

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

STEPHEN R. RIFFLE and
LORA P. RIFFLE,

Debtors.

CASE NO. 07-22372

DECISION & ORDER

BACKGROUND

On September 21, 2007, Stephen R. Riffle and Lora P. Riffle (the "Debtors") filed a petition initiating a Chapter 13 case. On the Schedules and Statements required to be filed by Section 521 and Rule 1007, the Debtors indicated that Community Bank, N.A. ("Community Bank") held a fully secured first mortgage on their residence.

The Debtors' Schedule I of Current Income indicated that the Debtor, Stephen Riffle, had been employed for three years at YB Sales & Distribution ("YB Sales") and the Debtor, Lora Riffle, was apparently unemployed because the Schedule showed she had no income.

Along with their petition, the Debtors filed a September 14, 2007 Earning Statement from YB Sales for the Debtor, Stephen Riffle (the "Pay Stub"), which: (1) covered the pay period ending September 8, 2007; (2) set forth his earnings for that pay period as well as year-to-date earnings for various income categories, including commissions, regular salary and an expense reimbursement;

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and (3) set forth his payroll deductions for that pay period as well as year-to-date deductions for various categories, including state and federal tax withholding, health and dental insurance and medical flex fund.

The Debtors also filed a Sales Earning Report from YB Sales for the Debtor, Stephen Riffle (the "Earnings Report"), which set forth his earned commissions, salary and gross pay for sixteen pay periods running from January 5, 2007 through August 31, 2007, along with a year-to-date gross pay computation for the end of each pay period.

On November 9, 2007, Community Bank filed a Motion to Dismiss the Debtors' Chapter 13 case (the "Motion to Dismiss"), which asserted that: (1) the Debtor, Stephen Riffle, was required by Section 521(a)(1)(B)(iv)¹ to file with the Bankruptcy Court within forty-five days of September 21, 2007, all payment advices received by him within the sixty days preceding September 21, 2007; (2)

¹ Section 521(a)(1)(B)(iv) provides that:

(a) The debtor shall ---

(1) file ---

(B) unless the court orders otherwise,

(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor[.]

11 U.S.C. § 521 (2008).

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during that sixty-day period, the Debtor, Stephen Riffle, received payment advices from YB Sales on August 3, August 17, August 31 and September 14, 2007, but he only filed the September 14, 2007 payment advice; (3) as a result of his noncompliance with Section 521(a)(1)(B)(iv), the case of the Debtor, Stephen Riffle, was automatically dismissed on November 6, 2007, pursuant to Section 521(i)(1);² (4) pursuant to the provisions of Section 521(i)(2),³ Community Bank was requesting and was entitled to an order confirming the automatic dismissal; and (5) the case of the Debtor, Lora Riffle, should be dismissed because with the automatic dismissal of the Chapter 13 case of the Debtor, Stephen Riffle, she had no regular income and thus was not eligible for Chapter 13.

At the November 21, 2007 return date of the Motion to Dismiss, the Debtors interposed oral opposition to the Motion and later, on

² Section 521(i)(1) provides that:

(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

11 U.S.C. § 521 (2008).

³ Section 521(i)(2) provides that:

(i)(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

11 U.S.C. § 521 (2008).

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December 20, 2007, they filed a Memorandum of Law which asserted that: (1) the timely filed Pay Stub and Earnings Report provided the Chapter 13 Trustee (the "Trustee"), and all other parties in interest, with full and complete information as to the amounts YB Sales paid to the Debtor, Stephen Riffle, for the sixty days prior to the filing of the petition; and (2) the filed Pay Stub and Earnings Report satisfied the "or other evidence of payment" option set forth in Section 521(a)(1)(B)(iv), because: (a) the Pay Stub set forth all of the year-to-date deductions from the pay of the Debtor, Stephen Riffle, by specific categories; and (b) the Earnings Report set forth in detail all of the earnings of the Debtor, Stephen Riffle, for the sixty-day period before the filing of the petition and from the beginning of 2007, which specifically included salary, commissions and expense reimbursements.

