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WRITTEN DECISION - NOT FOR PUBLICATION

ENTERED DEC 05 2006
FILED
DEC - 5 2006
CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re ENRIQUE BARRAGAN and FELICITAS BARRAGAN, Debtors.	Case No. 05-12631-B7 ORDER ON DEBTORS' MOTION TO VACATE

The facts and issues in this matter were set out in the Court's Order entered September 19, 2006, and will not be repeated here.

Counsel for debtors has since filed his Supplemental Brief, elaborating on some facts, and making his argument for "excusable neglect" under Pioneer and Rule 60.

The Court remains troubled by the circumstances in this case, and the seemingly cavalier attitude of counsel. In the last Order, the Court addressed its concern that counsel seemed to try to lay the fault at everyone else's door. It is noteworthy that in none of his three San Diego cases filed at the

same time did he attempt to contact the trustees before the first meetings of creditors to explain his apparent inability to attend. In the current pleading, counsel curiously acknowledges that while he had asked for the morning off of a continued trial to attend a § 341 meeting in Los Angeles, he did not ask for the afternoon for one meeting in San Diego, which he knew was on his schedule because it was set more than a week before the Los Angeles hearing. Then, in the current pleading, he lays out a lengthy paragraph of the traffic problems traveling from Los Angeles to San Diego, which presumably would be true any work day of the week. One supposes if that were a problem, he should not file any cases in San Diego. The one meeting of creditors in the afternoon was set for 4:15 p.m., and his Los Angeles morning hearing was at 9 a.m. It is difficult to imagine he could not have made it to San Diego in time, despite the traffic, had he advised the state court he had hearings scheduled both in the morning and the afternoon, instead of just the morning. Curiously, counsel stated:

> However, Mr. Turaski did not want to impose further on Judge Klein, since he had already given permission for Mr. Turaski to skip trial in the morning.

As noted, that is a puzzling statement since the San Diego afternoon § 341 meeting was set before the Los Angeles morning session, so counsel knew about all four when talking to the judge about the trial schedule, and it was not a matter of asking for the afternoon after having been granted the morning.

Then, counsel states: "All three of Mr. Turaski's bankruptcy clients in San Diego did not consent to having an 'appearance attorney' attend their November 22nd 341a hearings in San Diego." The record is devoid of any evidence his clients were ever offered that option, however.

So what it all boils down to is that the debtor's case is unadministered, the one possible non-exempt asset was lost to the estate because neither the debtor nor counsel appeared or otherwise provided the trustee with the information necessary to determine whether to resist the relief from stay motion, and counsel wants the Court to absolve him of the consequences of a series of decisions counsel made. If that were all there is to the motion, it would be denied. The Court's concern, however, is what is in the best interest of both the debtor and creditors, consistent with the applicable legal standards.

Under all the circumstances of this case, the Court finds that some, but not all of the elements of Pioneer have been met, and that the practical implications of Pioneer are better served by granting the motion to vacate the order of dismissal.

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Accordingly, the order of dismissal shall be, and hereby is vacated and set aside. Notice of that fact shall be given to all creditors, together with notice of a new date for the first meeting of creditors pursuant to 11 U.S.C. § 341(a). Failure of either of the debtors or their counsel to appear and participate at the meeting shall result in dismissal and a prohibition of filing any new bankruptcy petition under Chapter 7 for a period of 180 days from the date of entry of that order of dismissal.

IT IS SO ORDERED.

DATED: DEC - 5 2006

PETER W. BOWIE, Chief Judge
United States Bankruptcy Court