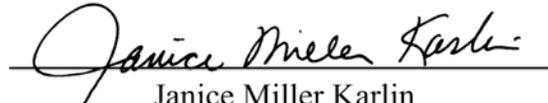


SO ORDERED.

SIGNED this 3rd day of March, 2015.




Janice Miller Karlin
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

**In re:
Jacqueline P. Mack,**

**Case No. 14-41043
Chapter 7**

Debtor.

Order Dismissing Case

Debtor Jacqueline P. Mack initially filed her pro se bankruptcy petition as a chapter 11 case, and that case was later converted to one under chapter 7 on the motion of the United States Trustee. Because Debtor's required filing fee has never been paid, despite repeated efforts to so collect, the Court now *sua sponte* dismisses Debtor's case.

I. Procedural and Factual Background

From the outset, this case has required a disproportionate amount of time and attention from this Court. Debtor's pro se chapter 11 bankruptcy petition was filed on

September 9, 2014.¹ That same date, Debtor also filed an application to pay her \$1,717 filing fee in installments,² which was granted.³ The order granting installment payments notified Debtor that her fee must be paid in no more than four installments, that the first payment was due within thirty days and every thirty days thereafter, and that payment in full was due within one hundred twenty days. The order also notified Debtor that if her filing fee was not paid within these periods, “the case may be dismissed without further notice.”

Debtor made one installment payment, on September 29, 2014.⁴ Shortly thereafter, the U.S. Trustee moved to convert Debtor’s case to one under chapter 7 (or in the alternative, for dismissal), for cause based on Debtor’s bad faith and inability to reorganize under chapter 11.⁵ Debtor opposed this motion, this time filing a Notice and

¹ Doc. 1. Debtor’s petition was a “short” file, meaning none of the required Schedules, Statement of Financial Affairs, or Declarations were included. As a result, the Court had to issue an Order To Correct, seeking these documents. Doc. 6.

² Doc. 3. The Form B3A requires the debtor to “Fill in the amounts you propose to pay and the dates you plan to pay them.” She filled in \$429.25 to be paid “on or before” each of the following dates, which she also filled in: September 6, 2014, October 3, 2014, October 17, 2014 and October 31, 2014.

³ Doc. 9, entered September 11, 2014.

⁴ Debtor made this payment of \$429.25 via a United States Postal Service Postal Money Order, so she clearly knows how to make a proper payment for filing fees when she wants to make a valid payment.

⁵ Doc. 25. The motion alleged that “the case was filed under (sic) bad faith with no ability to reorganize in a Chapter 11” because the case was filed listing a single creditor—the mortgagee on her home—and because Debtor had failed to make any mortgage payment for over a year. The creditor at issue now contends Debtor made zero, or perhaps one, payment since Debtor signed the promissory note and took possession of the home in the spring of 2013. The U.S. Trustee’s motion further noted Debtor attempted to exempt this real estate on her Schedule C as “spoliated owner; Title 12 U.S.C. § 95(a) &

Demand for Forensics Audit (to require the U.S. Trustee to do some kind of an audit),⁶ a Motion for Evidentiary Hearing,⁷ and a 99-page Motion to Strike,⁸ throughout referring to herself as a trust protector, agent and general executor office. After the hearing on the U.S. Trustee's motion, the Court allowed Debtor to elect between the conversion or the dismissal of the case, since the U.S. Trustee had stated cause for relief.⁹ Debtor elected conversion. Although Debtor subsequently filed numerous other documents in her case after conversion, most of which were likewise indecipherable¹⁰

95(b)” and that Debtor “claimed that since the mortgage was a FHA loan the United States owed the money and she was the custodian of the real property.” *Id.*

⁶ Doc. 38 (stating, among other unintelligible things: “Trust protector has, through UCC-1 filing, fully surrendered and placed in trust with the estate for the Full Faith and Credit, herein now assigning any and all reversionary interest from Jacqueline Priscilla Mack estate to the United States as gift pursuant to title 31 USC 3113(e)(1)(B).”).

⁷ Doc. 39

⁸ Doc. 40.

⁹ Doc. 45.

