



**IT IS ORDERED as set forth below:**

**Date: July 24, 2015**

*Mary Grace Diehl*

Mary Grace Diehl  
U.S. Bankruptcy Court Judge

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

In re:	:	CASE NUMBER:
	:	
<b>JOHNNY BRETT GREGORY,</b>	:	<b>15-401-MGD</b>
	:	
Petitioner.	:	MISCELLANEOUS PROCEEDING
	:	

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**MEMORANDUM OPINION**

A hearing was held on July 22, 2015 on the Court's May 20, 2015 Show Cause Order to Johnny Brett Gregory as to why the Court should not dismiss the Involuntary Petition and supporting documents filed as Miscellaneous Proceeding 15-401-MGD. (Doc. 1). Mr. Gregory appeared telephonically. After presentation by Mr. Gregory, the Court issued an oral ruling constituting its findings of facts and conclusions of law under Federal Rule of Bankruptcy Procedure 7052. This Opinion memorializes the Court's ruling.

The purported Involuntary Petition filed by Mr. Gregory names at least eighteen individuals including a Judge of the Superior Court of Whitfield County and various government employees related to the state judicial and criminal justice systems of Whitfield County, Georgia.

The Rome Division of the Bankruptcy Court for the Northern District of Georgia received Mr. Gregory's documents on May 4, 2015 and returned them to him because they were not accompanied by the required filing fee for an involuntary petition. BLR 1006-1, N.D. Ga ("Pleadings received by the Bankruptcy Clerk for filing with the full filing fee not attached shall be marked "received," but they shall not be filed."). Mr. Gregory again sought to file the documents without tendering the fee and the Court directed the Bankruptcy Clerk to create a miscellaneous proceeding to allow the Court to adjudicate the issues raised by Mr. Gregory's filings. Having reviewed the numerous filings made by Mr. Gregory,<sup>1</sup> the Court will dismiss the Involuntary Petition and related documents. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. The determination of whether an involuntary case should be dismissed constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

#### **I. Filing Fee**

The Court noted in its May 20, 2015 Show Cause Order that Mr. Gregory did not pay the Chapter 11 filing fee of \$1,717 in connection with filing his case. (Doc. 3). That Order notified Mr. Gregory that if he did not pay the filing fee in full by the July 22, 2015 hearing date, his "case may be dismissed without further hearing or notice."

The procedures for charging and collecting bankruptcy filing fees are set forth in 28 U.S.C. § 1930. The fee for filing a Chapter 11 petition is \$1,717 which includes (i) the statutory fee of \$1,167 set forth in Section 1930(a)(3) and (ii) the administrative fee of \$550 set forth in the Judicial Conference Schedule of Fees, Bankruptcy Court Miscellaneous Fee Schedule paragraph (8).

Federal Rule of Bankruptcy Procedure 1006(a) requires that "[e]very petition shall be

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<sup>1</sup> Thirty-four docket entries have been made in this case, all but four of which originated with Mr. Gregory.

accompanied by the filing fee except as provided in subsections (b) and (c) of this rule.” Under Federal Rule of Bankruptcy Procedure 1017(b), a case may be dismissed for failure to pay the filing fee. *See also* 11 U.S.C. § 1112(b)(4)(K) (cause for dismissal includes “failure to pay any fees or charges required under chapter 123 of title 28.”).

Section 1930 also contains procedures for waiver of filing fees or payment of such fees in installments, but only in voluntary cases. Federal Rule of Bankruptcy Procedure 1006(b) authorizes payment in installments only for “[a] voluntary petition by an individual.” Subsection 1006(c) authorizes waiver of the filing fee only for “[a] voluntary chapter 7 petition filed by an individual.”

On June 15, 2015, Mr. Gregory filed a purported “Filing Fee and Indemnification Bond” which was to “be levied against assets in the above state court action” apparently in satisfaction of the filing fee. (Doc. 20). For filings by mail, the Clerk’s Office accepts money orders or cashier’s checks. Mr. Gregory’s “indemnification bond” does not constitute either of these forms of payment, nor does it appear to constitute payment at all, but rather a direction for another individual to pay Mr. Gregory’s filing fee. Mr. Gregory, as petitioner, cannot delegate his responsibility to pay filing fees to a non-party. In the “Filing Fee and Indemnification Bond,” Mr. Gregory also asserts that a trustee or debtor-in-possession filing a complaint need only pay such fee from the estate. (Doc. 20 (citing Bankruptcy Court Miscellaneous Fee Schedule ¶(6)). Mr. Gregory is neither a debtor nor a trustee. Further, the \$350 fee for filing an adversary complaint within an already commenced title 11 case is distinct from the \$1,717 fee for filing a petition to commence a title 11 case. The petition filing fee is the same regardless of who files the petition. 11 U.S.C. § 1930(a) (“The parties commencing a case under title 11 shall pay to the clerk of the

district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees . . . .”)

