with prejudice for 180 days, beyond the *ore tenus* Motion that dismissal be conditioned on payment of the Trustee's attorneys' fees. This Court granted the Debtor's motion for voluntary dismissal but reserved jurisdiction on the issue of the Trustee's attorneys' fees.

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### DISCUSSION

A Chapter 7 Debtor does not have an absolute right to obtain voluntary dismissal of his or her case. *In re Hull*, 339 B.R. 304, 307 (Bankr. E.D. N.Y. 2006). Dismissal of such cases are governed by the “for cause” requirement of Section 707(a) of the Bankruptcy Code. *Id.* (quoting 11 U.S.C. § 707(a)). Section 707(a) provides a non-exhaustive list of causes for which a Chapter 7 case may be dismissed. The examples of “cause” are:

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28; and
- (3) failure of the debtor in a voluntary case to file, within 15 days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States Trustee.

11 U.S.C. § 707(a).

The Trustee, by *ore tenus* Motion and memorandum, asserts that dismissal here should be conditioned on the payment of the Trustee’s attorneys’ fees. Although there is nothing in Section 707(a) that authorizes the Court to impose as a condition of dismissal the payment to the Trustee of attorneys fees, the Trustee argues the Court has the authority to impose this condition and cites, for support, a number of cases from outside of this District - *In re Richards*, 4 B.R. 85 (Bankr. M.D. Fla. 1980); *In re Salaberry*, 107 F. 95 (N.D. Cal 1901); *In re Gallman*, 6 B.R. 1 (Bankr. N.D. Ga. 1980); *In re Wolfe*, 12 B.R. 686 (Bankr. S.D. Ohio 1981). The cases cited by the Trustee all recognize that the decision to condition dismissal of a bankruptcy case on the payment of the Trustee’s

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attorneys' fees should be made on a case-by-case basis, mindful of the facts and circumstances leading to the debtor's motion for voluntary dismissal.

Even were this Court to follow the cases cited by the Trustee, the Court would not impose the payment of the Trustee's fees as a condition of dismissal of this case. This is not a case where it appears there might have been substantial assets available for liquidation if the Trustee were able to prevail on the objection to exemptions. *In re Richards*, 4 B.R. at 85. Nor has the Trustee unrecovered unlisted assets or transfers. *In re Wolfe*, 12 B.R. at 686; *In re Gallman*, 6 B.R. at 1. Accordingly, the Court need not decide today whether the Court generally has the authority to condition dismissal of a bankruptcy case on the payment of attorney fees; such condition is not appropriate in this case.

Accordingly, the relief requested by the *ore tenus* Motion is DENIED. The Order Granting Debtor's Motion to Dismiss Voluntary Bankruptcy Petition (CP #48) shall have immediate effect.

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Copy to:

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Attorney Scott N. Brown shall serve a conformed copy of this Order upon all parties in interest and shall file a Certificate of Service of same with the Clerk of Court.