

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
Eastern Division

In Re:)	BK No.: 21-11755
)	
HRISTOS V. KAFKIS,)	Chapter: 7
)	Honorable David D. Cleary
)	
)	
Debtor(s))	

**ORDER GRANTING MOTION TO
DISMISS AND BAR DEBTOR FROM REFILING**

This matter coming to be heard upon the United States Trustee's Motion to Dismiss and Bar Debtor from Refiling (the "Motion"), the Court having jurisdiction over this core proceeding; notice of the Motion being due and proper under the circumstances; the Court having heard from the parties; and the Court being otherwise fully advised in the premises:

THE PARTIES HAVING STIPULATED TO THE FOLLOWING FACTS AND THE COURT THEREFORE FINDING that:

1. On October 14, 2021 (the "Petition Date"), the Debtor filed his voluntary petition for relief under Chapter 7 of the Bankruptcy Code. Michael K. Desmond is the appointed Chapter 7 Trustee in this case. Based on the Debtor's Schedules and Statement of Financial Affairs the U.S. Trustee had questions about the Debtor's filing.

2. The 341 meeting of creditors ("341 Meeting") was initially set for November 10, 2021. The Chapter 7 Trustee continued the 341 Meeting to December 1, December 15, 2021, January 12, March 16, April 13, May 11, June 22, July 13, July 27, and August 10, 2022. Although continued, the Debtor sat for an initial 341 Meeting.

3. Although he had been residing in Greece since January 2021, the Debtor filed his voluntary chapter 7 petition and accompanying schedules and statement of financial affairs ("SOFA") on the Petition Date. His Schedule A/B, reflects only \$950 in assets, including three businesses – each scheduled with no value. The Debtor scheduled \$347,939 in unsecured debt on his Schedule E/F. See Dkt. No. 1, Schedule E/F. That included over \$184,000 of unsecured debt incurred in the two years prior to the Petition Date, a large portion of which is credit card debt. Id.

4. Although he scheduled \$347,939 in unsecured debt, his Schedule I indicated that he was unemployed and had no income as of the Petition Date. See Dkt. No. 1, Schedule I. His historical income was similar – his SOFA indicated that he had no employment or business income for 2020 and 2021 year-to-date through the Petition Date and received \$9,000 in unemployment and government stimulus in 2020. [See Dkt No. 1]. Although the Debtor indicated he had substantially no income and significant unsecured debt, the Debtor's SOFA reflected he lost approximately \$30,000 gambling in each of the previous two years. Id.

5. At the 341 Meeting, the Debtor testified that he has been living in Greece with his spouse since January 2021. He further testified that he owns no property here and that both he and his spouse lived with his brother in Mt. Prospect, Illinois before they moved to Greece.

6. At the 341 Meeting, the Debtor also testified that the businesses he scheduled had been closed and that they held no assets prior to his bankruptcy filing.

7. On January 6, 2022, the Chapter 7 Trustee filed his Trustee's Motion to Dismiss Case for

Improper Venue Pursuant to 28 U.S.C. § 1408 (the “Motion to Dismiss”). [Dkt No. 15]. The Motion to Dismiss was scheduled for initial presentment on February 2, 2022, and a briefing schedule was set. The matter was continued to July 20, July 27, and August 10, 2022.

8. While continuing the 341 Meeting from time to time, the Chapter 7 Trustee learned of a potential asset of the estate. On June 15, 2022, the Chapter 7 Trustee filed Trustee's Motion to Approve Settlement (the “Settlement Motion”) in which he sought Court approval of a settlement (the “Settlement”) he reached with the Debtor to resolve the issue surrounding the aforementioned potential asset of the estate. [Dkt No. 48]. After further discussions between the Chapter 7 Trustee and the debtor, it became apparent the parties had not reached a final settlement in the Debtor's case, that would have otherwise resolved all issues pertaining to the Debtor's case, including issues the US Trustee had with the Debtor's case. The Settlement Motion was continued from time to time and ultimately withdrawn.

9. While the Chapter 7 Trustee's Settlement Motion was pending, On July 8, 2022 the U.S. Trustee filed a motion seeking authority to take a Rule 2004 examination of the Debtor. [Dkt No. 52].

10. On July 20, 2022, the Court entered an order permitting the U.S. Trustee to examine the Debtor. [See Dkt No. 57].

11. After receiving authority to conduct a Rule 2004 examination, but before issuing a subpoena, the U.S. Trustee engaged in discussions with Debtor's counsel regarding the production of documents that might obviate the need for the issuance of a subpoena. If the documents produced addressed the U.S. Trustee's concerns, there would be no need to issue a subpoena.

