

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION



In re: ) Case No. 05-17356  
 )  
ELAN ELNETT LEWIS, ) Chapter 7  
 )  
 ) Judge Pat E. Morgenstern-Clarren  
Debtor. )  
 ) **MEMORANDUM OF OPINION**

In this case, the debtor Elan Lewis did not sign and verify her chapter 7 petition before it was filed, did not correct the violation when the chapter 7 trustee raised it at the meeting of creditors, and did not sign the petition until the day before a hearing on the trustee's motion to dismiss, more than two months after the case was filed. The question is whether the case should be dismissed for this insufficient filing and the failure to correct the error despite repeated notice.

Every bankruptcy case is commenced by the filing of a petition. Without exception, "[a]ll petitions, lists, schedules, statements, and amendments thereto shall be verified [by the debtor] or contain an unsworn declaration as provided in 28 U.S.C. § 1746." FED. R. BANKR. P. 1008. The filing of a petition has immediate significant consequences, primarily the automatic stay of most actions against the debtor. *See* 11 U.S.C. § 362. Only a debtor who has verified her petition and the debt and asset information filed with it is entitled to that protection.

When case documents were filed on paper, debtors verified the information by signing their name to the petition and filing it with the court. With electronic case filing (ECF), the procedures are different, but just as straightforward. This district offered optional participation in

ECF starting January 1, 2003.<sup>1</sup> On May 21, 2003, the court gave notice that ECF would be mandatory starting January 1, 2004, with limited exceptions not relevant here.<sup>2</sup>

The ECF procedure for complying with the bankruptcy rule's signature requirements is as simple as it is critical: "Any document requiring the debtor's signature shall **first** be signed by the debtor, followed by the electronic submission of a copy of the document with the debtor's signature indicated as /s/name."<sup>3</sup> The debtor is, at the same time, to sign another document titled Declaration re Electronic Filing which must be filed with the court within five working days. The debtor's lawyer has an affirmative obligation to maintain the petition with the debtor's handwritten signature for one year following the closing of the case.<sup>4</sup> This procedure facilitates the administration of bankruptcy cases, while still maintaining the integrity of bankruptcy filings and the bankruptcy system.

This chapter 7 case was filed on May 24, 2005 by attorney Oscar Trivers. In addition to the petition, Mr. Trivers filed schedules, debtor's declaration concerning schedules, statements of financial affairs, statement of intentions, disclosure of compensation, and debtor's verification of creditor matrix, and lists. The petition says:

I declare under penalty of perjury that the information provided in this petition is true and accurate.

---

<sup>1</sup> See second amended general order 03-1. All general orders are posted on the court's web page at [www.ohnb.uscourts.gov](http://www.ohnb.uscourts.gov). (Emphasis added).

<sup>2</sup> *Id.*

<sup>3</sup> ECF Administrative Procedures Manual at II.B.2, exhibit to general order 02-2.

<sup>4</sup> *Id.* at II.B.1.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

/s/ Elan Elnett Lewis

Signature of Debtor Elan Elnett Lewis

This statement is not true: the debtor did not review the final, typed petition and did not sign the paper petition before the case was filed via ECF.<sup>5</sup>

The chapter 7 trustee conducted the meeting of creditors<sup>6</sup> on June 28, 2005, more than one month after the petition was filed. The debtor appeared with attorney Marcus Poole, who apparently was covering the meeting for Mr. Trivers. After swearing the debtor in, the trustee asked counsel to produce the original signed petition and schedules so that the debtor could authenticate her signature, verify that she provided the information in the petition and schedules, and confirm that such information was accurate at the time of filing. Counsel had the debtor's file, but it did not contain an actual signed copy of the petition and schedules. The debtor then testified that she had not reviewed or signed the completed petition and schedules before they were filed. As a result, the trustee could not go forward with the meeting.

The debtor did nothing to address the deficiency, despite this notice. On July 5, 2005, the trustee moved to dismiss the case because the debtor's failure "to review and sign the petition and schedules filed in this case precludes the orderly administration of the case." The motion

---

<sup>5</sup> Shortly after the case was filed, the court issued two show cause orders. The first was to show cause why the case should not be dismissed for the debtor's failure to pay the filing fee and the second was to show cause why the case should not be dismissed for failure to file the declaration of electronic case filing. In response to the orders, the debtor paid the filing fee late and then filed the declaration late. The court held the two show cause hearings and concluded them without sanctions.

<sup>6</sup> See 11 U.S.C. § 341.

was set for hearing on August 4, 2005 and the debtor still did nothing to try to correct the problem. On July 28, 2005, Mr. Trivers filed an affidavit in opposition to the motion. The affidavit states in full:

STATE OF OHIO                    )  
  ) SS.  
COUNTY OF CUYAHOGA )

A F F I D A V I T

OSCAR TRIVERS, being first duly sworn according to law, deposes and says:

1. That he is the attorney for the Debtor, Elan Elnett Lewis;
2. That he personally interviewed the Debtor and prepared a written rough draft of her bankruptcy petition and reviewed it with her, prior to having the Paralegal Assistant input it into the computer;
3. That all of the information contained in the bankruptcy petition came from the Debtor;
4. That in his absence, the Debtor came into the office and signed the Declaration and the Petition;
5. That at the time of the 341 Hearing, he was out of town, in St. Charles, Missouri and Attorney Marcus L. Poole attended the 341 Hearing for him; apparently, Attorney Poole did not have a signed copy of the Petition at the hearing.

FURTHER AFFIANT SAYETH NAUGHT.

/s/ Oscar Trivers

SWORN TO BEFORE ME and subscribed in my presence this 28<sup>th</sup> day of July, 2005.

/s/ E. Yvonne Harris, Esq. (0058636)  
NOTARY PUBLIC  
My Commission Has No Expiration.

Paragraphs 4 and 5 may be ambiguous; if they are intended to say that the debtor signed her petition before it was filed, this is not true. Specifically, on August 4, 2005, Mr. Trivers

appeared at the hearing on the motion to dismiss and said the debtor had not signed the petition until the day before the hearing, August 3, 2005. He also stated that he is 71 years old and not computer literate.<sup>7</sup> Be that as it may, it has nothing to do with the defect in this case. The problem here is that the debtor did not review the final petition and schedules and did not verify them by physically signing them with a pen before they were filed electronically. This has nothing to do with the ability to use a computer.<sup>8</sup>

The bankruptcy code provides that a case may be dismissed on the trustee's motion for cause, including unreasonable delay by the debtor that is prejudicial to creditors. 11 U.S.C. §707(a). In this case, cause exists to dismiss for two reasons. First, the debtor violated the bankruptcy rules by failing to review and sign the petition before it was electronically filed. She thus got the benefit of the automatic stay when she was not entitled to it because she had not carried out her responsibilities as a debtor. Second, additionally and alternatively, the debtor should have known when the case was filed on May 24, 2005 that she had not signed the required documents. She had additional notice that she had fallen short of her responsibilities on June 28,

---

<sup>7</sup> The court notes that all attorneys are required to attend an ECF training course before they receive an ECF password. Mr. Trivers is a registered ECF user, which means he took the course. The court has trained more than 2000 attorneys and their staff in ECF, welcomes anyone who needs a refresher course or additional training, and maintains a help desk to answer questions and provide assistance. Court personnel have even made "office calls" to help users who have questions about the system that are best resolved in person.

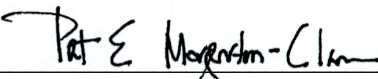
<sup>8</sup> Mr. Trivers also argued that the debtor is happy with his representation. This is irrelevant to the legal issue presented. He additionally argued that he did a "rough draft" of the petition and reviewed it with the debtor. He then gave it to an assistant to type and file without further review by the debtor or the attorney. Again, this is not relevant to the issue, which is whether the debtor reviewed and signed the petition before it was filed or promptly moved to correct the problem when she was directly told about it at the 341 meeting. It is important to note that Mr. Trivers did not make an excusable neglect argument to explain the failure to comply and so the court will not engage in that analysis.

2005 when the chapter 7 trustee directly told her and her counsel that the filing was deficient. She did nothing. On July 5, 2005, the trustee filed a motion to dismiss which once again identified the deficiency. The debtor still did nothing to correct the problem. It was not until August 3, 2005, the day before the hearing, that the debtor supposedly signed the documents and even then, counsel did not show any such documents to the court, although the court assumes he was telling the truth. The debtor's behavior in this case falls far short of that required and expected of someone seeking relief under the bankruptcy code. By this time in the case, the debtor's 341 exam should have been concluded and creditors should have had the opportunity to examine verified documents and question the debtor at the 341 meeting if they wished to do so. Instead, the case is no farther along than it was the day it was filed, due to the debtor's behavior. This pattern of behavior amounts to unreasonable delay that is prejudicial to the creditors.

On consideration of all of the facts and arguments presented at the hearing, the court concludes that dismissal for cause under 11 U.S.C. § 707(a) is appropriate. The trustee's motion to dismiss is, therefore, granted and the opposition to the motion is overruled. The dismissal will be without prejudice to the debtor filing a bankruptcy case that complies with the bankruptcy code, the bankruptcy rules, and the general orders in effect in this district.

A separate order will be entered reflecting this decision.

Date: 5 August 2005

  
\_\_\_\_\_  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center

THIS OPINION NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION




In re: ) Case No. 05-17356  
ELAN ELNETT LEWIS, )  
Debtor. ) Chapter 7  
Judge Pat E. Morgenstern-Clarren  
**ORDER**

For the reasons stated in the memorandum of opinion filed this same date, the trustee's motion to dismiss is granted and the opposition to the motion is overruled. (Docket 10, 12).

The dismissal is without prejudice to the debtor filing a bankruptcy case that complies with the bankruptcy code, the bankruptcy rules, and the general orders in effect in this district.

IT IS SO ORDERED.

Date: 5 August 2005

  
Pat E. Morgenstern-Clarren  
United States Bankruptcy Judge

To be served by clerk's office email and the Bankruptcy Noticing Center