

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
) CASE NO. 05-37586 (LMW)
)
 EDWARD JOSEPH CORRIGAN,) CHAPTER 7
)
)
 DEBTOR.) DOC. I.D. NOS. 3, 7, 15, 20, 21

APPEARANCES

Edward Joseph Corrigan
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Debtor, *Pro Se*

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Chapter 7 Trustee

BRIEF MEMORANDUM AND ORDER AND NOTICE TO CREDITORS RE: MOTION TO CHANGE DATE OF FILING PETITION AND COURT’S MOTIONS TO DISMISS

Lorraine Murphy Weil, United States Bankruptcy Judge

WHEREAS, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the “Act”) became effective on October 17, 2005 (the “Effective Date”). *See* Act § 1501;

WHEREAS, the voluntary petition (Doc. I.D. No. 4, the “Petition”) in this case was filed in conventional (paper) form by the above-referenced debtor (the “Debtor”) *pro se* and docketed by the Clerk’s Office as filed on October 17, 2005;

WHEREAS, the Debtor claims that he had previously telephonically inquired of the Clerk's Office whether a conventionally-filed petition postmarked on October 14, 2005 would be deemed filed prior to the Effective Date even if received by the Clerk's Office on or after the Effective Date and further claims that he was advised by an employee of the Clerk's Office that such was the case (the "Alleged Communication");

WHEREAS, the Petition was mailed on (Friday) October 14, 2005 but was not received by the Clerk's Office until the Effective Date (a Monday);

WHEREAS, the Debtor was telephonically notified by the Clerk's Office that the Petition would be deemed to have been filed on the Effective Date;

WHEREAS, on October 19, 2005, the Debtor filed a certain "Notice of Motion for Hearing" (Doc. I.D. No. 2, the "Motion") seeking entry of an order deeming the Petition to have been filed prior to the Effective Date. The Motion was amended (without any relevant change) on October 20, 2005. (*See* Doc. I.D. No. 3, the "Amended Motion");

WHEREAS, on October 25, 2005, the Clerk's Office issued a certain "Deficiency Notice" (Doc. I.D. No. 5) which advised the Debtor of the following deficiencies (collectively, the "Deficiencies") in respect of the Petition: lack of "Means Test" statement; lack of "Credit Counseling Certificate" or "Exigent Certificate"; and lack of "Payment Advices";¹

WHEREAS, on October 25, 2005, the Clerk's Office issued that certain Court's Motion To Dismiss for failure to pay filing fee in full. (*See* Doc. I.D. No. 7, the "First Court's Motion");²

¹ The Deficiencies refer to filing requirements required by the Act but not required under prior law.

² The Petition was accompanied by payment of the lower filing fee in effect prior to the Effective Date.

WHEREAS, the Amended Motion and the First Court's Motion were scheduled for a hearing on November 16, 2005;

WHEREAS, on November 1, 2005 the Clerk's Office issued that certain Court's Motion To Dismiss on account of the Deficiencies. (*See* Doc. I.D. No. 15, the "Second Court's Motion.");

WHEREAS, the Second Court's Motion was scheduled for a hearing on November 23, 2005;

WHEREAS, the hearing on the Amended Motion and the First Court's Motion was continued (at the request of the Debtor) to November 23, 2005;

WHEREAS, on November 23, 2005 the Debtor filed: a legal memorandum captioned "Hearing on Motion To Change Date of Filing Petition" (Doc. I.D. No. 21, the "Memorandum"); and an Objection to Court's Motions To Dismiss Case (Doc. I.D. No. 20, the "Objection") with respect to the First Court's Motion and the Second Court's Motion;

WHEREAS, in the Memorandum and the underlying pleadings the Debtor makes the following arguments (among others):

- The postmarking of the Petition on October 14, 2005 alone requires that the Petition be deemed filed prior to the Effective Date.
- The Debtor's claimed reliance on the Alleged Communication requires that the Petition be deemed filed prior to the Effective Date.
- Various of the Federal Rules of Civil Procedure and the Federal Rules of Bankruptcy Procedure either require or permit this court to deem the Petition to be deemed filed prior to the Effective Date.
- This court otherwise has discretion to deem the Petition to be filed prior to the Effective Date;

