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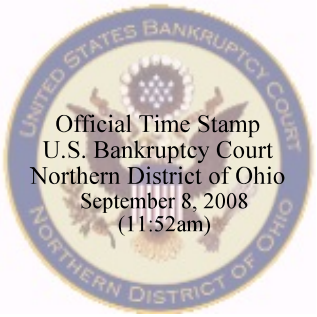

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 08-14920
	)	
JAMES E. LUNDEEN, SR., M.D.,	)	Involuntary Chapter 7
	)	
Alleged Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**MEMORANDUM OF OPINION**

Petitioning creditors Umakant Purohit, M.D., William Midian, M.D., and John Nickels, M.D. have requested that involuntary chapter 7 relief be entered against James E. Lundeen, Sr., M.D.[1] Dr. Lundeen moves to dismiss the petition on the grounds of improper venue, insufficient service of process, and the factual assertion that he does not personally owe any debt to the petitioning creditors.[2] He also moves to disqualify counsel for the petitioning creditors, to seal the record and prohibit consumer reporting agencies from reporting this case, and for an award of costs and damages. Finally, he requests a jury trial. For the reasons stated below, Dr. Lundeen's motion is denied.[3]

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[1] Docket 1, 9, 12, 14.

[2] Docket 8, 10.

[3] In the court's view, the value of this opinion is to decide the dispute between the parties, rather than to add anything to the general bankruptcy jurisprudence. For that reason, the opinion is not intended for commercial publication.

JURISDICTION

Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).[4]

DISCUSSION

I. Facts

A. Background

Dr. Lundeen is the sole shareholder in two corporations: James E. Lundeen, Sr., M.D., Inc. and Lundeen Physical Therapy-Akron, Inc. Dr. Lundeen and the corporations have been debtors in other cases before this court. As a result, some background information is required to put his motion to dismiss this involuntary case into context.

In 1996, Dr. Lundeen and the two corporations filed chapter 11 cases.[5] The corporate cases were substantively consolidated and the three cases were jointly administered. In 1999, the three debtors' joint fourth amended plan of reorganization was confirmed (the confirmed plan).

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[4] Although Dr. Lundeen has filed a motion asking the district court to withdraw the reference of jurisdiction in this case, that request does not stay this court from proceeding in this matter. *See* FED. R. BANKR. P. 5011(c) (stating that "[t]he filing of a motion for withdrawal of a case or proceeding . . . shall not stay the administration of the case or any proceeding therein before the bankruptcy judge except that the bankruptcy judge may stay, on such terms and conditions as are proper, proceedings pending disposition of the motion"). The court invited the parties to file position statements on the issue of whether this court should impose a stay of proceedings pending the district court's disposition of the motion to withdraw the reference. The petitioning creditors have taken the position that a stay is not appropriate. Dr. Lundeen has taken the position that this court should rule on his motion to dismiss and has not filed a motion for a stay. *See* docket 18, 19. Because both parties agree that the court should proceed at least with respect to the motion to dismiss, the court will do so.

[5] *See In re James E. Lundeen, Sr., M.D.* (individually), case no. 96-12918; *In re James E. Lundeen, Sr., M.D., Inc.*, case no. 96-12660; and *In re Lundeen Physical Therapy-Akron, Inc.*, case no. 96-12909.

The consolidated and jointly administered cases were closed in 2002 and reopened in 2006 based on the unchallenged representations of plan creditors that the debtors were in substantial default with respect to plan payments.

In 2007, Parshotam Gupta, Floyd Heller, Jerold Ladin, Estelle Lukasek, Darshan Mahajan, and Mahendra Patel filed involuntary petitions requesting chapter 7 relief against the same three debtors.[6] The petitioning creditors in those cases sought relief against the debtors based on their failure to pay general unsecured claims as provided in the confirmed plan. Following an evidentiary hearing, the court entered orders for relief against the two corporate debtors.[7] The court dismissed the involuntary case that had been filed against Dr. Lundeen individually.[8] In doing so, however, the court rejected Dr. Lundeen's contention that he was not personally liable to creditors under the terms of the confirmed plan, holding that:

> Dr. Lundeen, personally, and the two corporations are liable to the petitioning creditors under the joint [confirmed] plan. The joint plan is effectively a new contract between the three chapter 11 debtors and their creditors and it is to be interpreted using contract principles. *Official Comm. of Unsecured Creditors v. Dow Corning Corp. (In re Dow Corning Corp.)*, 456 F.3d 668, 676 (6th Cir. 2006), *cert. den.*, 127 S. Ct. 1874 (2007). The terms of the joint plan provide that Dr. Lundeen, together with the two corporate debtors, would make the plan payments to satisfy allowed claims.[9]

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[6] *See In re James E. Lundeen, Sr., M.D.* (individually), case no. 07-19422; *In re James E. Lundeen, Sr., M.D., Inc.*, case no. 07-19423; and *In re Lundeen Physical Therapy-Akron, Inc.*, case no. 07-19424.

[7] *In re James E. Lundeen, Sr., M.D., Inc.*, case no. 07-19423, docket 53, 55; and *In re Lundeen Physical Therapy-Akron, Inc.*, case no. 07-19424, docket 55, 56.

[8] *In re James E. Lundeen, Sr., M.D.* (individually), case no. 07-19422, docket 59, 60.

[9] *Id.*, docket 59 at 10.

B. This Involuntary Case

In this case, three different petitioning creditors—Umakant Purohit, William Midian, and John Nickels—seek chapter 7 relief against Dr. Lundeen on the ground that Dr. Lundeen owes them contractual debt totaling $122,574.96 under the terms of the confirmed plan. The creditors filed the involuntary petition on June 26, 2008 and the clerk issued a summons on June 30, 2008. On July 3, 2008, counsel for the petitioning creditors filed a certificate of service stating under penalty of perjury that Dr. Lundeen was served with the summons and the involuntary petition on July 1, 2008 by U.S. mail. In lieu of filing an answer, Dr. Lundeen filed the motion at hand.

II. The Motion

An alleged debtor may contest a request for involuntary bankruptcy relief. *See* 11 U.S.C. § 303(d); FED. R. BANKR. P. 1011(a). Dr. Lundeen moves to dismiss the involuntary petition as provided by bankruptcy rule 1011. *See* FED. R. BANKR. P. 1011(b) (providing that defenses and objections to an involuntary petition shall be presented "in the manner prescribed by Rule 12 F. R. Civ. P.").

A. The Motion to Dismiss

1. Dismissal–Improper Venue

Federal civil rule 12(b)(3) provides that a party may raise the defense of improper venue by motion. Dr. Lundeen argues that venue in this district is improper because his current residence and principal place of business is Columbus, Ohio which is located in the Southern District of Ohio.

Venue for bankruptcy cases is governed by 28 U.S.C. § 1408, which provides that:

> Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—
>
> (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or
>
> (2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

28 U.S.C. § 1408. Assuming that venue is proper in the Southern District of Ohio under § 1408(1), venue is also proper in the Northern District of Ohio under § 1408(2) because debtors James E. Lundeen, Sr., M.D., Inc. and Physical Therapy-Akron, Inc. currently have cases pending in this district before this court. Dr. Lundeen is the sole shareholder of each, which makes them affiliates of Dr. Lundeen and establishes this district as a proper venue for Dr. Lundeen's case.[10]

Dr. Lundeen's response brief concedes this issue, but suggests that the court should transfer the case anyway. Even if the court treats Dr. Lundeen's response as a motion to transfer venue, the motion does not state good cause because it is clear based on the long and complicated history of this dispute that neither the "interest of justice or . . . the convenience of the parties" favor such a transfer. 28 U.S.C. § 1412 (providing for transfer of a case to another district).

[10] 11 U.S.C. § 101(2)(B) defines the term affiliate to mean a " corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor. . . ."

2. Dismissal–Insufficiency of Service of Process

Bankruptcy rule 7004(a) and (b) outline the manner in which an involuntary petition and summons are to be served on the debtor. *See* FED. R. BANKR. P. 1010. Dr. Lundeen moves to dismiss on the ground that service of process was insufficient. Federal civil rule 12(b)(5) provides for dismissal of an involuntary petition on that basis. As the party questioning the sufficiency of service, Dr. Lundeen is required to raise a clear and specific objection. *See Photolab Corp. v. Simplex Specialty Co.*, 806 F.2d 807, 810 (8th Cir. 1986); *Binns v. City of Marietta Housing Authority*, No. 1:07-CV-0070, 2007 WL 2746695, at *2 (N.D. Ga. Sept. 18, 2007); *see also* 2 JAMES WM. MOORE, et al., MOORE'S FEDERAL PRACTICE-CIVIL § 12.33[1] (3d ed.).

Bankruptcy rule 7004(b) provides for service by first class United States mail. Under this rule, an individual is properly served in an involuntary case by mailing a copy of the summons and petition to the individual's "dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession." FED. R. BANKR. P. 7004(b)(1). Proof of such service to the court is made by affidavit or by unsworn declaration made under penalty of perjury. *See* FED. R. CIV. P. 4(l) (applicable under bankruptcy rule 1010) (providing for proof of service by server's affidavit); 28 U.S.C. § 1746 (providing that an unsworn declaration made under penalty of perjury is the equivalent of an affidavit for this purpose). Counsel's executed return of service serves as prima facie evidence of valid service. *See Trustees of Local Union No. 727 Pension Fund v. Perfect Parking, Inc.*, 126 F.R.D. 48, 52 (N.D. Ill. 1989); *Tropin v. Weitzman (In re Premium Sales Corp.)*, 182 B.R. 349, 351 (Bankr. S.D. Fla. 1995); *see also* 1 JAMES WM. MOORE, et al., MOORE'S FEDERAL PRACTICE-CIVIL § 4.100 (3d ed.).

Dr. Lundeen states that he currently resides at 668 North Nelson Road, Apt. A, Columbus, Ohio 43219. The petitioning creditors assert that they served Dr. Lundeen at that address by U.S. mail, and also served his then-counsel, Chad Hanke.[11] The certificate of service which their counsel filed, *see* docket 6, supports that assertion and is prima facie evidence of proper service.

Dr. Lundeen's motion does not state a specific problem with regard to service, stating only that "he never received proper service although his legal address is well known" (Lundeen motion at 3, docket 8) and that he "did not receive certified mail . . . or notice of certified mail." Lundeen response at 8, docket 10. Based on these statements, the court must conclude that Dr. Lundeen's challenge is directed solely to the petitioning creditors' attempt to serve him by means of certified mail. This challenge to the sufficiency of service fails, however, because Dr. Lundeen was properly served by regular U.S. mail at his current place of residence–as provided by the bankruptcy rules. Dr. Lundeen has not challenged the sufficiency of that method of service, nor has he provided an affidavit to support a version of the facts to rebut the petitioning creditors' prima facie showing of service by that method. *See* LOCAL BANKR. R. 9013-2(b) (providing for the submission of evidence in support of a motion).

As noted above, a debtor in an involuntary case may also be served under bankruptcy rule 7004(a). FED. R. BANKR. P. 7004(a). That rule incorporates federal civil rule 4(e) and provides that an individual living within a judicial district of the U.S. may be served in accordance with

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[11] *See* FED. R. BANKR. P. 7004(g) (providing for service of a debtor's counsel when service is made under rule 7004). Petitioning creditors' counsel served the summons and petition on July 1, 2008 at a time when it appeared that Mr. Hanke represented Dr. Lundeen. This is based on the fact that Mr. Hanke represented Dr. Lundeen in his previous involuntary case and Dr. Lundeen filed a notice in this case indicating that he did not terminate Mr. Hanke's services until July 2, 2008. *See* docket 7.

the law of the state in which the court is located. In this case, rule 7004(a) would have permitted service of the summons and involuntary petition on Dr. Lundeen by certified mail as provided under Ohio law. *See* OHIO R. CIV. P. 4.1(A) (providing that the clerk may serve a party by certified mail with such service being evidenced by a signed return receipt). While the petitioning creditors attempted to serve Dr. Lundeen by certified mail, Dr. Lundeen's challenge to the sufficiency of that service need not be resolved as he was properly served by regular U.S. mail under rule 7004(b).

3. Dismissal–Based on Absence of Personal Liability

Dr. Lundeen also moves to dismiss on the basis that he is not personally liable to the petitioning creditors under the terms of the confirmed plan. Although he does not cite a procedural basis for this request, federal civil rule12(b)(6) provides that a case may be dismissed for failure to state a claim upon which relief can be granted. The court will assume that this is the ground for this part of the motion to dismiss.

The issue of whether an involuntary petition should be dismissed for failure to state a claim is a question of law. *Assoc. of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 548 (6th Cir. 2007). In *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955 (2007), the Supreme Court clarified the standard that a complaint must meet to survive a challenge under rule 12(b)(6). The standard is equally applicable to an involuntary petition because it is the document by which an involuntary bankruptcy case is commenced, just as a complaint commences a lawsuit in district court. Under *Twombly*, "[f]actual allegations contained in a[n] [involuntary petition] must 'raise a right to relief above the speculative level.'" *Bassett v. Nat'l Collegiate Athletic Assoc.*, 528 F.3d 426, 430 (6th Cir. 2008) (quoting *Twombly*, 127 S.Ct. at 1965). "*Twombly* does not 'require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is

plausible on its face.'" *Id.* (quoting *Twombly*, 127 S.Ct. at 1974). Under a rule 12(b)(6) review, the involuntary petition is construed in the light most favorable to the petitioning creditors, their allegations are accepted as true, and all reasonable inferences are drawn in their favor. *Id.* (citing *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007)).

Bankruptcy code § 303(b) provides that an involuntary case may be commenced against a person by three or more creditors whose claims aggregate at least $13,475.00 more than the value of any lien on the debtor's property securing the claims and whose claims are not contingent as to liability or subject to a bona fide dispute as to liability or amount. 11 U.S.C. § 303(b)(1). If the petition is challenged, involuntary relief shall be granted if the debtor is generally not paying his debts (other than debts subject to a bona fide dispute as to liability or amount) as they become due. 11 U.S.C. § 303(h)(1).

The involuntary petition alleges that: (1) the petitioning creditors are eligible to file the petition under 11 U.S.C. § 303(b); (2) Dr. Lundeen is a person against whom involuntary relief may be entered; and (3) Dr. Lundeen is not generally paying his debts as they become due except to the extent such debts are subject to a bona fide dispute as to liability or amount.[12] It also states that the nature of each of the three petitioning creditors' claims is contractual chapter 11 debt and that their claims aggregate $122,574.96. These allegations are plausible on their face and clearly state a claim for involuntary relief under the bankruptcy code.

Dr. Lundeen argues that the petition does not state a claim for relief because he is not personally liable to the petitioning creditors under the confirmed plan. This, however, is a

[12] Involuntary petition at 1, docket 1.

factual argument which is not appropriately resolved on a 12(b)(6) motion.[13] Moreover, this court interpreted the confirmed plan in Dr. Lundeen's previous involuntary proceeding and determined that he does have personal liability to creditors under the terms of the plan. Consequently, Dr. Lundeen's motion to dismiss the involuntary petition under rule 12(b)(6) must be denied.

B. The Remainder of the Motion

In addition to moving to dismiss the involuntary petition, Dr. Lundeen's motion includes a jury demand and a request for various other types of relief, each of which is discussed below.

1. Jury Trial Demand

28 U.S.C. § 1411 provides for a jury trial as follows:

> (a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.
>
> (b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

This statute does not create a right to a jury trial in a contested involuntary proceeding. *See In re Tobacco Rd. Assocs, LP.,* No. 06-CV-2637, 2007 WL 966507, at *5 (E.D. Pa. Mar. 30, 2007) (noting that a contested involuntary case is not subject to trial by jury); *In re Arrow Stevedoring Co.,* No. 95-41233, 1995 WL 17006343, at *1 (Bankr. S.D. Ga. Sept. 15, 1995) (recognizing that "a right to a jury trial lies within the discretion of the bankruptcy court"); *In re McNaughton*, 171 B.R. 65, 66 (Bankr. W.D. Mo. 1994) (concluding that § 1411(b) does not provide a statutory