On July 9, 2015, Mr. Gregory filed Application to Proceed in District Court without Prepaying Fees or Costs. The authority for a prisoner to file civil actions without prepaying fees is 28 U.S.C. § 1915, Proceedings in forma pauperis (Doc.30). However, the Supreme Court in *United States v. Kras*, 409 U.S. 434, 440 (1973) held that Section 1915 does not apply to bankruptcy cases. Instead, the sole basis for fee waivers in bankruptcy cases is Section 1930(f), which for the reasons stated above does not apply to involuntary petitions.

As Mr. Gregory has not paid the \$1,717 fee, his case is subject to dismissal under Federal Rule of Bankruptcy Procedure 1017(b).

## **II. Abuse of Process**

Perhaps more significantly, the documents filed in this case taken as a whole do not constitute a valid petition under 11 U.S.C. § 303. They do not contain a short and plain statement of the facts on which the involuntary petition is based and, taken as a whole, clearly indicate an abuse of the bankruptcy process and an attempt to utilize the federal bankruptcy court for improper purposes. Under those circumstances, Section 105 of the Bankruptcy Code authorizes the bankruptcy court to issue “any order, process, or judgment that is necessary . . . to prevent an abuse of process.” 11 U.S.C. § 105(a); see also *In re Fachini*, 470 B.R. 638, 643 (Bankr. M.D. Ga. 2012) (considering the requirements of Section 303 *sua sponte* where “petition is invalid on its face.”).

The genesis of Mr. Gregory’s grievances appears to stem from the failure of county officials to return personal property to him which was seized in 2005. Those grievances have been the subject of several state and federal actions. Involuntary bankruptcy is a collective remedy where an alleged debtor is generally not paying its undisputed, liquidated debts as they come due.

11 U.S.C. § 303(h)(1). It is not designed as a remedy for a two-party dispute in which the existence of the underlying obligation has not been finally determined. The Bankruptcy Code recognizes the potentially detrimental impact which an improperly filed involuntary petition can cause and therefore sets very specific and limited requirements for its use, including the parties who may properly be counted as petitioning creditors, the nature and amount of the debts involved, and the imposition of sanctions on parties who use the involuntary process for improper purposes. 11 U.S.C. § 303(b), (i).

Here, Mr. Gregory's claims are not undisputed — the attached papers to the many filings demonstrate at a minimum a continued dispute as to the liability of any of the named alleged debtors, particularly in an individual capacity. (Ga. Super. Ct. Ord. of Jul. 28, 2011 in Case No. 10-CI-272-B, Involuntary Petition Ex. 7, Doc. 1 at 26 (“[Mr. Gregory] did not and does not have any judgment in the amount of \$53,060,000.00 or any other amount against Defendants . . . or any other individual or entity named as a Debtor Party.”)).

It is also noteworthy and relevant to the Court's determination that the matter should be dismissed that Mr. Gregory has sought relief against eighteen different parties. An involuntary bankruptcy cannot be commenced against more than a single party — joint involuntary proceedings are not recognized. This is clear not only from the plain language of the statute but also from prior case law. *In re Benny*, 842 F.2d 1147 (9th Cir. 1988), cert. denied, 488 U.S. 1014 (1989); *King v. Fidelity Nat'l Bank of Baton Rouge*, 712 F.2d 188 (5th Cir. 1983), cert. denied, 465 U.S. 1029 (1984); *In re S. Florida Title, Inc.*, 92 B.R. 548, 549 (Bankr. S.D. Fla. 1988). This is further evidence of the abuse of process present here.

### **III. Automatic Stay**

The Court must also address issues raised by the potential application of 11 U.S.C.

§ 362 — the automatic stay. The filing of an involuntary petition under Section 303 invokes the automatic stay provisions of the Bankruptcy Code in favor of the involuntary debtor. Because the court has determined that the involuntary petition here is an abuse, the court will strike the involuntary petition as *void ab initio* and to the extent necessary, the court will annul the automatic stay pursuant to 362(d). It should also be noted that no stay is in effect or has ever been in effect as to Mr. Gregory. A petitioning creditor, even in the case of a valid involuntary petition, does not receive an automatic stay — several of Mr. Gregory's filings seem to misapprehend this fact.

The presence of an involuntary bankruptcy on the public record has the likelihood of adverse financial consequences to the named alleged debtors. As such, the Court will seal the record in this case. Mr. Gregory may seek appropriate appellate review of the Court's ruling in a timely manner. The Clerk is directed to close the file in this miscellaneous proceeding except as required to insure that Mr. Gregory can seek appellate review. Any filings not related to the appellate process by Mr. Gregory will not be docketed but will be provided to chambers for review and determination of whether the papers should be filed under seal.

An Order in accordance with this Opinion will be entered on this date.

**END OF DOCUMENT**