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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:)	Case No. 01-18545
)	
MITZI A. COLLIS-GARRETT,)	Chapter 7
)	
Debtor.)	Judge Pat E. Morgenstern-Clarren
_____)	
)	
SAUL EISEN, TRUSTEE,)	Adversary Proceeding No. 02-1025
)	
Plaintiff,)	
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
MITZI A. COLLIS-GARRETT, et al.,)	<u>AND ORDER</u>
)	
Defendants.)	

The Chapter 7 Trustee filed an Adversary Complaint against the Debtor and Ameriquist Mortgage Corporation, among others, to determine the priority, validity, and extent of liens and interests, to set aside mortgages, and to sell real property of the Debtor. (Docket 1). The Court issued an Adversary Case Management Initial Order on January 25, 2002. (Docket 3). Following a pretrial conference on March 14, 2002, the Court also issued an Adversary Case Management Scheduling Order which, by agreement of the parties, set a June 28, 2002 discovery cutoff date in this relatively routine case. (Docket 16).

On May 20, 2002, Ameriquist noticed the deposition of the Debtor for June 13, 2002. (Docket 24). The Debtor did not appear for the deposition. As a result of this failure to attend, Ameriquist filed a motion on July 3, 2002 to dismiss the Trustee's case, citing Federal Rule of Civil Procedure 37. (Docket 25). In its motion, Ameriquist admits that it did not attempt to

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reschedule the deposition, apparently believing that the Trustee or the Debtor had that responsibility. Without the Debtor's deposition, Ameriquest contends it cannot proceed with its case because the Debtor is the Trustee's only witness. Further, Ameriquest argues that rescheduling would now be burdensome because its counsel has moved from Cleveland to Columbus, Ohio. The Trustee opposes the motion to dismiss his complaint, arguing among other things that Ameriquest did not follow the rules regarding discovery disputes and that the Trustee is not accountable for the Debtor's actions or failures to act. (Docket 26).

DISCUSSION

Rule 7026-1 of the Local Bankruptcy Rules for the Northern District of Ohio states:

Discovery Disputes. To curtail undue delay in the administration of justice, no discovery procedure filed under Fed. R. Civ. P. 26 through 37 to which objection is made by the responding party shall be taken under consideration by the Court unless the party seeking discovery shall first advise the Court in writing that, after personal consultation and sincere attempts to resolve differences, the parties are unable to reach an accord. This statement shall recite those matters which remain in dispute, and, in addition, the date, time and place of such conference, and the names of parties participating therein. It shall be the responsibility of counsel for the party seeking discovery to initiate such personal consultation. In the case of a failure to answer a question at a deposition (including a claimed evasive or incomplete answer), such personal consultation may take place at the deposition at which the alleged failure to answer occurs. Unless otherwise ordered by the Court, no discovery dispute shall be brought to the attention of a Judge, and no motion to compel may be filed, more than 10 days after the discovery cut-off.

The Initial Adversary Case Management Order entered in this case further requires parties having discovery disputes:

to make sincere, good faith efforts to resolve [them] before seeking aid from the Court. If the parties are unable to resolve the issue,

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they are to advise the Court by telephone. A telephone conference call will then be scheduled to attempt to resolve the dispute. Motions under Local Bankruptcy Rule 7026-1 shall not be filed before that conference call takes place, unless otherwise ordered by the Court.

The Adversary Case Management Scheduling Order reminded the parties of these obligations.

Ameritrust now requests that the Trustee's case be dismissed as a sanction for the Debtor's failure to comply with a discovery request. Ameritrust did not, however, follow the procedures set forth by the Local Rules and the Case Management Orders before filing its motion. Specifically, Ameritrust did not contact the Debtor to see if the issue could be resolved and did not ask the Court to hold a telephone conference. These procedures are in place to insure that discovery disputes (which can be expensive, time-consuming, and counterproductive, although at times necessary) move forward in a prompt, efficient, and fair manner with the requesting party having the obligation to first attempt to resolve the problem. The rules and Court Orders are specifically designed to function when time is tight by providing parties with a quick telephone conference to address the dispute if they are unable to resolve it themselves. The fact that the discovery deadline was approaching is not an acceptable excuse for failing to follow the rules; in fact, it should have been additional motivation to follow them. Additionally, counsel's decision to move to another Ohio city is not a valid excuse for non-compliance.

Because Ameritrust did not comply with the Local Rules of the Northern District of Ohio and the Case Management Orders issued by the Court, its motion to dismiss this case based on the Debtor's failure to attend a deposition is denied. In light of this disposition, the Court need not address whether it would be appropriate to dismiss the Trustee's case as a sanction against the Debtor when no claim is made that the Trustee did anything improper. Suffice it to

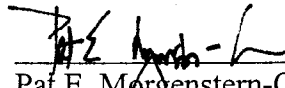
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say that it appears unlikely that such a result would comply with the bankruptcy rule's guiding principle that sanctions should be "just." FED. R. BANKR. P. 7037, incorporating FED. R. CIV.

P. 37.

IT IS SO ORDERED.

Date: 15 July 2002



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

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By: Joyce L. Gordon, Secretary

Date: 7/25/02