[13] Dr. Lundeen also attached a number of exhibits to his motion which were excluded from consideration in resolving this part of his motion. *See* FED. R. CIV. P. 12(d) (providing that a 12(b)(6) motion must be treated as one for summary judgment where matters outside the pleadings are presented and not excluded by the court). Dr. Lundeen may, of course, submit those exhibits and make his arguments with respect to them at an appropriate point in this matter.

right to a jury trial on an involuntary petition–in contrast to the law as it existed under the Bankruptcy Act of 1898); 11 WILLIAM L. NORTON, JR., NORTON BANKRUPTCY LAW AND PRACTICE Fed. R. Bankr. P. 1018 (3d ed. July 2008) (noting that a contested involuntary case is tried without a jury). As one bankruptcy authority noted, the cases interpreting § 1411(b) " have uniformly held that the statute leaves it up to the discretion of the court to decide whether to allow a jury trial and there is no inherent right to a trial by jury." HOWARD J. STEINBERG, BANKRUPTCY LITIGATION § 11:40 (2d ed. July 2008) (collecting cases).[14]

Based on this discussion, Dr. Lundeen is not entitled to a jury trial as of right on the issues raised by the involuntary petition. Moreover, while § 1411(b) provides that the court *may* order a jury trial in an involuntary proceeding, the court declines to exercise its discretion to grant a jury trial in this proceeding because the issues raised here are issues which are routinely decided by bankruptcy judges, rather than by juries. Consequently, Dr. Lundeen's jury demand is denied.

2. Disqualification of Opposing Counsel

Dr. Lundeen moves to disqualify counsel for the petitioning creditors on the basis that the involuntary petition is a frivolous filing and because counsel suborned perjury by the petitioning creditors by assisting them in requesting involuntary relief against him. To support this argument, Dr. Lundeen references two orders which were entered in the chapter 11 cases. Those orders resolved objections to claims filed by Drs. Midian and Nickels in those cases. Dr. Lundeen's argument is that these orders establish that he has no personal liability to Drs. Midian

[14] The court also notes that Dr. Lundeen requested a jury trial by motion rather than making a demand as provided in the rules. *See* FED. R. CIV. P. 38(b) (applicable under FED. R. BANKR. P. 9015(a) (providing that a party may demand a jury trial by serving the demand on other parties and filing the demand with the court). This procedural error is not, however, determinative in this case.

and Nickels and that it is perjurious to assert otherwise. Dr. Lundeen also suggests that counsel for the creditors have violated ethical duties and he submitted the affidavit of David Peloquin to support this charge. The petitioning creditors argue that they are Dr. Lundeen's creditors under the terms of the confirmed plan and that they have the right to pursue this matter. And their counsel deny violating their ethical duties.[15]

A motion to disqualify is a proper vehicle for an opposing party to bring a breach of ethical conduct to the court's attention. *Musicus v. Westinghouse Elec. Corp.*, 621 F.2d 742, 744 (5th Cir. 1980). Additionally, a bankruptcy court may raise ethical issues even if the parties do not. *Gen. Mill Supply Co. v. SCA Servs., Inc.*, 697 F.2d 704, 711-12 (6th Cir. 1982). Dr. Lundeen's attempt to short circuit this involuntary proceeding by means of this request to disqualify fails, however, because he has not stated a legitimate basis for disqualification. The disposition of this particular request does not require an evidentiary hearing. *Id.* at 711. There is no basis to find that counsel suborned perjury by filing the involuntary petition. Dr. Lundeen believes that he should not have any personal liability under the confirmed plan; an assertion to the contrary is not perjury. This is a factual debate, not an ethical one and it does not state grounds to disqualify counsel.

Dr. Lundeen's second argument that counsel should be disqualified for breaching their ethical duties is based on the affidavit of David Peloquin, EA, FLMI which states:[16]

> On August 1, 2007 I met with attorney Mary Ann Rabin for the purpose of delivering documents subpoenaed from my office. I requested the meeting to review the subpoenaed financial

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[15] The petitioning creditors also argue that sanctions should be imposed against Dr. Lundeen, but did not make a motion for such relief. *See* Petitioning Creditors' response brief at 3, docket 9.

