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APR 16 2007

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

United States Bankruptcy Court
Columbia, South Carolina (25)

IN RE: Carl Steven Scott, Debtor.	C/A No. 00-00888
IN RE: Carl Steven Scott, Debtor.	C/A No. 00-02009
IN RE: Carl Steven Scott, Debtor.	C/A No. 01-03460

ENTERED
APR 16 2007
K.R.W.

JUDGMENT

Based on the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Debtor's Motion to Expunge Case Nos. 00-00888, 00-02009, and 01-03460 is denied. The Clerk of Court shall forward a copy of the Order to the South Carolina Commission on Lawyer Conduct for determinations, if any, regarding Daniel L. Blake's representation of Debtor as described in the Order.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
April 16, 2007

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
APR 16 2007
10:00 AM
United States Bankruptcy Court
Columbia, South Carolina (5)

IN RE:

Carl Steven Scott,

Debtor.

C/A No. 00-00888

IN RE:

Carl Steven Scott,

Debtor.

C/A No. 00-02009

IN RE:

Carl Steven Scott,

Debtor.

C/A No. 01-03460

ENTERED
APR 16 2007
KRW

ORDER

THIS MATTER comes before the Court upon a *pro se* Motion to Expunge Bankruptcy Case Nos. 00-00888, 00-02009, 01-03460 (the "Motion") filed by Carl Steven Scott ("Debtor"). The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Pursuant to Rule 52 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Fed. R. Bankr. P. 7052, the Court makes the following Findings of Fact and Conclusions of Law.¹

FINDINGS OF FACT

1. On December 6, 1999, Debtor filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code. Debtor filed this petition *pro se*. This case was assigned Case No. 99-10551 (the "First Case"). Debtor testified that he intended to file the First Case to obtain the protections of the Bankruptcy Code. Specifically, Debtor testified that he filed bankruptcy because his home was in foreclosure.

¹ To the extent that any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent that any Conclusions of Law constitute Findings of Fact, they are so adopted.

2. On December 17, 1999, Daniel L. Blake ("Blake") filed a Notice of Appearance advising that he had been retained by Debtor to complete his schedules, statements, and Chapter 13 plan and to act as counsel in the First Case.

3. After filing a Motion to Extend the Time to File the Schedules, Statements, and Plan, which was objected to by the Chapter 13 Trustee, Blake filed a Motion to Dismiss the Case on behalf of Debtor on January 3, 2000.

4. The First Case was dismissed by order of this Court on January 4, 2000. Debtor was served with the order of dismissal. Blake testified that Debtor was aware that the first case was being dismissed because they needed more time to prepare the schedules and plan.

5. On January 31, 2000, Debtor transferred funds in the amount of \$700.00 to Janet Cook, Blake's employee, via Western Union Money Transfer. Blake testified that these funds constituted the balance owed to him by Debtor for filing the First Case.

6. On February 2, 2000, a second voluntary petition for relief under Chapter 13 of the Bankruptcy Code was filed by Blake on behalf of Debtor. This case was assigned Case No. 00-00888 (the "Second Case"). The petition contains signatures purporting to be those of Debtor and Blake. Debtor and Blake testified that their respective signatures on the petition for the Second Case were not their signatures. Blake testified that both his signature and the signature of Debtor were probably signed by a member of his staff. He further testified that he did not authorize his staff to sign the signatures on the petition.

7. The Court's records indicate that Debtor was served on February 2, 2000 with the Notice of Chapter 13 Case, Meeting of Creditors and Deadlines for the Second Case by U.S. mail, which was sent to the same address Debtor provided on the petition for Debtor's First Case.

8. On February 16, 2000, Blake filed a Motion to Extend Time to File a Chapter 13 Plan on behalf of Debtor. Blake asserted in the motion that he was ill and

could not complete the Chapter 13 Plan by the original deadline of February 17, 2000. By order dated February 17, 2000, Debtor was granted an extension of time to file his chapter 13 plan until February 25, 2000. Debtor was served with the order granting the extension.

9. On February 29, 2000, the Second Case was dismissed for Debtor's failure to file a chapter 13 plan. Debtor was served with the order of dismissal.

10. On March 3, 2000, a third voluntary petition for relief under Chapter 13 of the Bankruptcy Code was filed by Blake on behalf of Debtor. This case was assigned Case No. 00-02009 (the "Third Case"). Debtor testified that the signature of the debtor on the petition for the Third Case was also not his signature. Blake also testified that the signature for the attorney for the debtor was not his signature. Blake testified that, as in the Second Case, both his signature and the signature of Debtor on the petition for the Third Case were probably signed by a member of his staff. He further testified that he did not authorize his staff to sign his signature on the petition for the Third Case.

11. On March 20, 2000, an Order to Show Cause was issued to Debtor to show cause for repetitive filings. This order was served upon Debtor.

12. On April 5, 2000, a hearing was held regarding the Order to Show Cause. The Chapter 13 Trustee moved for sanctions against Blake in the amount of \$300.00 for the repetitive filings. Debtor testified that he and Blake were present at this hearing.

13. On April 12, 2000, the first meeting of creditors was held for the Third Case. Both Debtor and Blake were present at this meeting.

14. On April 17, 2000, an order was entered by the Court sanctioning Blake \$300.00 for repetitive filings. According to the Court's records, Blake paid the sanction on May 3, 2000.

15. Debtor's chapter 13 plan filed in the Third Case was confirmed on July 18, 2000. Debtor made payments on his plan for a brief period, but the Third Case was ultimately dismissed for failure to pay on December 18, 2000 with prejudice for a period of 180 days. The order of dismissal was served on Debtor.

16. On April 2, 2001, Debtor filed his fourth voluntary petition for relief under Chapter 13 of the Bankruptcy Code. This petition was filed *pro se* and bears the signature of Debtor. The case was assigned Case No. 01-03460 (the "Fourth Case"). Debtor also filed an application to pay the filing fee in installments. The signatures on both the petition and the application appear to be similar to the signature on the petition in the First Case, which Debtor admits he signed. Debtor testified that the signature on the petition in the Fourth Case looked like his signature, but he did not recall filing the case. Debtor stated that someone living in his house could have filed the petition using documents he left behind that contained his original signatures. Blake testified that he had no involvement with the filing of the Fourth Case.

17. The Fourth Case was dismissed on April 12, 2001 for violation of the December 19, 2000 order entered in the Third Case that dismissed the case with prejudice for a period of 180 days.

18. On February 14, 2007, the Court received a letter from Debtor stating that he did not authorize the filing of the Second, Third, and Fourth Cases. The Court treated this correspondence as a motion to expunge these cases and issued a Rule to Show Cause and Notice of Hearing on Motion on February 27, 2007, requiring Debtor, Blake, and Jason Moss to appear at the hearing on Debtor's Motion scheduled for March 13, 2007.²

19. On March 13, 2007, Debtor appeared at the hearing and provided testimony regarding this matter. Blake did not appear at this hearing because the notice of hearing was not properly served upon him.

20. On March 14, 2007, an Amended Rule to Show Cause was issued requiring Debtor and Blake to appear at another hearing on Debtor's Motion scheduled for April 10, 2007.

² Jason Moss was shown as the attorney of record in Third Case. The Rule was dissolved as to Jason Moss by separate order.

21. On April 10, 2007, Blake appeared at the hearing and provided testimony regarding his involvement with Debtor's bankruptcy cases. Debtor did not appear at this hearing.

CONCLUSIONS OF LAW

Debtor asks the Court to expunge his Second, Third, and Fourth Cases on the grounds that he did not authorize the filing of these cases. Expungement is an extraordinary remedy. "[T]he expungement of bankruptcy cases appears to be a rare event exercised with the greatest of prudence by bankruptcy judges under the equitable powers implied under 11 U.S.C. § 105." In re Storay, No. 05-14920-JW, slip op. at 4 (Bankr. D.S.C. Nov. 22, 2006)(quoting In re Buppelmann, 269 B.R. 341 (Bankr. M.D.Pa. 2001)).

Debtor testified that he intended to file his First Case and intended to obtain the protections of the Bankruptcy Code. The Court's records indicate that Debtor was served with the order dismissing the First Case by mail at the address Debtor provided in his petition. Blake testified that Debtor knew that they had to dismiss the case because they needed more time to prepare the schedules and Chapter 13 plan.

The petitions for the Second Case and Third Case contain neither the signature of Debtor nor the signature of Blake. While this appears improper,³ the evidence indicates that Debtor knew or should have known of these filings. See Fed. R. Bankr. P. 9011. Debtor was served with the Notice of the Chapter 13 Case, Meeting of Creditors and Deadlines in each case. Debtor was also served with the order granting an extension of time to file a Chapter 13 Plan and the order of dismissal in the Second Case. Debtor attended and participated in the Meeting of Creditors for his Third Case. He also attended

³ Debtor has not sought sanctions or other relief from the Court regarding Blake's representation of him in these cases. Neither the Trustee nor the U.S. Trustee has moved for sanctions in these cases.

the hearing on the Rule to Show Cause for Repetitive Filings where his attorney was sanctioned for repetitive filings.⁴ Significantly, Debtor made over \$4,000.00 in plan payments to the Trustee in the Third Case. While Debtor disputes signing the petition, his active participation in the Third Case belies any claim that he did not intend to be in bankruptcy at that time and ratifies the filing.

The Court finds that the Fourth Case was filed by Debtor, *pro se*, and was therefore authorized. There is a general presumption that a signed petition indicates that the party filing the petition had the authority to do so. In re Storay, No. 05-14920-JW, slip. op. (Bankr. D.S.C. Nov. 22, 2006). The signature on the petition for the Fourth Case is substantially similar to the signature on the petition for the First Case, which the Debtor admits is his signature. Under Fed. R. Evid. 901(b)(3), the Court, as the trier of fact, can identify the origin of a signature by comparing it with a signature that has been authenticated. Further, Debtor testified that the signature on the petition for the Fourth Case looked like his signature. The Court is not persuaded by Debtor's explanation that someone living in his house could have filed the petition using documents he left behind. Debtor has failed to rebut the presumption that the Fourth Case was authorized.

This Court has previously found that cause existed to expunge a bankruptcy case where the debtors did not authorize their attorney to file the petition in the case. See In re Storay, slip op. at 5; In re Brock, No. 04-08646-W, slip op. (Bankr. D.S.C. Oct. 13, 2004). In Storay, Mr. and Mrs. Storay signed a blank petition after meeting with their attorney to discuss the possibility of filing bankruptcy, but never authorized their attorney to file the

⁴ The Court notes that Blake filed two Amended Petitions in the Third Case: the first on March 10, 2000 and the second on May 3, 2000. While Blake was not questioned about the Amended Petitions at the hearing, it appears to the Court, based on a review of the documents and the signatures authenticated by Blake, that Blake signed the Amended Petitions and may have signed the signature of Debtor on these Amended Petitions.

petition. In Brock, the debtor's spouse never requested that a bankruptcy case be filed and never met with or sought representation from the attorney who filed the case. These cases are distinguishable from the Debtor's cases because, unlike the Storays and the debtor's spouse in Brock, Debtor intended to be in bankruptcy. Debtor was able to protect his home from foreclosure for an extended period of time as a result of these bankruptcy cases. Debtor presented no evidence of harm resulting to him on account of these additional cases.

After receiving testimony, carefully considering all the evidence, and weighing the credibility of the witnesses, the Court finds that Debtor is not entitled to have his Second, Third, and Fourth bankruptcy cases expunged. Therefore, it is hereby

ORDERED that Debtor's Motion to Expunge Bankruptcy Case Nos. 00-00888, 00-02009, 01-03460 is denied and

IT IS FURTHER ORDERED that the Clerk of Court shall forward a copy of this Order to the South Carolina Commission on Lawyer Conduct for determinations, if any, regarding Blake's representation as described herein.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
April 16, 2007