


Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
February 26, 2024

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:) Case No.: 23-15097-MKN
) Chapter 7
KEVIN JULIAN RIZZI,)
)
Debtor.) Date: February 14, 2024
) Time: 2:30 p.m.
)

**ORDER ON TRUSTEE’S MOTION TO DISMISS CASE PURSUANT
TO BANKRUPTCY CODE §§ 343 AND 521¹**

On February 14, 2024, the court heard the Trustee’s Motion to Dismiss Case Pursuant to Bankruptcy Code §§ 343 and 521 (“Case Dismissal Motion”) (ECF No. 41) brought in the above-captioned proceeding. The appearances of counsel and any parties were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On November 17, 2023, Kevin Julian Rizzi, in pro se (“Debtor”), filed a “skeleton” voluntary Chapter 7 petition (“Petition”). (ECF No. 1).² The case was assigned for

¹ In this Order, all references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court. All references to “Section” are to provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRE” are to the Federal Rules of Evidence.

² On May 1, 2012, Debtor filed in pro se a prior voluntary Chapter 7 petition in the United States Bankruptcy Court for the Northern District of California, denominated Case No.12-533848. In that petition, Debtor attested that he “has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any

1 administration to Chapter 7 panel trustee Lenard E. Schwartzter (“Trustee”). In Part 5 of his
2 Petition, Debtor attested that he is not required to receive a briefing about credit counseling
3 because of a physical disability that causes him “to be unable to participate in a briefing in
4 person, by phone, or through the Internet, even after I reasonably tried to do so.” A hearing on
5 Debtor’s request for waiver of credit counseling was scheduled for December 27, 2023. (ECF
6 No. 7). Notice of the hearing was sent by first class mail to the Debtor as well as any party
7 whose address was provided by the Debtor. (ECF No. 10).

8 On December 1, 2023, Debtor filed a variety of materials: (1) certificates of debtor
9 education indicating that he had completed on that date a course of personal financial
10 management given by internet, (2) an Affidavit of Debtor Kevin Julian Rizzi, (3) his schedules
11 of assets and liabilities (“Schedules”), and (4) a “Request for Emergency Assistance” seeking a
12 variety of relief against a variety of parties. (ECF Nos. 16, 17, 18, 19, and 20). Absent from the
13 Debtor’s materials was the Statement of Financial Affairs for Individuals Filing for Bankruptcy
14 (“SOFA”) required by FRBP 1007(b) and (c).³

15 On December 5, 2023, Debtor filed a Verification of Creditor Matrix, to which he
16 attached the names and addresses of creditors and interested parties (“Creditor Matrix”). (ECF
17 No. 22).

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19
20
21 other district.” On June 19, 2012, the case was dismissed because the Debtor failed to file
22 schedules, which are required by Section 521(a), as well as other required information.

23 ³ A SOFA completed under penalty of perjury requires a debtor to disclose information
24 essential to the administration of a bankruptcy case. Among many other things, an individual
25 debtor is required to attest to where he lived during the three years before filing the bankruptcy
26 petition, the amounts and sources of income in the prior two years, the payments made prior to
27 bankruptcy, any legal actions pending within the past year, any transfers of property for up to ten
28 years prior to filing the bankruptcy, and the ownership of any businesses. By disclosing the
events in the years preceding the commencement of bankruptcy, the SOFA provides a roadmap
of sorts to explain the debtor’s remaining assets and resulting liabilities as of the petition date
that appear in the Schedules. Such information is critical to bankruptcy trustees, creditors, the
court, and other parties in interest.

1 On December 6, 2023, Debtor’s proposed order granting his Request for Emergency
2 Assistance was denied by the court inasmuch as the court lacks jurisdiction to provide or address
3 the relief requested. (ECF No. 24).

4 On December 18, 2023, Debtor filed a notice of change of address, providing a post
5 office box number matching the mailing address appearing on the Petition. (ECF No. 27).

6 On December 18, 2023, Debtor also filed an adversary complaint (“Adversary
7 Complaint”) against Christopher Palms, LLC (“Christopher Palms”) as well as his mother,
8 Karen Christopher,⁴ in connection with certain real property located in Gilroy, California
9 (“California Property”). The matter was assigned Adversary No. 23-01160. (ECF No. 28).

