

ORDERED in the Southern District of Florida on 03/15/06.




Raymond B. Ray, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
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Broward Division

In re: Case No. 06-10477-BKC-RBR
Christopher Westenberger, Chapter 7
Debtor.

**SUPPLEMENTAL ORDER TO ORDER VACATING DISMISSAL
AND REINSTATING CHAPTER 7 CASE**

THIS MATTER came before the Court for hearing on March 10, 2006 upon Christopher Westenberger's ("Debtor") Emergency Motion to Reconsider the Order Dismissing the Case (C.P. 14). The Court granted the emergency motion and entered a form order that vacated the dismissal and reinstated the case (C.P. 19). The Court entered the form order to prevent the rescheduling of the Section 341 Meeting of Creditors, which was scheduled for March 13, 2006.

The Debtor filed a Chapter 7 voluntary petition on February 16, 2006 along with a Certification of Exigent Circumstances in order to get the Court to waive the requirement of the Debtor to obtain budget and credit counseling prior to filing. The Court dismissed the case finding that the Certificate was deficient because: 1) it did not specifically detail exigent circumstances that merit a waiver of the credit counseling requirement required by 11 U.S.C. § 109(h)(3)(A)(i); and 2) it did not state that the Debtor requested credit counseling services from an approved budget and credit counseling agency but was unable to obtain the services during the 5-day period beginning

on the date on which the Debtor made that request, as required by 11 U.S.C. § 109(h)(3)(A)(ii).

The Debtor then filed an emergency motion to reconsider the dismissal order stating that that a creditor "had frozen the Debtor's only bank account which received and contained his sole source of income, that being monies from the Social Security Administration (SSI). He was totally without funds or access to funds until such monies would be released by the Bank." Additionally, the Debtor stated that he did contact a credit counseling agency and was unable to receive the counseling within the five day period because the counseling agency required payment before they would be able to provide the required counseling. The Debtor had no means of paying the agency, due to all his funds being frozen, other than an out of state check by the Debtor's relative. However, the agency was not willing to provide the required counseling until the check cleared its bank account, which would have been more than five days.

The Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") requires individuals to complete budget and credit counseling from an approved agency during the 180-day period preceding the date of filing of a bankruptcy petition. See 11 U.S.C. § 109(h)(1). Section 109(h)(3) states that a debtor may be excused from the requirement of obtaining credit counseling prior to filing if the debtor provides the court with a certification that (1) describes the exigent circumstances that merit a waiver; (2) state that the debtor requested but was able to obtain the counseling within five days; and (3) the certification must be satisfactory to the court.

The first criteria is whether the Debtor has described exigent circumstances that merit a waiver. The Debtor has certified that his sole bank account was frozen by a creditor. The Debtor's bank account electronically receives his only source of income, which is from Social Security. The Debtor further certified that he was without any money and had no access to funds unless released by the bank. Exigency circumstances occur where "the debtor finds himself in a situation in which adverse events are imminent and will occur before the debtor is able to avail himself of the statutory briefing." In re Dixon, --- B.R. ----, 2006 WL 355332, 4 (8th Cir.BAP 2006). The Court finds the

Debtor's situation of being without any money and having no access to funds unless released by the bank to be exigent. As to whether it merits a waiver, the Court finds that it does because the Debtor's only bank account and sole source of funds was frozen.

The second criteria is whether the Debtor has certified that he requested the credit counseling but was unable to obtain it within five days. The Court finds that the Debtor was unable to obtain the counseling because the credit counseling agency was not willing to provide counseling until the out of state check cleared its bank account, which would have taken more than five days.

The third criteria is whether the certification is satisfactory to the Court. The initial certification filed by the Debtor was sworn to and signed by the Debtor before a notary public. In addition, the notice of hearing on the motion for rehearing was served on the creditor body. At hearing there was no objection to the motion for rehearing. The Court finds that the certification is satisfactory to the Court.

Accordingly, the Court, having considered the Certificate, and being otherwise fully advised in the premises hereby

Orders and Adjudges that the emergency motion for rehearing (C.P. 14) is **GRANTED**.

The order dismissing the case entered March 6, 2006 (C.P. 13) is **VACATED** and the case is **REINSTATED**.

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The Clerk of the Court is hereby directed to serve a copy of this Order upon all interested parties and creditors.