

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

**RAYMOND SPISAK,
Debtor.**



**Chapter 7 Case
06-10511**

ORDER
MODIFYING INSTALLMENT PAYMENT SCHEDULE
AND WITHDRAWING ORDER TO SHOW CAUSE

On February 20, 2007, the Court held a hearing on the Order to Show Cause (doc. # 24) it had issued in this case based on the Debtor's failure to make the January 31, 2007 filing fee installment payment of \$75.00. For the reasons set forth below, the Court hereby modifies the installment payment schedule previously set and withdraws its Order to Show Cause.

Procedural Background

Mr. Spisak filed a petition for relief under chapter 7 on November 2, 2006. Pursuant to the Bankruptcy Rules, he was required to make the last installment payment on his filing fee no later than March 2, 2007, unless the Court found that the Debtor had shown "cause" to extend that timeframe.

Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates of payment. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

Bankruptcy Rule 1006(b)(2)[Interim]. The Court finds that there is cause to extend the due date for the last payment beyond the 120-day period in this case due to the time taken to ultimately resolve the issue of whether the Debtor had to pay the filing fee. On November 8, 2006, the Court granted the Debtor's application for a fee waiver (doc. # 7). On November 21, 2006, the case Trustee moved for reconsideration of the Order waiving the filing fee (doc. # 10). The Debtor objected (doc. # 11), and the Court held a hearing on the motion to reconsider on December 19, 2006. The Debtor's counsel filed a post-hearing brief on January 3, 2007 (doc. # 14) and, on January 12, 2007, the court issued its

memorandum of decision and order granting the motion to reconsider and vacating the order granting the fee waiver (doc. # 18, 19). However, the Order setting forth the dates upon which the Debtor was to make installment payments was not entered until January 16, 2007 (doc. # 22). This Order provided that payments were due on January 31, March 2, April 2, and May 1, 2007.

The Debtor failed to make the first installment payment, which was the impetus for the instant Order to Show Cause. The Debtor's attorney, Michael Kainen, Esq., appeared at the February 20, 2007 hearing in opposition to dismissal of the case. He explained that Mr. Spisak did not have the funds to pay the \$75.00 by January 31 but would be able to make the payments if each due date were extended by 30 days. No other party in interest appeared at the hearing or filed papers in support of dismissal of the case.

Discussion

In light of the fact that the delay caused by the litigation over the Debtor's application for a waiver of the filing fee did not conclude until more than 60 days after the case was filed, the extension requested by Debtor's counsel seems to be eminently reasonable. The Court finds this case to present extraordinary circumstances and observes that the Bankruptcy Rules do not yet take into account how litigation around fee waiver applications affect the timeframe within which a debtor must make the filing fee installment payments. It seems evident that debtors like Mr. Spisak who are initially granted a waiver of the filing fee might be the hardest pressed to generate the funds to pay the fee if the fee waiver order is vacated. It therefore strikes this Court as inherently unfair that such persons should have a shorter period of time to pay the filing fee than persons who do not apply for a fee waiver, particularly given the fact that the fee waiver was initially granted in this case and the Debtor did not know he would have to pay the fee until more than two months after he filed his case.

In the absence of case law or rule guidance on this issue, the Court relies on its inherent powers under 11 U.S.C. § 105 and determines that, under these rather unique facts, it is appropriate to compute the period in which payment must be made from the date the fee waiver order was vacated rather than from the date of filing. If one begins counting the 120-day period set forth in Bankruptcy Rule 1006(b)(2) on the date the order was entered vacating the fee waiver order, the Debtor would be entitled to pay the

fee in installments as long as the last installment was made by May 16, 2007, with the possibility for an extension, for cause, until July 15, 2007. Based upon the testimony presented at the December 19, 2006 hearing in connection with the motion to vacate the fee waiver order, the Court finds that there is cause to extend the timeframe to a date that is beyond 120 days but less than 180 days after the date the fee waiver order was vacated. The Court sets the revised due dates for the installment payments, with information provided by Debtor's counsel, to coincide with the dates on which the Debtor receives his monthly benefit payments.

Conclusion

Therefore, the prior Order (doc. # 22) is hereby modified, and the Debtor is directed to pay the filing fee according to the following installment schedule:

\$75.00 on or before February 28, 2007,
\$75.00 on or before March 28, 2007,
\$75.00 on or before April 28, 2007, and
\$74.00 on or before May 28, 2007.

Should the Debtor fail to make any of these payments, the Court may dismiss this case without further notice or hearing.

SO ORDERED.

February 22, 2007
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge