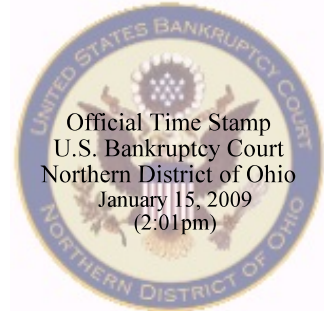


NOT FOR COMMERCIAL PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION



In re:) Case No. 08-18112
)
CINSEREE JOHNSON,) Chapter 7
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**
) **AND ORDER**

Pro se debtor Cinseree Johnson filed her chapter 7 bankruptcy case on October 21, 2008. Alan Treinish serves as the chapter 7 trustee responsible for administering her bankruptcy estate. The debtor filed a document titled “Motion to Cease and [Desist]” in which she asks for a court order directing the trustee not to ask her certain questions and to restrict attendance in the hearing room during her § 341 examination. *See* 11 U.S.C. § 341. (Docket 36). The trustee opposes the motion on the ground that his requests and procedures are within the scope of his responsibilities and the bankruptcy rules. (Docket 56). The court held a hearing on January 15, 2009.¹ For the reasons stated below, the motion is denied.

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)(A).

¹ The chapter 7 trustee appeared, as did the United States trustee in support of the chapter 7 trustee’s position. The debtor did not appear, but the court has fully considered all arguments that she presented.

FACTS AND DISCUSSION

A. The Dispute

The United States trustee is required to “convene and preside at a meeting of creditors” within a reasonable time after a voluntary bankruptcy case is filed. 11 U.S.C. § 341(a). Trustee Treinish held such an examination in this case on November 18, 2008 and adjourned it to December 16, 2008. (Docket 33). In the interim between those two dates, the debtor filed this motion in which she seeks a court order directing the trustee:

- (1) not to ask her questions about her primary residence;
- (2) not to ask her questions about her vehicle;
- (3) not to ask her questions about how she earned her income;
- (4) not to ask her questions about a pending lawsuit against Greyhound based on a missing baggage report that she filed;
- (5) to cease unequal treatment of debtors based on race;
- (6) to identify each person who is in the room during her examination and, preferably, to prevent anyone from entering the room after the examination begins; and
- (7) to file all requests for additional information in writing with the court.

In support, the debtor states that her house and vehicle are exempt from her creditors and, therefore, beyond legitimate inquiry. On the issue of her income, the debtor states that it “is of no consequence to this action” and an invasion of privacy. With respect to the lawsuit, the debtor states that she will give the trustee the case number, but not the baggage report. On the equal treatment issue, the debtor states that the trustee asked her more questions than he asked another

debtor (a white female), and that the trustee gave the other debtor a “yeah, baby!” smile. She does not explain why she is asking that all further information requests be written.

The trustee provided this explanation for the information he requested:²

1. Evidence of the Debtor’s social security number. The Debtor failed to provide evidence of her social security number at the meeting of creditors, and the Trustee requested that documentary evidence of the number be provided.
2. A full copy of the Debtor’s 2007 income tax return. The Debtor provided an incomplete income tax return for the year 2007, and the Trustee requested that she provide a full copy of the return, which is required pursuant to 11 U.S.C. § 521(e)(2).
3. Information relating to claims of the Debtor against other parties. The Debtor testified that she had a medical malpractice claim, several “civil rights” claims, and a claim relating to the loss of property (baggage) against Greyhound. Some of the claims may not be filed with any court based on the Debtor’s testimony. None of the claims were disclosed in the Debtor’s bankruptcy schedules. The Trustee requested that the Debtor provide a list of her claims, and the underlying facts supporting each claim. With respect to the claim against Greyhound, the Trustee requested a copy of the report of missing property, which the Debtor testified had been filed or submitted to Greyhound.
4. Evidence of the Debtor’s income. The Debtor testified that she earned wages from “Uptown Bucks” in the year 2008, but disclosed no such income in her bankruptcy schedules. The Trustee requested that she provide evidence of such income.
5. The Debtor’s real estate. The Debtor testified that she owns real estate, and that the value of her interest in the real estate is \$6,000.00. The Debtor further testified that the property had recently been transferred from the probate estate of the Debtor’s aunt to the Debtor, and that the Debtor is a “fiduciary” of the probate estate. The Debtor also testified that a foreclosure lawsuit had been filed with respect to the real estate, but it was dismissed. The Debtor’s bankruptcy schedules did not disclose the probate

² Trustee’s brief, docket 56 at 2–3.

estate, secured creditor, or foreclosure lawsuit. The Trustee asked questions regarding the basis for the \$6,000.00 value of the real estate, and requested that the Debtor cooperate with the Trustee's efforts to have a realtor look at the premises to determine if there is value for the benefit of creditors.

6. The Debtor's life insurance policy. The Debtor testified that she owns a whole life insurance policy with no value. The Trustee requested a copy of the policy.
7. The probate estate of the Debtor's aunt. Although the Debtor testified that she is a "fiduciary" with respect to a probate estate, no interest in a probate estate was disclosed in the Debtor's bankruptcy schedules. The Trustee requested that the Debtor provide the case number and documentation regarding the probate estate.

The trustee states further that a § 341 meeting is a public proceeding and that he leaves the door to the meeting room open to avoid distractions. He objects to creating a special procedure for this debtor.

B. The Meeting of Creditors

Bankruptcy code § 341(a) provides that a meeting of creditors is to be held in each case. 11 U.S.C. § 341. The debtor is required to appear at the meeting and be examined under oath by the chapter 7 trustee, creditors, and others. 11 U.S.C. § 343. The scope of the examination "may relate . . . to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any other matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." FED. R. BANKR. P. 2004(b).

