

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE:

LEON MEEKS II

CASE NO. 91-03089

Debtor

APPEARANCES:

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STEPHEN D. GERLING, U.S. Bankruptcy Judge

MEMORANDUM-DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

The Court considers herein a motion by the United States Trustee ("UST") to dismiss the petition of Debtor, Leon E. Meeks II ("Debtor") on the premise that Debtor has not "substantially complied" with the requirements of the Official Forms and Federal Rule of Bankruptcy Procedure ("Fed.R.Bankr.P.") 9009. The UST alleges that while the Debtor has filed the required schedules pursuant to §521 of the Bankruptcy Code (11 U.C.C. §§101-1330) ("Code"), Fed.R.Bankr.P. 9009 and the Local Rules of this Court, the Chapter 7 Petition and Schedules were submitted in a smaller print than is normally used in legal documents, therefore, violating Rule 9009's requirement of "substantial compliance". The motion, which was argued at a term of this Court held in Syracuse, New York on March 3, 1992, further alleges that the Debtor failed to provide the information required, that the time limits set by Fed.R.Bankr.P. 1007(c) have expired, and Debtor has not made an application for an extension of time.

JURISDICTIONAL STATEMENT

The Court has core jurisdiction of this contested matter pursuant to 28 U.S.C. §§1334(b) and 157(a), (b)(1), (2)(A).

FACTS

On November 4, 1991, Debtor filed a voluntary petition pursuant to Chapter 7 of the Code. On December 19, 1991, Debtor appeared at his Code §341 Meeting of Creditors. There is no indication that the Chapter 7 Trustee, nor any creditors voiced any objection to the content or form of Debtor's Petition and Schedules.¹

DISCUSSION

Fed.R.Bankr.P. 9009 provides that Official Bankruptcy Forms as prescribed by the Judicial Conference of the United States, " ... may be combined and their contents rearranged to permit economies in their use." The Advisory Committee Note to the Rule further states that " ... the use of the Official Forms has generally been held subject to a 'rule of substantial compliance'." Debtor maintains that the contents of the petition did not follow the standard 12-point type in form because the result would be a significantly longer Petition and Schedules. By using smaller print, Debtor's attorney contends that he was able to save considerable expense and argues that the smaller print was within the boundaries of Rule 9009, specifically Advisory Committee Note which " ... recognizes the propriety of combining and rearranging Official forms to take advantage of technological developments and resulting economies." Debtor further argues that Fed.R.Bankr.P. 9029 provides that the bankruptcy court may adopt local rules "which do not prohibit or limit the use of the Official Forms."

The Debtor asserts that the Chapter 7 petition remains fully legible, even with the modification of the form, by use of the smaller print. Debtor contends that the petition does substantially comply with the Official Forms. In the alternative, Debtor argues that even if it does not, a dismissal of the petition is too drastic a sanction and that pursuant to Local Bankruptcy Rule 8,

¹ It is noted that on February 14, 1992, Debtor filed an Amendment to his Schedule E, Summary of Schedules and Mailing Matrix utilizing a similar format.

the only penalty for non-conforming papers is that the Clerk may return such papers without filing. See also Fed.R.Bankr.P. 9005 which provides " ... when appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights."

The Court has examined Debtor's Petition and Schedules, and while the smaller type may be somewhat of an inconvenience to the reader, it does not approach illegibility. Further, while the Schedules use the symbol "X" to denote a negative response in many cases, the Court does not believe it is so confusing to creditors that it constitutes a non-response.

Viewed as a whole, this Court cannot conclude that the Petition and Schedules rise to the level of legal insufficiency so as to warrant a dismissal of Debtor's case. See In re Mack, 132 B.R. 484 (Bankr. M.D.Fla. 1991).

CONCLUSION

The UST's motion to dismiss Debtor's Chapter 7 petition is denied. The Court believes that Debtor's Petition and Schedules substantially comply with the applicable Official Forms in accordance with Fed.R.Bankr.P. 9009. Further, the Court, having reviewed the Petition and Schedules, does not agree that Debtor has failed to answer the questions propounded therein.

IT IS SO ORDERED.

Dated at Utica, New York
this day of June, 1992.

STEPHEN D. GERLING
U.S. Bankruptcy Judge