

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA—LOS ANGELES DIVISION

In re: Daniel Rose Trust,
Debtor.

Case No.: 2:22-bk-10443-ER
Chapter: 11

**MEMORANDUM OF DECISION (1)
DENYING MOTION FOR AN
EXTENSION OF TIME TO FILE
SCHEDULES AND (2) DISMISSING
CASE**

[RELATES TO DOC. NOS. 13 AND 15]

[No hearing required pursuant to Federal Rule
of Civil Procedure 78(b) and Local Bankruptcy
Rules 9013-1(j)(3) and 9013-1(p)(1)]

Before the Court is the motion of the Daniel Rose Trust (the “Debtor”) for an extension of time to file schedules (the “Motion to Extend”).¹ The Motion to Extend is opposed by Lisa Abai (“Abai”). Pursuant to Civil Rule 78(b), LBR 9013-1(j)(3), and LBR 9013-1(p)(1),² the Court finds this matter to be suitable for disposition without oral argument. For the reasons set forth below, the Motion to Extend is **DENIED** and the above-captioned case is **DISMISSED**.

I. Background

On January 27, 2022, Daniel Rose (“Rose”), in his capacity as trustee of the Debtor, caused the Debtor to file a voluntary Chapter 11 petition. The Debtor is not represented by counsel.

¹ Doc. Nos. 13 and 15.

² Unless otherwise indicated, all “Civil Rule” references are to the Federal Rules of Civil Procedure, Rules 1–86; all “Bankruptcy Rule” references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all “Evidence Rule” references are to the Federal Rules of Evidence, Rules 101–1103; all “LBR” references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

Rose states that the Debtor is a “business trust” within the meaning of § 101(9)(A)(v). The Debtor asserts an interest in real property located at 50 Lakeside Drive, Buena Park, CA 90621 (the “Property”).

On November 18, 2021, in an action entitled *Alex David v. Daniel M. Rose, et al.* (Orange County Superior Court Case No. 30-2020-01167066-CU-OR-CJC) (the “State Court Action”), the Orange County Superior Court (the “State Court”) issued a Minute Order quieting title to the Property in Lisa Abai. On November 23, 2021—five days after the State Court’s issuance of the Minute Order but before the State Court had issued a judgment memorializing the Minute Order—Rose caused the Lakeside Trust to file a voluntary Chapter 11 petition (Case No. 2:21-bk-18863-BB). Like the Debtor in the instant case, the Lakeside Trust was not represented by counsel and asserted an interest in the Property. On January 6, 2022, upon the motion of the United States Trustee (the “UST”), the Court dismissed the Lakeside Trust’s case pursuant to § 1112(b). No representatives of the Debtor appeared at the hearing on the UST’s § 1112(b) motion.

On December 3, 2021, the Orange County District Attorney filed a felony complaint against Rose for criminal conduct in connection with the transaction transferring title of the Property to Abai.

Rose seeks an extension of the Debtor’s deadline to file schedules. He testifies that the case was filed on an emergency basis and that as a result, he was unable to locate counsel to represent the Debtor. Rose claims that he is in the process of hiring counsel to represent the Debtor.

Abai opposes the Motion to Extend. She asserts that the Debtor’s case was filed in bad faith to delay her attempts to quiet title to the Property.

II. Findings of Fact and Conclusions of Law

A. The Motion to Extend is Denied

Bankruptcy Rule 1007(c) requires the Debtor to file its schedules, statements, and lists (collectively, the “Case Commencement Documents”) within fourteen days of the filing of the petition. LBR 1017-2(a)(3) authorizes the Court to dismiss a case, without further notice or hearing, if the Debtor fails to file the Case Commencement Documents “within 14 days from the filing of the petition or an extension of such 14-day period granted by an order of the court.”

