

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 13, 2019 at 10:00 a.m.

1. [19-23340-E-13](#) ANTOINE FEHER MOTION TO RECONSIDER DISMISSAL
[RHS-1](#) Pro Se OF CASE
7-22-19 [\[36\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The court issued an Order on July 23, 2019 vacating dismissal of the case and setting a final hearing on the motion to vacate dismissal for August 13, 2019. Dckt. 37. Notice was provided to the debtor, Chapter 13 Trustee, and Office of the U.S. Trustee on July 24, 2019. Dckt. 39. 20 days' notice was provided.

The Motion to Vacate was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Vacate is denied.

Antonie Feher, the Debtor, commenced this bankruptcy case on May 24, 2019. On July 2, 2019, the court conducted a hearing on Debtor's request for further continuance of the time to file the

August 13, 2019 at 10:00 a.m.
- Page 1 of 7

basic required documents in this case, such as the Schedules, Statement of Financial Affairs, and Plan. As discussed in the Civil Minutes from the hearing, Debtor participated in the hearing, addressed with the court the complexities of bankruptcy, and that Debtor would seek counsel to be employed to represent her in this bankruptcy case. Civil Minutes, Dckt. 31.

The bankruptcy case was dismissed on July 17, 2019, the court having waited two weeks from the July 2, 2019 hearing before dismissing the case. Order, Dckt. 33.

On July 22, 2019, Debtor filed an *ex parte* Motion to vacate the order dismissing the case. Motion, Dckt. 36. While the *ex parte* Motion filed in *pro se* by this Debtor is not supported by a declaration, the allegations in the *ex parte* Motion are made subject to the certifications arising under Federal Rule of Bankruptcy Procedure 9011. The allegations in the *ex parte* Motion are consistent with her statements in open court at the July 2, 2019 hearing and the new facts alleged are limited. For purposes of this *pro se ex parte* Motion only the court considers the requested relief without there being a supporting declaration.

The *ex parte* Motion recites that Debtor has been meeting with possible attorneys, stating that the first several attorneys she met with would not represent her because she was in an active case which she has commenced in *pro se*. Motion, ¶ 17, bottom of page 2; Dckt. 36. Such is not surprising, as the lawyers may well have concluded that it would be a better strategy to file a new case and not try and salvage the current case.

The *ex parte* Motion continues that she has now identified two potential attorneys who have stated they would represent her if the court were to vacate the dismissal of this case.

The court issued an Order on July 23, 2019 vacating dismissal of the case and setting a final hearing on the motion to vacate dismissal for August 13, 2019. Dckt. 37.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on July 25, 2019. Dckt. 40. Trustee argues the case should be dismissed for the following reasons:

1. Debtor failed to appear at the First Meeting of Creditors.
2. Debtor has still not filed all 11 U.S.C. § 521 documents.
3. Debtor's Motion provides vague information as to a medical emergency and attorneys interested in taking the case. However, the lack of details suggests the information is not credible.
4. All time extension thus far have not helped.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

August 13, 2019 at 10:00 a.m.

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

Trustee’s arguments are well-taken. Despite representation made by Debtor, no attorney has substituted into the case. Nothing has been filed in this case. Debtor has not provided all 11 U.S.C. § 521 documents.

Debtor is simply not prosecuting the case. The motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the

August 13, 2019 at 10:00 a.m.

- Page 3 of 7

hearing.

The Motion to Vacate filed by Antoine Kamilo Feher (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

2. [19-23340-E-13](#) ANTOINE FEHER
Pro Se

**ORDER TO SHOW CAUSE RE: NOTICE
OF INCOMPLETE FILING AND
NOTICE
OF INTENT TO DISMISS CASE
5-29-19 [9]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

Sufficient Notice Provided. The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on July 24, 2019. The court computes that 20 days’ notice has been provided.

The Order to Show Cause is sustained, and the case is dismissed.

Antonie Feher, the Debtor (“Debtor”), commenced this bankruptcy case on May 24, 2019. An Order To Show Cause was issued May 29, 2019 relating to Debtor’s failure to file the following documents:

Chapter 13 Plan
Form 122C-1 Statement of Monthly Income
Schedule A/B - Real and Personal Property
Schedule C - Exempt Property
Schedule D - Secured Creditors
Schedule E/F - Unsecured Claims
Schedule G - Executory Contracts
Schedule H - Codebtors
Schedule I - Current Income
Schedule J - Current Expend.
Statement of Financial Affairs

Summary of Assets and Liabilities

Dckt. 9.

On July 2, 2019, the court conducted a hearing on Debtor's request for further continuance of the time to file the basic required documents in this case, such as the Schedules, Statement of Financial Affairs, and Plan. As discussed in the Civil Minutes from the hearing, Debtor participated in the hearing, addressed with the court the complexities of bankruptcy, and that Debtor would seek counsel to be employed to represent her in this bankruptcy case. Civil Minutes, Dckt. 31.

The bankruptcy case was dismissed on July 17, 2019, the court having waited two weeks from the July 2, 2019 hearing before dismissing the case. Order, Dckt. 33.

On July 22, 2019, Debtor filed an *ex parte* Motion to vacate the order dismissing the case. Motion, Dckt. 36. While the *ex parte* Motion filed in *pro se* by this Debtor is not supported by a declaration, the allegations in the *ex parte* Motion are made subject to the certifications arising under Federal Rule of Bankruptcy Procedure 9011. The allegations in the *ex parte* Motion are consistent with her statements in open court at the July 2, 2019 hearing and the new facts alleged are limited. For purposes of this *pro se ex parte* Motion only the court considers the requested relief without there being a supporting declaration.

The *ex parte* Motion recites that Debtor has been meeting with possible attorneys, stating that the first several attorneys she met with would not represent her because she was in an active case which she has commenced in *pro se*. Motion, ¶ 17, bottom of page 2; Dckt. 36. Such is not surprising, as the lawyers may well have concluded that it would be a better strategy to file a new case and not try and salvage the current case.

The *ex parte* Motion continues that she has now identified two potential attorneys who have stated they would represent her if the court were to vacate the dismissal of this case.

The court issued an Order on July 23, 2019 vacating dismissal of the case and setting a final hearing on the motion to vacate dismissal and this Order To Show Cause for August 13, 2019. Dckt. 37

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order To Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

August 13, 2019 at 10:00 a.m.

3. [19-23340](#)-E-13 ANTOINE FEHER
[WB-1](#)

**NOTICE OF INTENT TO REVOKE
E-FILING PRIVILEGES
8-2-19 [44]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

Sufficient Notice Provided. The Notice of Intent was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on August 2, 2019. The court computes that 11 days’ notice has been provided.

The Notice of Intent is sustained, and the debtor Antoine Kamilo Feher’s e-filing privilege is revoked.

Antonie Feher, the Debtor (“Debtor”), commenced this bankruptcy case on May 24, 2019. On that same day Debtor applied for an e-filing account on the basis he was a “creditor/claims agent.”

Subsequently, Debtor has filed only a Motion To Reconsider and a “Claims Related Document” amending the master address list.

Because Debtor appears to not be using the e-filing as a creditor, and does not appear eligible for e-filing privileges, the Clerk of the Court, Wayne Blackwelder, filed this Notice on August 2, 2019.

DISCUSSION

Debtor applied for e-filing privileges as a creditor when he is clearly not a creditor.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Notice of Intent having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Notice of Intent is sustained, the debtor Antoine Kamilo Feher's e-filing privilege is revoked.