¹⁰ There are too many such documents to individually reference, so the Court simply incorporates the Docket Sheet for more examples. The following filed just in the first 6 weeks of the case are emblematic: Doc. 21 (Schedule A, listing Debtor's interest as “spoliated owner,” giving the description and location of the real property as “State of Michigan Certificate,” and nature of her interest in that property as “General Executrix” with a zero fair market value and “united states full amt” in the column for the amount of secured claim against her residence); Doc. 28 (a “trust order”—where Debtor purports to assign to this bankruptcy judge certain accounts—and an “Affidavit of Nationality”—a ten page document randomly discussing the Bill of Rights and the Constitution, among other things); and Doc. 30 (a certificate of service of a “Notice of Mistake, Notice of Appearance, Original Writ, Amended Trust Order, USDA CCC-251, USDA CC-252 and Form 56,” referencing Debtor's name “bearing Treasury Direct Account #B-405-787-740, by Special Attendance as agent for general executor office JACQUELINE PRISCILLA MACK estate, see annexed form 56 . . .”). Debtor also filed defective claims on behalf of approximately 9 creditors, then objected to those same claims because of that defect. She then asked the Court to enter orders that would have forever barred these creditors from making any claim against her, which the Court denied. Doc. 125. The Court finds all of these filings were

and did not comply with applicable Federal or Local Rules or the Bankruptcy Code, Debtor never made another payment toward her filing fee.

On January 29, 2015, the Court issued an order to show cause, ordering Debtor to appear and show cause why her case should not be dismissed for failure to pay the remainder of her filing fee.¹¹ Within that order to show cause, Debtor was informed that a balance of \$1287.75 remained due on her filing fee. Debtor was therein again warned of dismissal if the fee was not paid. Debtor, on February 9, 2015, then filed a “request for clarification and notice of excusable error for cause and answer to the order to show cause why the monthly installments stopped,”¹² apparently in response to the order to show cause. Within that document, Debtor explained that because her case was converted to chapter 7, she did not know whether her chapter 11 fee remained due and that she was confused. Debtor asked for five days to “settle any errors” with respect to the filing fee issue.

At a hearing on another matter on February 11, 2015, the Court addressed Debtor’s “request for clarification.” The Court gave Debtor the information sought by her pleading. The Court informed Debtor, once again, that only \$429.25 of her filing fee had been received, and that a balance of \$1287.75 remained due. The Court also warned Debtor that the time for making her installment payments had passed, and that the Court was likely to dismiss Debtor’s case if Debtor’s filing fee was not paid

made in bad faith.

¹¹ Doc. 105.

¹² Doc. 117.

before the show cause hearing set for February 24, 2015. An order was thereafter entered denying Debtor's "request for clarification" as moot, because the requested clarification had been orally given.¹³ Within that order, Debtor was again warned by the Court that her filing fee remained due, and that her case would be dismissed if the remainder of the fee was not paid.

On February 12, 2015, the Court entered another order in Debtor's case, this time setting deadlines on a substantive matter—a motion for relief from stay by Wells Fargo Bank, N.A. ("Wells Fargo").¹⁴ In the February 12, 2015 order, the Court notified Debtor that the show cause hearing previously set for February 24, 2015 remained set, that Debtor's filing fee was past due, and warned her yet again that if the fee was not paid in full by the February 24, 2015 hearing, her case would be dismissed.

At the show cause hearing on February 24, 2015, Debtor acknowledged that her filing fee was due and stated that she would pay it. Debtor stated no basis for why the

¹³ Doc. 121.

¹⁴ Doc. 122. Wells Fargo, the only creditor Debtor listed in her bankruptcy, filed a motion for relief from stay after the case was converted to chapter 7. *See* Doc. 75. In a hearing on that motion, Debtor argued the July 1, 2014 state court judgment (foreclosing on her home), a copy of which counsel for Wells Fargo produced at the hearing, was not valid, claiming she had filed a notice of appeal of that judgment. The Court ordered Debtor to produce a certified copy of the state court file, as Debtor's testimony on this topic was, at best, confusing. Debtor was ordered to produce that complete certified copy of the state court record by February 18, 2015. *See* Doc. 122. On February 18 and 19, 2015, Debtor filed selected portions of the state court record, *see* Docs. 132 and 133, but did not file the complete record as ordered. At the show cause hearing concerning her filing fee on February 24, 2015, the Court granted Debtor an extension to March 2, 2015 to file the complete certified copy of the state court record, again admonishing Debtor for failing to obey a very clear court order. Debtor finally did so on March 2, 2015, *see* Doc. 147. Contrary to Debtor's sworn testimony, she has not filed a Notice of Appeal in the state proceeding, although she did file a motion for rehearing.

