

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

| | | |
|-----------------|---|------------------------|
| In Re: |) | Case No. 09-31946 |
| |) | |
| James F. Larcom |) | Chapter 7 |
| |) | |
| Debtor(s). |) | |
| |) | JUDGE MARY ANN WHIPPLE |

ORDER

Debtor commenced this case on March 30, 2009, by filing a petition naming only himself as the Debtor herein. Pending before the court is Debtor’s motion to add his spouse as a joint debtor to his petition through the filing of an amended petition. [Doc. # 11]. That motion was filed on May 5, 2009, more than a month after notice was given to creditors and parties in interest of commencement of the case by Debtor, only, of the meeting of creditors and of important deadlines related both to his commencement of the case and to the date set for his meeting of creditors.

Debtor does not cite any authority for his motion. Although Rule 1009(a) of the Federal Rules of Bankruptcy Procedure authorizes amendments to petitions “at any time before the case is closed,” courts have ruled consistently that a debtor cannot amend a petition to add a joint debtor. *E.g., In re Clinton*, 166 B.R. 195, 198 (Bankr. N.D. Ga. 1994)(drafters of rule intended to facilitate corrections of clerical errors and to permit amendments of jurisdictional facts supporting voluntary or involuntary petitions); *In re Walker*, 169 B.R. 391 (Bankr. W.D. Tenn. 1994); *In re Daly*, Case No. 07-22628-13, 2008 WL 276538, 2008 Bankr. LEXIS 190 (Bankr. D. Kan., Jan. 30, 2008). Section 302 of the Bankruptcy Code provides for filing a joint

petition with a debtor's spouse. However, the language of § 302 states that a joint case is commenced by filing a single petition. Courts generally recognize that "nothing in section 302 suggests that a debtor may amend a petition to add a spouse as a debtor and thereby retroactively commence a case for that spouse." *Clinton*, 166 B.R. at 196. Several concerns are cited by other courts in refusing to allow amendment of a petition to add a spouse: (1) the possibility of prejudice to creditors due to delay and confusion as to applicable deadlines and parties; (2) the absence of clear authority to permit such an amendment in the statute; and (3) serious questions as to the appropriate case filing date, *In re Sobin*, 99 Bankr. 483, 484 (Bankr. M.D. Fla. 1989). This court shares those concerns in this case, which has already been pending for more than a month and noticed to creditors as to Mr. Larcom only, and is persuaded by the uniform body of non-binding case law that prohibits petition amendments to add a joint debtor.

To avoid these problems, there is another approach that clearly comports with the statute and the applicable rules and that minimizes the practical difficulties of an amendment to the petition to add a co-debtor. Instead, the would be co-debtor spouse "is free to commence a voluntary case and then seek joint administration of the two related cases involving husband and wife as provided by Federal Rule of Bankruptcy Procedure 1015(b)(1)." *Olson-Ioane v. Derham-Burk (In re Olson)*, 253 B.R. 73, 75 (9th Cir. B.A.P. 2000).

Based on the foregoing reasons and authorities,

IT IS THEREFORE ORDERED that Debtor's Motion for Leave to Amend Petition to Add Wife a Joint Debtor [Doc. # 11] is **DENIED**, without prejudice.