The meeting of creditors "is a fishing expedition allowed, even encouraged, by the statutes and the rules so long as the subject of the questioning relates to the bankruptcy case." *Clippard v. Russell (In re Russell)*, 392 B.R. 315, 358-59 (Bankr. E.D. Tenn. 2008) (citing

Chereton v. United States, 286 F.2d 409 (6th Cir. 1961)). The meeting “provides the trustee and creditors with a cheap, inexpensive, and convenient tool to get an overall feel for the bankruptcy estate, and to do so early in the case.” *In re Muy Bueno Corp.*, 257 B.R. 843, 851 (Bankr. W.D. Tex. 2001).

The meeting of creditors is a “formal part” of the bankruptcy case and members of the general public are presumed to be entitled to attend the meeting unless it can be shown that a significant competing interest outweighs that presumption. *Baltimore Sun Co. v. Astri Invest. Mgmt. & Sec. Corp. (In re Astri Invest. Mgmt. & Sec. Corp.)*, 88 B.R. 730, 735 (Bankr. D. Md.1988); *see also* FED. R. BANKR. P. 2003(c) (providing that a debtor’s § 341 examination shall be recorded and that the record be made available to the public).

C. A Debtor’s Duties

In addition to appearing at the meeting of creditors, the debtor must provide the trustee with information about the debtor’s overall financial situation, including income, assets, and liabilities. *See* 11 U.S.C. § 521, FED. R. BANKR. P. 1007 and 4002. This is not a matter of satisfying the chapter 7 trustee’s idle curiosity; the trustee is *required* to investigate the debtor’s financial affairs as part of the bankruptcy process. 11 U.S.C. § 704(a)(4). The code requires the debtor to “cooperate with the trustee as necessary to enable the trustee to perform the trustee’s duties”, 11 U.S.C. § 521(a)(3), and to surrender to the trustee “all property of the estate and recorded information, including books, documents, records, and papers relating to property of the estate”, 11 U.S.C. § 521(a)(4). The code does not require the trustee to make information requests in writing. The debtor does not have the right to withhold information because she believes that it is not meaningful to her case. *In re Russell*, 392 B.R. at 358. The consequences

to a debtor for withholding the information can be severe, up to and including denying the debtor a discharge. *See* 11 U.S.C. § 727(a)(4)(D) (providing for denial of discharge in cases where a debtor knowingly and fraudulently withholds such information from an officer of the estate).

DISCUSSION

The debtor's concerns fall into four areas: (1) the scope of the trustee's questions; (2) the public nature of the examination; (3) the trustee's approach to her compared to his treatment of another debtor; and (4) any further requests the trustee may make.

On the first point, the debtor resists being questioned about her house, car, pending lawsuit, and income source. These are all, however, legitimate sources of inquiry. The trustee is responsible for collecting and reducing to money property of the bankruptcy estate. 11 U.S.C. § 704(a)(1). The estate consists of all legal and equitable interests in property held by the debtor at the time the bankruptcy case is filed. 11 U.S.C. § 541(a). The debtor's house and car are property of the bankruptcy estate, even if subject to exemption. *See* 11 U.S.C. § 522. A lawsuit filed by the debtor that is pending at the time of the bankruptcy filing is also property of the estate. *Bauer v. Commerce Union Bank*, 859 F.2d 438, 441 (6th Cir. 1988) (stating that it is well settled that a trustee has the right to pursue causes of action formerly belonging to the debtor for the benefit of the estate). The trustee is, therefore, acting within his statutory mandate when he asks questions about these areas. The same is true of the debtor's income. *See* 11 U.S.C. § 521(e)(2)(A)(i) (requiring a debtor to give the trustee the debtor's federal income tax return for the most recent tax year ending immediately before the case was filed); Statement of Financial Affairs, questions 1 and 2 (Official Form 7) (requiring a debtor to state the amount and source of

all income received during the two years immediately preceding the calendar year in which the petition is filed).

On the second point, the debtor asks that everyone in the room be identified before her examination begins and that no one be permitted to enter after that time. All bankruptcy proceedings—including the § 341 meeting conducted under the auspices of the United States trustee—are presumptively public proceedings. When hearings are held before the undersigned in the courtroom, the proceedings are open to the public and the court does not ask those attending to identify themselves, absent some extraordinary circumstance not presented by these facts. The debtor has not articulated any reason why a different, more restrictive rule, should apply to that part of the bankruptcy process conducted by the United States trustee. Granted, it is not pleasant to be asked questions in public about what would otherwise be personal matters. Congress has determined, however, that any debtor wishing to avail herself of the privilege of filing for relief under the bankruptcy code must accept that the proceedings are generally public.

The third issue is the debtor's complaint that the trustee asked fewer questions of a white, female debtor who was examined immediately before this debtor was examined. There are any number of legitimate reasons why one debtor might be asked a different number of questions or questions of a different kind than another debtor. For example, one debtor's filed information may be more complete than that of another debtor. The court does not have any information before it to support the suggestion that the trustee behaved differently toward this debtor because of race. Similarly, the court cannot read racial bias into the debtor's characterization of the trustee's facial expression.

The fourth and final point is that the debtor asks that the trustee be required to make his requests for information in writing and to file them with the court. As noted above, the code does not impose this requirement on the trustee and, in this case, it would be a burden on the bankruptcy system to put such a requirement in place with no demonstrated offsetting benefit.

CONCLUSION

For the reasons stated, the debtor's motion is overruled. The chapter 7 trustee is directed to reschedule the continued § 341 meeting and to give the debtor written notice of the new date.

IT IS SO ORDERED.



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge