

FILED & JUDGMENT ENTERED
Steven T. Salata

August 6 2018

Clerk, U.S. Bankruptcy Court
Western District of North Carolina



J. Craig Whitley
J. Craig Whitley
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

In re:)
)
Douglas Salatha Miller and) Chapter 13
Myra Salmon Miller,) Case No. 15-40251
)
Debtors.)
_____)

**ORDER DENYING MOTION TO HAVE TRUSTEE AUDITED AND
DIRECTING CLERK TO REFUSE FUTURE FILINGS FROM
CHRIS S. MILLER**

THIS MATTER is before the Court on the Motion to Have Trustee Audited filed by Chris S. Miller (“Miller”) on June 18, 2018. On July 27, 2018, Miller sent correspondence to the BNC, which was forwarded to this Court. The Court will construe the correspondence from Miller as a supplement to the Motion to Have Trustee Audited (collectively, the “Motion”).

On July 1, 2015, Miller, a putative creditor of Douglas and Myra Miller (the “Debtors”), became involved in this bankruptcy proceeding when he filed his Objection to Confirmation of Plan (the “First Objection”). The Debtors’ Plan (docket no. 6) proposed avoiding Miller’s judgment lien. Miller’s principal objection to avoidance was, and continues to be, that the Debtors waived their right to claim exemptions under N.C.G.S. § 1C-1601 when they failed to claim them in previous state court litigation with Miller. Thus, Miller posits that the Debtors are unable to avoid his lien because they have waived any right to exemptions.

On the same date that the First Objection was filed, the Court issued its Notice of Defective

Filing (the “First Notice”). The First Notice stated that the First Objection was defective because no Notice of Hearing was filed. Miller, who is apparently incarcerated, never filed a Notice of Hearing to correct his error. However, out of an abundance of caution, the Chapter 13 Trustee filed a Notice of Hearing on Miller’s behalf. Furthermore, the Chapter 13 Trustee informed Miller (through correspondence dated July 31, 2015) that he should have filed the Notice of Hearing and suggested that Miller acquire an attorney to represent him. Importantly, the correspondence sent from the Chapter 13 Trustee to Miller included the hearing date/time and identified the correct address for the Court and future hearings.

On August 17, 2015, Miller filed another Objection to Confirmation of Plan (the “Second Objection”). Again, Miller argued that the Debtors had waived their right to claim exemptions before bankruptcy. The Second Objection also erroneously suggested that the Debtors failed to notify Miller of the date, time, and location of the hearing on his First Objection. Again, the Court issued a Notice of Defective Filing (the “Second Notice”) because Miller failed to file a Notice of Hearing.

On August 28, 2015, the Court held a hearing at which it overruled Miller’s First Objection and Second Objection and confirmed the Debtors’ Plan (the “Confirmation Hearing”). Miller was of course not present at the Confirmation Hearing and he had not filed a proof of claim in the case. At the Confirmation Hearing, the Court raised questions regarding Miller’s claims, considered his filings, and found them to be unpersuasive. Failure to claim exemptions in a state court case prior to bankruptcy does not preclude a debtor from claiming exemptions in his/her bankruptcy. *See* 11 U.S.C. § 522(f). Consequently, the Court avoided Miller’s lien as it impaired the Debtors’ exemptions.

On August 31, 2015, the Court again received correspondence from Miller in response to the Second Notice (that had yet to be cured by Miller). In this correspondence, Miller confused

the Chapter 13 Trustee's act of filing a Notice of Hearing on Miller's behalf with respect to the First Notice as sufficient to cure the Second Notice. Miller's belief was incorrect, but irrelevant considering that the Court had already overruled the First Objection at the Confirmation Hearing.

On September 21, 2015, the Court received further correspondence from Miller. This time, Miller, having become aware that the Court overruled his objections, argued that his Constitutional rights were violated because the Court did not "issue a writ to have [him] transported to the hearing." Miller argued that the Court would have ruled in his favor had he been present and had the Court considered documents regarding the state court litigation. Miller again is confused and incorrect. As noted above, the failure to claim the exemptions in state court does not preclude the Debtors from claiming them in Bankruptcy Courts. *Id.* Nor is it the obligation of a bankruptcy court to secure a creditor's (who is a prisoner) presence at a hearing. *See In re Palm Beach Partners, Ltd.*, 251 B.R. 906 (Bankr. S.D. Fla. 2000). Thus, neither Miller's presence nor the state court documents would have changed the outcome of the confirmation hearing.

