



IT IS ORDERED as set forth below:

Date: January 09, 2009

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN THE MATTER OF:	:	CASE NUMBER: A08-86649-PWB
	:	
JASON LARY,	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Debtor.	:	BANKRUPTCY CODE

ORDER

On December 30, 2008, the Debtor, Jason Lary, filed a chapter 7 bankruptcy petition. The first page of the petition indicates that the "Type of Debtor" is "Individual," and Mr. Lary has signed the petition in his individual capacity. Six days later, an amendment was filed stating "Comes Now, Jason Lary Presents, Inc. who amends the Voluntary Petition to reflect a Chapter 7 business bankruptcy." Attached to the document is a new voluntary petition in the name of "Jason Lary Presents, Inc." This new petition reflects that the "Type of Debtor" is a "Corporation" and the document has been signed by Mr. Lary in his capacity as "Owner."

Although Rule 1009 of the Federal Rules of Bankruptcy Procedure permits liberal

amendment to pleadings, a bankruptcy case cannot be amended to change the identity of a debtor. *In re Clinton*, 166 B.R. 195, 198 (Bankr. N.D. Ga. 1994) (“As to petitions it seems likely that the drafters of this rule intended to facilitate corrections of clerical errors and to permit amendments of allegations of jurisdictional facts supporting voluntary or involuntary petitions. No one would seriously argue that the rule would permit an amendment to substitute a new and different debtor.”). Courts also have ruled consistently that a debtor may not amend a petition to add a joint debtor. *In re Clinton*, 166 B.R. 195 (Bankr. N.D. Ga. 1994); *In re Sobin*, 99 B.R. 483 (Bankr. M.D. Fla. 1989); *In re Woodell*, 96 B.R. 614 (Bankr. E.D. Va. 1988). Nevertheless, in this case, such an attempt would be particularly meritless since only spouses may be joint debtors. 11 U.S.C. § 302(a).

This case was commenced by Jason Lary, an individual, not Jason Lary Presents, Inc. To the extent Mr. Lary has personal obligations or guaranties arising from the operation of Jason Lary Presents, Inc., such debts, of course, may be included in his bankruptcy case. Indeed, as a precautionary matter he may list all creditors of the corporation in his individual case so that the bankruptcy case deals with any claims a corporate creditor may have against him. But there is no provision in the Bankruptcy Code or the Bankruptcy Rules which would permit the substitution of a different entity as a debtor in the case after the entry of the order for relief. Accordingly, it is

ORDERED that the Debtor’s amendment is denied to the extent he seeks to substitute Jason Lary Presents, Inc., as a debtor in this case.

End of Order

Distribution List

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