Bankruptcy Rule 1007(c) authorizes the Court to extend the Debtor’s deadline to file Case Commencement Documents “for cause shown.” The factors set forth in *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) govern the assessment of whether the Debtor has shown “cause” sufficient to warrant an extension of the Bankruptcy Rule 1007(c) deadline. *In re Montanaro*, 307 B.R. 194, 196 (Bankr. E.D. Cal. 2004). In evaluating whether “cause” exists, the Court must consider “the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the [debtor], and whether the [debtor] acted in good faith.” *Pioneer*, 507 U.S. at 395. The determination “is at bottom an equitable one” that must take “account of all relevant circumstances.” *Id.*

Here, the most salient of the *Pioneer* factors is the Debtor’s lack of good faith in filing the petition and in seeking an extension of time to file the Case Commencement Documents. This is the second time that an entity controlled by Rose has filed a bankruptcy petition for the purpose of delaying Abai’s ability to obtain a judgment from the State Court memorializing the Minute Order that quieted title to the Property. In both this case and the prior case of the Lakeside Trust, the debtors were not represented by counsel and so were not authorized to appear in federal

court. See *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993) (holding that a corporation, business trust, limited liability company, or other type of business entity "may appear in the federal courts only through licensed counsel").³ The Debtor has failed to offer a compelling explanation for the fact that the petition was filed without counsel. The dismissal of the Lakeside Trust made Rose aware that it was necessary for a business entity to be represented by counsel when seeking bankruptcy protection. The absence of a reasonable explanation for the Debtor's lack of counsel further exemplifies the Debtor's lack of good faith.

Having taken into account all relevant circumstances, the Court finds that the Motion to Extend was not filed in good faith. For that reason, the Motion to Extend is **DENIED**.

B. The Case is Dismissed

LBR 1017-2(a)(3) authorizes the Court to dismiss a case, without further notice or hearing, if the Debtor fails to file the Case Commencement Documents "within 14 days from the filing of the petition or an extension of such 14-day period granted by an order of the court." This case was filed more than fourteen days ago, and the Court has found that the Debtor is not entitled to an extension of time to file the Case Commencement Documents. Consequently, dismissal of the case is warranted.

Bankruptcy Rule 1017(a) provides that a case may not be dismissed "for want of prosecution or other cause ... before a hearing on notice as provided in Rule 2002." As explained in *Bayer v. Hill (In re Tennant)*, 318 B.R. 860, 869 (B.A.P. 9th Cir. 2004), Bankruptcy Rule 1017(a) does not prevent the Court from dismissing a case without conducting a hearing where the Debtor has failed to timely file schedules. The *Tennant* court found that under § 105, the court was authorized to implement a local rule comparable to LBR 1017-2(a)(3) for the purpose of enforcing Bankruptcy Rule 1007(c)'s deadline for filing Case Commencement Documents.

When the Debtor filed the petition, the Clerk of the Court issued a *Notice of Case Deficiency Under 11 U.S.C. § 521(a)(1) and Bankruptcy Rule 1007* that warned the Debtor of the possibility of dismissal if the Case Commencement Documents were not filed within fourteen days. A procedure that "notifies the debtor of the deficiencies of his petition and dismisses the case *sua sponte* without further notice and a hearing when the debtor fails to file the required forms within a deadline" is "perfectly appropriate." *Tennant*, 318 B.R. at 870–71. The case is dismissed pursuant to § 105 and LBR 1017-2(a)(3).

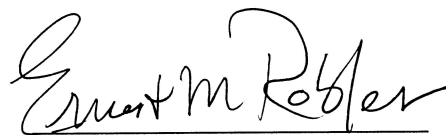
Notwithstanding the dismissal, the Court will retain jurisdiction to hear (1) the motion for relief from the automatic stay filed by Abai that is set for hearing on February 28, 2022 and (2) the two motions to dismiss under § 1112(b) filed by the UST and Abai. The § 1112(b) motions are not mooted by the dismissal because the UST seeks the imposition of a 180-day bar against re-filing.

The Court will enter an order consistent with this Memorandum of Decision.

³ For purposes of the Motion to Extend only, the Court assumes that the Debtor is in fact a business trust, as alleged by Rose. The Court notes that in connection with a pending motion to dismiss the case under § 1112(b), Abai asserts that the Debtor does not qualify as a business trust.

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Date: February 22, 2022

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is written in a cursive style with a horizontal line underneath the name.

Ernest M. Robles
United States Bankruptcy Judge