On December 10, 2007, Community Bank filed a Memorandum of Law in Support of its Motion to Dismiss, which asserted that: (1) by failing to file each and every one of the payment advices the Debtor, Stephen Riffle, received in the sixty days prior to the filing of the petition, he failed to comply with the requirement of Section 521(a)(1)(B)(iv); (2) the Earnings Report showed that, because of his varying commissions, the gross amount the Debtor, Stephen Riffle, was paid also varied by pay period; (3) since the gross pay of the Debtor, Stephen Riffle, varied by pay period,

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payroll deductions must have also varied, so parties-in-interest, including Community Bank, were deprived of all of the information regarding: (a) the payroll deductions of the Debtor, Stephen Riffle, for the sixty-day period before the date of the filing of the Debtors' petition; and (b) the actual net payment received per pay period, notwithstanding that the Pay Stub showed year-to-date deductions; and (4) because of the failure of the Debtor, Stephen Riffle, to timely file all of the Pay Stubs received within the sixty days prior to the filing of the petition, the Court should find that the case was automatically dismissed in accordance with Section 521(i)(1).

On December 19, 2007, the Trustee interposed Opposition to the Motion to Dismiss, which asserted that: (1) the information set forth on the filed Pay Stub and Earnings Report showed all of the gross earnings of the Debtor, Stephen Riffle, by category, not only for the sixty-day period before the filing of the petition, but for all of 2007, and the Pay Stub showed the year-to-date totals for deductions by category; (2) in the Trustee's opinion, there was sufficient "other evidence of payment" to satisfy the requirements of Section 521(a)(1)(B)(iv); (3) the filed Pay Stub and Earnings Report provided the Trustee with all of the information necessary to perform an income analysis to determine: (a) if there was a means test issue; (b) whether Schedule I was accurate; and (c)

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whether in connection with any plan proposed by the Debtors, a determination could be made as to whether the Debtors were utilizing all of their disposable income; and (4) because there was full and sufficient "other evidence of payment" timely filed by the Debtor, Stephen Riffle, the automatic dismissal provisions of Section 521(i)(1) were not triggered.

DISCUSSION

I. The Motion to Dismiss

The Motion to Dismiss is in all respects denied, for the following reasons: (1) as asserted by the Debtors and the Trustee, by the filing of the Pay Stub and Earnings Report, the Debtor, Stephen Riffle, filed "other evidence of payment" for the sixty days before the filing of his petition, which provided all of the information required under Section 521(a)(1)(B)(iv), so that the Chapter 13 case of the Debtor, Stephen Riffle, was not automatically dismissed on November 6, 2007; (2) the combination of the filed Pay Stub and Earnings Report provided the Trustee and all parties-in-interest with year-to-date gross and net pay, including every category of gross pay and deductions applicable to the Debtor, Stephen Riffle, in connection with his employment; (3) although the "other evidence of payment" does not include the breakdown by deductions per pay period for the sixty-day period

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prior to the filing of the petition, this Court does not believe that detailed information per pay period with respect to deductions is critical under Section 521(a)(1)(B)(iv), as long as the year-to-date evidence, as supplied here by the last Pay Stub received before the filing of the petition, provides a complete list of the categories of the deductions from the Debtor's pay for the sixty-day period in question; and (4) since the case of the Debtor, Stephen Riffle, was not automatically dismissed and this is a joint case with disposable household income, the Motion to Dismiss is also denied in all respects as to the Debtor, Lora Riffle.

II. Automatic Dismissal

In the Rochester Division of the Western District of New York, this Court has indicated in its oral decisions that: (1) it would enter orders on motions dismissing cases pursuant to Section 521(i)(1)(2) where a debtor filed no payment advices or other evidence of payment within the forty-five-day period provided for by Section 521(i)(1), even when it has been asserted that it was attorney error that resulted in the failure to file; and (2) whenever a debtor filed some payment information within the applicable forty-five-day period, a determination would have to be made as to whether that was sufficient "other evidence of payment" to constitute "all of the information required" under Section 521(a)(1)(B)(iv).