On September 22, 2015, Miller filed yet another Objection to the Order Confirming Plan (the "Third Objection"). In the Third Objection, Miller accused Beth Carter, attorney for the Debtors, and the Clerk of the Bankruptcy Court of preventing the issuance of a writ to have Miller transported from prison so he could attend the Confirmation Hearing. Again, Miller argued that his Constitutional rights were violated. Out of an abundance of caution, the court treated Miller's Third Objection as a motion to reconsider the Confirmation Order. On September 24, 2015, the Court entered its Order (docket no. 33) denying Miller's requests and explaining in detail why such requests were without merit.

On October 20, 2015, the Chapter 13 Trustee filed an objection to Miller's claim (docket no. 35) because Miller had not filed a proof of a perfected lien and the Chapter 13 Trustee recommended that the claim should be treated as a general unsecured claim. One day later, Miller

filed a response, in which he asked to be paid \$15,900 with “\$6,000 paid up front then the rest to be paid in monthly payments of \$268.00 for 44 months then one payment of \$208....” Nine days later, Miller filed an additional response in which he argued that the Chapter 13 Trustee had failed to read Miller’s proof of claim and thus was not aware that a claim of “\$15,900 would satisfy [Miller] and end lawsuit and/or fight to free this case to allow payments to be issued to ALL creditors in this case.” The Court sustained the Chapter 13 Trustee’s objection to Miller’s claim by Order entered December 23, 2015. That Order specifically found that no equity existed in any property claimed as collateral by Miller upon which a lien could be attached.

On November 2, 2015, Miller filed a Notice of Appeal to District Court, belatedly appealing the Court’s August 28, 2015 bench ruling denying his objections. Again, Miller argued that the Debtors could not claim their exemptions because they had waived their right to do so as a result of the state court litigation. On December 15, 2015, the District Court entered its Order directing Miller to show cause for his failure to comply with the applicable rules and to correct various deficiencies identified by that Court, including paying the required filing fee. On January 20, 2018, the District Court entered its Order Dismissing Appeal and Dismissing in forma pauperis as moot (docket no. 53). On February 10, 2016, Miller appealed the District Court’s Order to the Fourth Circuit. On May 31, 2016, the Fourth Circuit issued its Unpublished Opinion affirming the District Court’s Order.

Since that time, Miller has continued to bombard the Bankruptcy Clerk of Court with various forms of correspondence with the intention of regaining his lien on the Debtors’ property. In total, he has filed **NINETEEN** different documents, be they correspondence, motions, objections, or notices. None have merit and the majority of them are procedurally defective.

Frustrated with the inability to get what he wants, Miller has most recently filed the Motion. In the Motion, Miller argues that the Chapter 13 Trustee “should be audited pursuant to Bankruptcy

procedure 586(f) of Title 28 and Section 605(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.” Miller goes on to list numerous reasons as to why the Chapter 13 Trustee should be audited, none of which the Court finds persuasive. On June 18, 2018, the same day that Miller filed the Motion, the Court issued its Notice of Defective Filing (the “Third Notice”). Similar to many of the other notices, the Third Notice informed Miller that the Motion was defective because it did not include a notice of hearing and was not served on the Chapter 13 Trustee as required by Local Rule 9013.

On June 29, 2018, Miller filed a document titled Notice of Hearing. On July 2, 2018, the Court issued its Notice of Defective filing (the “Fourth Notice”). The Fourth Notice informed Miller that the Notice of Hearing was defective because it did not include a hearing date, time, or location. On July 27, 2018, Miller filed the correspondence as a supplement to the Motion, in which he suggests that he is not aware of the Shelby Court location (which he is per the July 31, 2015 correspondence sent from the Chapter 13 Trustee to Miller) and argues that the Clerk of Court should have filed a Notice of Hearing on his behalf and set a court date. Out of an abundance of caution, the Court will address Mr. Miller’s most recent Motion below.

To date, the issues stated in the First Notice and Second Notice have not been addressed. Thus, the Motion is procedurally defective. Furthermore, the Motion is substantively flawed and mischaracterizes the Bankruptcy Code. Miller has suggested nothing that would lead this Court to believe that the Chapter 13 Trustee needs to be audited or that Miller has standing to ask for such relief. Furthermore, there is no point to audit the Chapter 13 Trustee because the Federal Government already does so on its own accord. In short, the Motion is but another attempt to argue against the avoidance of Miller’s judgment lien. Accordingly, the Motion is hereby **DENIED**.

Given the previous motions and correspondence, all on a seminal matter which has been

decided and is now final, and given the cost to other parties of responding, the Clerk is **DIRECTED** to no longer accept pleadings from Miller in this case other than a Notice of Appeal of this Order. If Miller needs to address anything other than the lien/exemption issue, he should write the Court, include a copy of the purported filing, and explain why he needs to file it. If a judge of this Court agrees, an order will be entered which will allow the pleading to be filed.

SO ORDERED.

This Order has been signed electronically. The Judge's signature and Court's seal appear at the top of the Order.

United States Bankruptcy Court