[16] Exh. C to Lundeen response, docket 10.

> information. As of August 1, 2007, I also prepared an additional report indicating that there was no substantial net worth nor could I foresee any ability to repay additional plan payments based on my professional experience of over 40 years. My review of the financials did not reveal any inappropriate or unusual expenditure for a medical practice of this type. I also indicated that I thought that she was wasting the Court's time and was inconveniencing many individuals by requesting additional documentation. At that point, Mary Ann Rabin stood up and indicated in a raised voice that I did not understand the whole scenario. My reply was "the facts are the facts." Her retort was, "You don't understand, this is personal." At that point I decided that further discussion was futile in any attempt to resolve these issues.

Dr. Lundeen contends that this affidavit proves that counsel filed the involuntary petition to harass him, in violation of the ABA Model Code of Professional Responsibility rules 7-102 and 1-102. Ohio does not follow the model code, but instead has adopted a version of the ABA Model Rules of Professional Conduct. *See* OHIO PROF. CONDUCT. RULE 1-1 – 8-5 (effective as of 2-1-07, amended effective 9-1-07). The Ohio rules provide that attorneys are not to assert frivolous claims (Rule 3.1); are to deal fairly with an opposing party (Rule 3.4); are to behave with candor towards the court (Rule 3.3); and are not to engage in professional misconduct (Rule 8.4). The conversation cited by Dr. Lundeen does not support a finding that, or even raise a question as to whether, counsel violated any of these rules. Counsel for the petitioning creditors are attempting to obtain involuntary bankruptcy relief for their clients and the fact that they may take the matter personally is not in and of itself a breach of their professional obligations to their clients, to Dr. Lundeen, or to the court. Consequently, Dr. Lundeen's motion to disqualify them on that basis is denied.

3. Other Relief

Dr. Lundeen's motion requests this additional relief: an award of costs and damages based on his assertion that the involuntary petition is a frivolous pleading; an order sealing the

records related to this case; and an order prohibiting consumer reporting agencies from making any consumer report that contains information related to the involuntary petition and case. The bankruptcy code provides for such relief. *See* 11 U.S.C. § 303(i) (providing for a judgment including costs, attorney fees and damages in favor of the debtor and against the petitioning creditors if the court dismisses the involuntary petition); 11 U.S.C. § 303(l) (providing for the entry of an order sealing the records in an individual debtor's involuntary case and for entry of an order prohibiting consumer reporting agencies from making any consumer report that contains information related to the involuntary petition and case). The relief is available, however, only in the event the court dismisses the involuntary petition. As Dr. Lundeen's motion to dismiss is being denied, his request for this other relief is premature at this point and is, therefore, denied without prejudice.

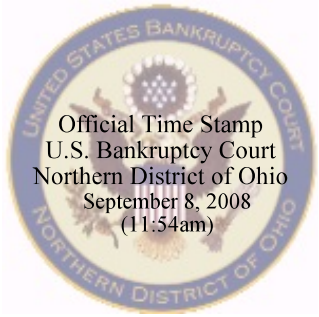
CONCLUSION

For the reasons stated, Dr. Lundeen's motion is denied. A separate order will be entered reflecting this decision.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:	)	Case No. 08-14920
	)	
JAMES E. LUNDEEN, SR., M.D.,	)	Involuntary Chapter 7
	)	
Alleged Debtor.	)	Judge Pat E. Morgenstern-Clarren
	)	
	)	**ORDER DENYING MOTION TO**
	)	**DISMISS AND SETTING ANSWER**
	)	**DATE**

For the reasons stated in the memorandum of opinion filed this same date, the alleged debtor's motion to dismiss the involuntary petition and for other relief is denied. (Docket 8). The alleged debtor's answer to the involuntary petition is to be filed on or before **September 22, 2008**.

IT IS SO ORDERED.

Pat E. Morgenstern-Clarren
United States Bankruptcy Judge