WHEREAS, the hearing (the "Hearing") on the Amended Motion, the First Court's Motion, the Second Court's Motion and the Objection were held as scheduled on November 23, 2005. The

Debtor appeared at the Hearing. After hearing the Debtor's arguments, the court took the matters under advisement further to consider them (and the Memorandum and the Objection);

WHEREAS, it is well settled that (in the absence of an order or applicable rule to the contrary) conventional (paper) pleadings are deemed filed no earlier than when they come into the hands of the judge or the clerk's office. *See, e.g., McIntosh v. Antonino*, 71 F.3d 29 (1st Cir. 1995); *Chrysler Motors Corp. v. Schneiderman*, 940 F.2d 911 (3d Cir. 1991); *In re Carbone*, 254 B.R. 1 (Bankr. D. Mass. 2000); *Fugate v. Pack (In re Pack)*, 252 B.R. 701 (Bankr. E.D. Tenn. 2000). Accordingly, time of mailing (or postmarking) is not controlling;

WHEREAS, reliance may not be placed upon communications with employees of the clerk's office with respect to time-of-filing requirements. *See Rezzonico v. H & R Block, Inc.*, 182 F.3d 144, 152 (2d Cir. 1999), *cert. denied*, 528 U.S. 1189 (2000). Accordingly, the Debtor may not rely upon the Alleged Communication³ for relief from the Effective Date;

WHEREAS, the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure are, by definition, procedural and cannot be used to alter statutory deadlines such as the Effective Date. *See In re Damach, Inc.*, 235 B.R. 727 (Bankr. D. Conn. 1999) (Krechevsky, B.J.). Accordingly, the Debtor may not rely upon procedural rules for relief from the Effective Date;

WHEREAS, even if this court otherwise has discretion to grant the Debtor relief from the Effective Date, the court declines to exercise its discretion in this case. Judicial notice is taken that both the enactment of the Act and the then impending Effective Date were heavily publicized in the general news media for some time well prior to the Effective Date. The Debtor's actions in this case

³ The court notes (but does not rely upon) the fact that the Clerk's Office denies that the Alleged Communication took place as the Debtor describes.

are some evidence that the Debtor had been exposed to the foregoing. “Filing” the petition at almost the end of the pre-Effective Date period was the Debtor’s choice and this court will not relieve the Debtor of its consequences;⁴

NOW, THEREFORE, it is hereby **ORDERED** that the Amended Motion is denied and the Petition is deemed to have been filed on the Effective Date; and it is further

ORDERED that the Hearing with respect to the First Motion, the Second Motion and the Objection is continued (the “Continued Hearing”) to December 14, 2005 at 3:00 p.m. to give the Debtor the opportunity to cure the Deficiencies and to pay the unpaid portion of the filing fee;⁵ and it is further

⁴ The court has considered the Debtor’s other arguments and concludes that they are unpersuasive.

⁵ The court notes that certain of the Deficiencies were required to be cured within 45 days (the “Cure Period”) of the bankruptcy filing (*i.e.*, December 1, 2005) (11 U.S.C. § 521(i)(1) (as amended by the Act). However, the court docket does not reflect any curing by the Debtor of any of the Deficiencies or any motion to extend the Cure Period (*see* Section 521(i)(3)). However, if the Deficiencies are cured and the full filing fee is paid prior to the Continued Hearing, at the Continued Hearing the court will consider an argument that the Cure Period was tolled during the pendency of the Amended Motion. **NOTICE IS HEREBY GIVEN TO CREDITORS OF THE FOREGOING AND AN OPPORTUNITY TO FILE WRITTEN OBJECTIONS TO THE SAME PRIOR TO THE CONTINUED HEARING.**

ORDERED that the Clerk's Office shall cause notice of this order to be given by electronic means (if applicable, otherwise by first-class mail) to the Debtor, the chapter 7 trustee, the United States Trustee and all creditors and parties in interest in this case.

Dated: December 2, 2005

BY THE COURT


Lorraine Murphy Weil
United States Bankruptcy Judge