10 On December 19, 2023, Christopher Palms filed a motion for relief from stay (“MRAS”)
11 seeking to terminate the automatic stay so that it could proceed against the California Property;
12 the MRAS was noticed to be heard on January 24, 2024. (ECF Nos. 29, 30, and 31).

13 On December 27, 2023, Debtor’s request for waiver of credit counseling was called, but
14 Debtor did not appear.

15 On December 28, 2023, an order was entered denying the waiver request. (ECF No. 35).

16 On January 4, 2024, the instant Case Dismissal Motion was filed by the Trustee. The
17 motion was noticed to be heard on February 8, 2024. (ECF No 42).

18 On January 17, 2024, Debtor filed a Motion for Contempt (“Contempt Motion”) seeking
19 various sanctions against the Trustee, Christopher Palms, and the Debtor’s mother, in addition to
20 removal of the Trustee from further administration of the Chapter 7 case. The motion was
21 noticed to be heard on February 14, 2024. (ECF Nos. 56 and 60).

22 On January 19, 2024, Debtor filed an Amended Chapter 7 Statement of Current Monthly
23 Income as well as an opposition to the Case Dismissal Motion. (ECF Nos. 65 and 66).

24 On February 1, 2024, the Trustee filed a response to the Contempt Motion as well as a
25 reply in support of the Case Dismissal Motion. (ECF Nos. 72 and 74). On the same date,
26 Christopher Palm filed a joinder in the Trustee’s response to the Contempt Motion. (ECF No.
27 76).

28 ⁴ Hereafter, both defendants are referred to jointly as “Christopher Palms.”

1 On February 8, 2024, Debtor filed a “Motion to Convert Chapter 7 to Chapter 13
2 Pursuant to 11 U.S. Code §706(A,” as well as another notice of change of address. (ECF Nos.
3 78 and 80). Debtor did not obtain a hearing date or notice a hearing on his motion to convert.
4

5 DISCUSSION

6 A bankruptcy case may be commenced in the judicial district “in which the domicile,
7 residence, principal place of business in the United States, or principal assets in the United
8 States, of the person... that is subject of such case have been located for the one hundred and
9 eighty days immediately preceding such commencement, or for a longer portion of such one
10 hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the
11 United States, or principal assets in the United States, of such person were located in any other
12 district.” 11 U.S.C. § 1408(1). (Emphasis added.).

13 Debtor commenced this voluntary Chapter 7 case on November 17, 2023. Part 1,
14 Question 6, of his Petition asked him to attest under penalty of perjury why he commenced the
15 case in the District of Nevada. His response to that question does not attest that he lived in
16 Nevada during the 180 days before commencing the case, or that he lived in Nevada for the
17 greater portion of the 180 day period before commencing the case. Debtor attests instead that he
18 “had to flee California due to death threats” but does not attest that he was required to seek
19 bankruptcy relief.⁵ Debtor’s unsecured creditor Schedule “E/F” lists no creditors in Nevada.

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21 ⁵ In response to Question 6 of the Petition, Debtor also requests that the court see Case
22 No. 2:23-cv-01721-GMN-DJA, which appears to be a civil action entitled Kevin Rizzi v. Keller
23 Williams, et al. filed on October 20, 2023, in the United States District Court for the District of
24 Nevada (“Federal Civil Action”). Judicial notice of the documents filed in that action is taken
25 pursuant to FRE 201(b). See generally U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). In
26 Paragraph 2 of his complaint in the Federal Civil Action, Debtor alleges, *inter alia*, that he “has
27 established residency in Nevada, dating back to 2004, and currently resides at 4205 W Tropicana
28 Ave, Apt. K2131, 89103, as plaintiff was force to flee Nevada in 2005 and again forced to flee
California due to ongoing abusive litigation by Defendants.” Debtor’s complaint in that action,
however, refers to alleged conduct occurring in Gilroy, California, on or about July 29, 2023, as
well as August 5, 2023. Both of those dates fall within 90 days before Debtor commenced his
voluntary Chapter 7 case in Nevada. In other words, Debtor’s own materials indicate that he
lived in California rather than Nevada for the greater portion of the 180-day period preceding the
commencement of his Chapter 7 case. Moreover, it is not clear whether the defendants named in

1 The only entity with a Nevada address listed on the Debtor's latest Creditor Matrix is the entity
2 under which he does business and which shared his personal mailing address. Considering the
3 materials submitted by the Debtor in this case, it is evident that he was residing in California,
4 was doing business in California, and had his principal assets in California for the greater portion
5 of the 180-day period prior to November 17, 2023.

6 In addition to commencing the instant Chapter 7 proceeding in the incorrect judicial
7 district, Debtor also did not comply with the requirement under Section 109(h)(1) to complete
8 credit counseling within 180 days prior to commencement of the case. Section 521 sets forth the
9 duties required of all applicable debtors seeking bankruptcy relief, including the filing of
10 Schedules, a SOFA, and documents providing essential information. Additionally, Section 521
11 directs that an individual debtor shall file with the court "a certificate from the approved
12 nonprofit budget and credit counseling agency that provided the debtor services under section
13 109(h) describing the services provided to the debtor." 11 U.S.C. §521(b)(1). While Debtor
14 attested in his Petition that he was physically disabled from obtaining credit counseling in
15 person, by telephone, or by internet, he later filed a certification that he was able to complete a
16 required debtor education course by internet.⁶ Moreover, a hearing was scheduled for the Debtor
17 to address whether he would be entitled to a waiver of credit counseling based on a physical
18 disability, but the Debtor did not appear. In response to the Dismissal Motion, Debtor also
19 represented that he had completed credit counseling but that proof of completion had been
20 stolen. Whether or not such proof was stolen, the Debtor's own materials he filed with the court
21 suggest that he had no physical disability at all preventing him from completing credit
22 counseling. The court makes no finding with respect to the Debtor's credibility on his asserted
23

24 the Federal Civil Action had any contacts with the State of Nevada or did business in the State at
25 the time the complaint was filed.

26 ⁶ Prepetition credit counseling and postpetition debtor education are separate
27 requirements created by Congress when it enacted the Bankruptcy Abuse Prevention and
28 Consumer Protection Act of 2005. Compare 11 U.S.C. §109(h)(1) [prepetition credit
counseling] and 11 U.S.C. §727(a)(11) [postpetition personal financial management course].
The former is required for an individual to be eligible for bankruptcy and the latter is required for
an individual to obtain a bankruptcy discharge.

1 physical disability, but there is no dispute that the credit counseling certificate required to be
2 filed under Section 521(b)(1) has never been filed.

3 Debtor's commencement of this bankruptcy in the incorrect judicial district and his
4 failure to comply with the credit counseling requirement is not the worst deficiency. An
5 individual debtor is required to file "a statement of the debtor's financial affairs..." 11 U.S.C.
6 §521(a)(1)(B)(iii). If "an individual debtor in a voluntary case under chapter 7 or chapter 13
7 fails to file all of the information required under subsection (a)(1) within 45 days after the date of
8 filing of the petition, the case shall be automatically dismissed effective on the 46th day after the
9 filing of the petition." 11 U.S.C. §521(i)(1). Either the individual debtor or the assigned trustee
10 can request an extension of the deadline to file the information, but the request must be made
11 before expiration of the deadline. See 11 U.S.C. §521(i)(3) and (4). While the Debtor filed 115
12 pages of materials on December 1, 2023, that included his Schedules, nowhere in those materials
13 is there the SOFA required by Section 521(a)(1)(B)(iii). The docket for the Chapter 7 case
14 reflects no other materials constituting a SOFA. Moreover, the last day to comply with Section
15 521(i) was on January 2, 2024,⁷ and no request to extend the deadline was filed by the Debtor or
16 the Trustee. As a result, Debtor's case was automatically dismissed under Section 521(i)(1), i.e.,
17 no later than January 3, 2024.

18 Debtor's deficiencies are not ameliorated by his attempt to convert his case from a
19 Chapter 7 liquidation to a Chapter 13 debt adjustment. Conversion of the case would relate back
20 to the filing of the original bankruptcy petition, but would not excuse the Debtor's failure to file
21 a credit counseling certificate. Nor would it resolve his failure to file a SOFA. Additionally,
22 while the Debtor never noticed his conversion motion for a hearing, it is questionable at best
23 whether the Debtor would ever be eligible for Chapter 13 relief. To be eligible under that
24 chapter, an individual must have, among other things, regular income. See 11 U.S.C. §109(e).
25 In this case, Debtor has filed under penalty of perjury schedules and statements of current
26

27 ⁷ Debtor voluntarily filed his Chapter 7 petition on November 17, 2023. The 45th
28 calendar day thereafter was Monday, January 1, 2024, which was a national holiday. If Tuesday,
January 2, 2024, is counted as the 45th day, the 46th day after the petition was filed fell on
Wednesday, January 3, 2024.

1 monthly income, which indicate that he essentially has little or no monthly income whatsoever,
2 much less regular income. Because a Chapter 13 plan must commit the individual debtor's
3 future earnings as necessary for the plan to be confirmed, see 11 U.S.C. §1322(a)(1) and 11
4 U.S.C. §1325(b)(1)(B), it also appears that the Debtor would have little prospect of confirming a
5 Chapter 13 plan or completing a Chapter 13 plan even if he otherwise is eligible.

6 The primary function of this bankruptcy filed in Nevada clearly is to resolve Debtor's
7 alleged claim to real property located in California. Obviously, the property itself as well as the
8 salient events alleged by the Debtor have their locus, if at all, in California. Most, if not all, of
9 the witnesses essential to resolve any factual disputes are located in California. Additionally,
10 any claims that the Debtor may have against Christopher Palms, or his mother, or any other
11 individual or entity, may be pursued in the location of the transaction or occurrence giving rise to
12 the claims. Moreover, Debtor previously commenced a Chapter 7 case in the Northern District
13 of California, and there is no evidence that he is unable to seek bankruptcy relief in that district.

14 Finally, the Adversary Complaint attempts to assert a variety of claims for relief based on
15 the conduct of multiple parties, including Christopher Palms and the Debtor's mother, all of
16 which took place before he commenced this Chapter 7 proceeding. Likewise, the Federal Civil
17 Action is based on alleged conduct occurring before the Chapter 7 petition was filed. Under
18 bankruptcy law, property of a bankruptcy estate includes "all legal and equitable interests of the
19 debtor in property as of the commencement of the case." 11 U.S.C. §541(a)(1). Those legal
20 interests include causes of action or claims for relief that could be asserted by the debtor on the
21 date the bankruptcy case is commenced. See Sierra Switchboard Co. v. Westinghouse Electric
22 Corp., 789 F.2d 705, 707 (9th Cir. 1986). The trustee assigned to a Chapter 7 case has exclusive
23 authority to reduce property of the estate to money, see 11 U.S.C. § 704(a)(1), and a debtor has
24 no standing to pursue claims of the bankruptcy estate. See generally 6 COLLIER ON
25 BANKRUPTCY, ¶704.03 (Richard Levin and Henry J. Sommer, eds, 16th ed. 2022). Absent
26 authorization from the court or consent from the Trustee, Debtor lacks standing to pursue any of
27 the claims or causes of action asserted in the Adversary Complaint or the Federal Civil Action.
28 When a Chapter 7 case is dismissed, however, any claims or causes of action that are listed in the

1 debtor's schedules are deemed abandoned to the debtor under Section 554(c). See Stevens v.
2 Whitmore (In re Stevens), 15 F.4th 1214, 1217 (9th Cir. 2021). In other words, whatever claims
3 or causes of action that the Debtor believes he had when he filed his Chapter 7 petition on
4 November 17, 2023, are not his to pursue in this Chapter 7 proceeding. If the Debtor has
5 actually scheduled those claims or causes of action, if any, they will be abandoned to him upon
6 dismissal of the Chapter 7 case, subject to the rights of any and all other parties.

7 **IT IS THEREFORE ORDERED** that the Trustee's Motion to Dismiss Case Pursuant to
8 Bankruptcy Code §§ 343 and 521, Docket No. 41, be, and the same hereby is, **GRANTED**.

9 **IT IS FURTHER ORDERED** that any further matters currently scheduled for hearing
10 in this Chapter 7 proceeding are **VACATED** from the calendar.

11
12 Copies sent via CM/ECF ELECTRONIC FILING

13 Copies sent via BNC to:
14 KEVIN JULIAN RIZZI
15 PO BOX 31226
16 LAS VEGAS, NV 89173

17 KEVIN JULIAN RIZZI
18 3289 UMBRIA GARDENS AVE
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22 2110 S. BASCOM AVE., SUITE 101
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