12. On July 26, 2022, the Debtor, through counsel, provided account statements for three American Express credit card accounts:

- a. Statements for the periods of January and February 2020 and from August 2020 through December 2020 for the account ending in -1008;
- b. Statements for the periods of January 2020 through March 2020 and May 2020 through December 2020 for the account ending in -1007;
- c. Statements for the period of July 2020 through January 2021 for the account ending in -1000.

13. None of the three accounts for which statements were provided were included on the Debtor's Schedule E/F.

14. On August 10, 2022, the Chapter 7 Trustee withdrew the Motion to Dismiss [Dkt. No. 64] and the Settlement Motion [Dkt No. 63] because the Debtor decided that he did not want to enter into the agreed upon Settlement because the United States Trustee did not agree that the Settlement would obviate whatever issues the United States Trustee had or may have had with the Debtor.

15. After the Trustee withdrew the Motion to Dismiss and the Settlement Motion, the U.S. Trustee began a more fulsome investigation into the Debtor and this case.

16. Because of the information contained in the Debtor's Petition, Schedules, and Statement of Financial Affairs and the additional questions (rather than answers) that arose from the credit card statements, on September 2, 2022, the U.S. Trustee served a subpoena (the “Subpoena”) on the Debtor requiring production of certain documents by September 30, 2022.

17. On September 23, 2022, without having responded to the Subpoena, the Debtor filed his Debtor's Motion to Dismiss His Chapter 7 Case (the “Debtor's Motion to Dismiss”). [Dkt no. 68]. On September 27, 2022, the U.S. Trustee filed his Notice of Objection to the Debtor's Motion to Dismiss. [Dkt No. 69].

18. On October 19, 2022, the U.S. Trustee filed a more fulsome response to the Debtor's Motion to Dismiss. [Dkt No. 74].

19. On the same date, October 19, 2022, the U.S. Trustee filed his Motion to Compel (the “Motion to Compel”), seeking to compel the Debtor to respond to the Rule 2004 subpoena. [Dkt No. 75]

20. At the initial presentment of the Motion to Compel, the Court ordered the U.S. Trustee to file a supplement addressing what he was looking to have the Debtor compelled to produce. [Dkt No. 79]. On November 1, 2022, the U.S. Trustee filed that supplement.

21. On November 7, 2022, the Debtor filed a response to the Motion to Compel. [Dkt No. 82]. And

on November 18, 2022, the U.S. Trustee filed his reply in support of his Motion to Compel. [Dkt No. 87].

22. On December 14, 2022, the Court denied the Debtor's Motion to Dismiss. [Dkt No. 93]. At that hearing, Debtor's counsel indicated that he needed to coordinate with the Debtor and was unsure whether he would be able to continue to represent the Debtor. Accordingly, any ruling on the Motion to Compel was continued for a week, to December 21, 2022.

23. On December 21, 2022, Debtor's counsel indicated that he would continue to represent the Debtor. Also on that date, the Court entered its Order Granting Motion to Compel Compliance with Subpoena [Dkt No. 96] and allowed the Debtor until January 26, 2023, to comply with the Subpoena. In its Order Granting Motion to Compel Compliance with Subpoena the Court required the Debtor to "file an affidavit of completeness" after making his production. See Order Granting Motion to Compel Compliance with Subpoena at p. 5. The Court also continued the Motion to Compel to February 1, 2023, for status on compliance. [Dkt No. 95].

24. The Debtor failed to comply with the Order Granting Motion to Compel Compliance with Subpoena by the January 26, 2023, deadline.

25. At the February 1, 2023, status hearing, Debtor's counsel indicated that the Debtor was either unable or unwilling to comply with the Subpoena and the Order Granting Motion to Compel Compliance with Subpoena. Based on those comments, the Court continued the Motion to Compel to February 22, 2023, for the parties to determine whether they could reach resolution on how to proceed.

26. Between the two February hearings, the U.S. Trustee and Debtor's counsel had a number of conversations with respect to how this case should proceed. Ultimately, the parties reach a form settlement which allowed for the dismissal of this case but provided that a bar would be entered which would prevent the Debtor from filing for bankruptcy relief for five years from the date of the entry of the bar order. Based on the Debtor's conduct in this case, the U.S. Trustee believes that the bar is warranted.

27. The Debtor does not object to the relief requested and has no objection to the Court barring him from filing another bankruptcy case for five years from the date of this order.

28. A bar preventing the Debtor from filing for bankruptcy for a period of five years is warranted by the facts and circumstances of this case, as recited above.

NOW THEREFORE IT IS ORDERED THAT:

A. This bankruptcy case is dismissed;

B. Hristos Kafkis, the debtor, is barred from filing another case under the Bankruptcy Code (11 U.S.C. § 101 et seq.) for a period of five years from the date of the entry of this order.

Enter:



Honorable David D. Cleary

United States Bankruptcy Judge

Dated: June 22, 2023

Prepared by:

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