



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

In re: Vicky Song,
Debtor.

Case No.: 2:22-bk-16781-ER
Chapter: 7

**MEMORANDUM OF DECISION: (1)
DISMISSING CASE AND (2) DENYING
MOTION FOR RELIEF FROM THE
AUTOMATIC STAY AS MOOT**

[RELATES TO DOC. NO. 14]

[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 for relief from the automatic stay [Doc. No. 14] (the “RFS Motion”) filed by Trea Lachowicz, Administrator of the Estate of Minh Tran (the “Movant”). The RFS Motion is opposed by the Debtor. Because the Debtor has failed to timely file her schedules and has failed to comply with the Bankruptcy Code’s requirements with respect to credit counseling, the Court will dismiss the case. Dismissal of the case terminates the automatic stay by operation of law, rendering moot most of the relief sought in the RFS Motion. The prospective relief sought in the RFS Motion that is not mooted by the dismissal—that a designated law enforcement officer be authorized to evict the Debtor from the Property without further notice, and that the order granting the RFS Motion remain binding and effective in any future bankruptcy case commenced by the Debtor—is **DENIED**.¹

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¹ Pursuant to Civil Rule 78(b), LBR 9013-1(j)(3), and LBR 9013-1(p)(1), the Court finds these matters to be suitable for disposition without oral argument.

I. Procedural and Factual Background

Vicky Song (the “Debtor”) filed a face-sheet voluntary Chapter 7 petition on December 13, 2022 (the “Petition Date”). The Court granted the Debtor two separate extensions of time to file her schedules, ultimately extending the deadline to January 25, 2023. *See* Doc. Nos. 10 and 18. As of the date of issuance of this Memorandum of Decision, the schedules have not been filed.

The Debtor did not receive the credit counseling required by § 109(h) prior to filing the petition. The Debtor states that a pending unlawful detainer trial prevented her from receiving credit counseling prior to the Petition Date. Although more than 45 days have elapsed since the Petition Date, the Debtor still has not filed a certificate establishing that she has received credit counseling.

Movant seeks relief from the automatic stay, pursuant to § 362(d)(1) and (d)(2), to enable Movant to pursue an unlawful detainer action against the Debtor. The Debtor currently resides at 18718 Rhine Place, Cerritos, CA 90703 (the “Property”). In opposition to the RFS Motion, the Debtor asserts that she holds a 50% ownership interest in the Property. Prior to the Petition Date, the Debtor filed a quiet title action seeking to establish her alleged ownership interest in the Property.

II. Findings of Fact and Conclusions of Law

A. The Debtor’s Failure to Timely File Schedules and Failure to Comply with the Bankruptcy Code’s Credit Counseling Requirements Warrants Dismissal

Bankruptcy Rule 1007(c)² requires debtors to file 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 a 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 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 a 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 an *Order to Comply with Bankruptcy Rule 1007 and Notice of Intent to Dismiss Case* [Doc. No. 1] 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.

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.

Here, the Debtor has been granted *two* separate extensions of the deadline to file her Case Commencement Documents. Notwithstanding these two extensions, the Case Commencement Documents still have not been filed. The Debtor's failure to timely file the Case Commencement Documents warrants dismissal.

Dismissal is warranted for an additional reason. Pursuant to § 109(h), an individual may not be a debtor under the Bankruptcy Code unless such individual has, during the 180-day period preceding the date of filing of the bankruptcy petition, received the credit counseling briefing described in § 109(h), unless the individual submits a certification describing exigent circumstances meriting a temporary waiver of the credit counseling requirement that is satisfactory to the Court. The temporary waiver may not remain in effect for longer than 45 days subsequent to the filing of the petition. Here, the Debtor did not receive credit counseling prior to the filing of the petition.

According to the Debtor, the pending unlawful detainer trial constituted an exigent circumstance meriting a temporary waiver of the credit counseling requirement. The Court seriously doubts that an unlawful detainer trial constitutes the type of "exigent circumstance" warranting the issuance of a temporary waiver. However, the Court need not decide this issue. More than 45 days have elapsed subsequent to the filing of the petition, meaning that the Debtor is no longer eligible for the temporary waiver. The Debtor has not filed a certification indicating that she received the credit counseling during the period in which she may have been eligible to receive the temporary waiver. As a result, it is now impossible for the Debtor to comply with § 109(h)'s credit counseling requirements. That means that the Debtor is not eligible to be a debtor under the Bankruptcy Code and that dismissal of the case is mandatory.

B. The Prospective Relief Requested in the RFS Motion That is Not Mooted by the Dismissal is Denied

The dismissal of the case terminates the automatic stay by operation of law. As a result, the majority of the relief sought in the RFS Motion is moot.

Certain of the prospective relief sought in the RFS Motion is not mooted by the dismissal. Specifically, Movant seeks (1) an order authorizing a designated law enforcement officer to evict the Debtor from the Property regardless of any future bankruptcy filing concerning the Property for a period of 180 days without further notice and requests that (2) the order granting the RFS Motion be binding and effective in any future bankruptcy case commenced by the Debtor for a period of 180 days.

Movant has not shown sufficient cause for the granting of this prospective relief. The prospective relief requested is not warranted given that (1) Movant has not yet obtained an unlawful detainer judgment against the Debtor and that (2) there is a dispute regarding the Debtor's ownership interest in the Property.

III. Conclusion

Based upon the foregoing, the case is **DISMISSED**. The prospective relief sought in the RFS Motion that is not mooted by the dismissal is **DENIED**. The hearing on the RFS Motion, scheduled for February 6, 2023 at 10:00 a.m., is **VACATED**. The Court will enter an order consistent with this Memorandum of Decision.

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Date: February 2, 2023



Ernest M. Robles
United States Bankruptcy Judge