fee had not been paid by that point. Debtor orally requested a three day extension to February 27, 2015, to make the payment, and the Court granted that request. The Court again warned Debtor to pay the filing fee with certified funds by February 27, 2015, and again stated that the case would be dismissed if the fee was not paid. Debtor stated she fully understood what was required of her.¹⁵ Again, in an order entered that date on the Wells Fargo matter, Debtor was notified that her case would be dismissed if her remaining filing fee was not paid by February 27, 2015.¹⁶

Debtor made no payment on or before the February 27, 2015 deadline. Then, on March 2, 2015, but before the case was dismissed, the Court received, via registered mail, several documents: 1) a document titled “Promissory Note Negotiable Bankers Acceptance,” that included a promise to pay \$1500 to the U.S. Bankruptcy Court on an unspecified date; 2) a Kansas Secretary of State online acknowledgment of filing, showing the United States Bankruptcy Court for the District of Kansas as the secured party in the “Jacqueline Priscilla Mack Estate” with collateral of a “registered bonded promissory note” for \$1500; and 3) a copy of the Court’s February 11, 2015 Order, which denied as moot Debtor’s “request for clarification,” with the written words “Accepted for Honor” and the date added in the top margin, and a number stamp added in the bottom margin. These March 2, 2015 documents will be hereinafter referred to as the “promissory note” and related documents.

¹⁵ Doc. 143.

¹⁶ Doc. 144.

II. Analysis

Filing fees are governed generally by 28 U.S.C. § 1930. Section 1930(a)(3) requires that a party commencing a case under chapter 11 of title 11 pay the chapter 11 filing fee, although Federal Rule of Bankruptcy Procedure 1006(b) allows the filing fee to be paid in installments. Under Rule 1006(b)(2), however, the final installment “shall be payable no later than 120 days after filing the petition.”¹⁷ In this case, Debtor’s bankruptcy petition was filed on September 9, 2014, and the 120 days expired on January 9, 2015. Section 707(a)(2) of title 11 then provides that the Court may dismiss, after notice and hearing, Debtor’s case for the “nonpayment of any fees or charges” required by 28 U.S.C. § 1930.

Debtor made only one payment, of \$429.25 on September 29, 2015, and has submitted no further United States currency, cashier’s check, or money order toward the payment of her fee. Rather, the next business day after the extended due date for the payment of the fee, Debtor submitted her nonsensical “promissory note” and related documents. For a multitude of reasons, this submission by Debtor does not satisfy the Court’s show cause order, and Debtor’s case should be dismissed.

First, despite being repeatedly warned that dismissal of her case would occur if the filing fee were not paid, Debtor’s submission is, simply, late. Debtor was notified no less than seven times that if she did not timely pay her filing fee, her case would be

¹⁷ For “cause shown,” the period for making installment payments can be extended, but to no more than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2). Debtor has never requested such an extension, or alleged any cause why she should be granted an extension of this nature.

dismissed. Debtor was warned on September 11, 2014, in the initial order granting her request to pay the fee in installments, on January 29, 2015 in the Court's order to show cause, on February 11, 2015, both in an oral admonition by the Court during a hearing on another matter and in a written order denying Debtor's "request for clarification" as moot, on February 12, 2015, in an order setting deadlines on the Wells Fargo motion for relief from stay, at the February 24, 2015 show cause hearing, and finally, in an order entered on the Wells Fargo matter on February 24, 2015. Debtor affirmatively stated at the February 24, 2015 show cause hearing that she understood what was required of her, and yet she still did not follow the Court's directive and pay her fee by the extended February 27, 2015 due date. Debtor has offered no legal basis for why she should be excused from the filing fee requirement, and the Court is fully justified in dismissing Debtor's case for failure to pay the fee.¹⁸

Second, even if the documents submitted by Debtor on March 2, 2015 were timely, Debtor cannot pay her filing fee with what she submitted. The "promissory note" and related documents do not constitute the certified funds the Court required Debtor to pay—and Debtor stated at the show cause hearing on February 24, 2015 that she fully understood what was required of her. The "promissory note" simply is not legal tender this Court can accept for the payment of fees; the Court's Internal Controls Manual permits payment by debtors in United States currency, cashier's checks, or

¹⁸ See, e.g., *In re Meuli*, 162 B.R. 327, 327–28 (Bankr. D. Kan. 1993) (reviewing history of case and dismissal for failure to pay the required filing fee). Cf. *In re Armstrong*, 101 Fed. App'x 766, 768 (10th Cir. 2004) (affirming the BAP's decision to dismiss for failure to pay required fees).

money orders.¹⁹ The “promissory note” and related documents are not money, legal tender, or any other commercially reasonable equivalent,²⁰ and this Court will not permit Debtor to further delay this case with her obstructive tactics.²¹

And finally, even if the March 2, 2015 “promissory note” and related documents could somehow be construed as an extension request for the payment of Debtor’s filing fee, no date is specified therein for the actual payment of the fee. Debtor also states no basis or cause for giving her more time to make the required payment. The “promissory

¹⁹ United States Bankruptcy Court for the District of Kansas, Internal Controls Manual, 12–13 (rev. May 2012). Further, the “promissory note” is for \$1500, more than Debtor is required to pay, and this Court cannot make change or accept payment for more than the amount due. *Id.*

²⁰ *Cf. In re Recker*, No. 09-01541, 2010 WL 3655515, at *9 (Bankr. N.D. Iowa Sept. 10, 2010) (collecting cases of debtors attempting to use “bonded promissory notes” as legal tender and finding no authority for proposition that these “notes” are “legal tender or have any validity as a negotiable instrument or commercial paper”); *In re Chabot*, 411 B.R. 685, 704 (Bankr. D. Mont. 2009) (noting “egregious behavior” of the debtor in tendering a “bogus bonded promissory note” in payment of a creditor’s mortgage; referring to the debtor’s behavior of “peddling bogus instruments” as evidence of bad faith); *In re Walton*, 77 B.R. 617, 620 (Bankr. N.D. Ohio 1987) (noting that the debtor’s purported “certified promissory money note” was not money or the commercially reasonable equivalent and was an “invalid document”).

²¹ Debtor’s bankruptcy petition now appears to solely be an attempt to delay the foreclosure by Wells Fargo of the real property where Debtor resides in Manhattan, Kansas. As stated in the U.S. Trustee’s prior motion to convert or dismiss, Debtor is alleged to have purchased the real property at issue in February 2013, made one payment at or around closing, but has not made a single payment since that time and apparently does not intend to, as her Schedule J (expenses) shows zero monthly payment on this home mortgage note notwithstanding her agreement to make monthly payments of \$811.74. *See* Docs. 37 and 75. Debtor has made repeated frivolous filings throughout this case, despite being admonished numerous times that her filings should comply with the Federal and Local Rules and be based on the Bankruptcy Code. Debtor has now hindered and delayed her creditors for an additional six months while this case has been pending, all apparently without making a single payment on her secured debt or more than one payment on her filing fee. And now that the Court has reviewed the contents of the Riley County, Kansas state court file (Doc. 147), it is clear that Debtor used the same tactics, of filing frivolous/unintelligible pleadings, to delay that foreclosure proceeding. This Court will not be a party to this type of behavior by allowing Debtor’s case to remain open.

note” states an “unconditional promise [to] pay” at “sight days after N/A,” of \$1500 of “certified funds***remit at par via fedwire.”²² Obviously, the words used are unintelligible. Debtor is proceeding pro se and the Court has attempted throughout this case to construe her filings liberally,²³ but the Court cannot construct arguments for Debtor in the absence of any hint of their form.²⁴

Because Debtor has not fulfilled her obligation to pay her filing fee, Debtor’s case should be dismissed. Debtor did not, by the due date, submit the “certified funds” she agreed to pay for this case to continue.

III. Conclusion

For the reasons stated above, Debtor’s case is hereby dismissed for failure to timely pay her required filing fee.

The Clerk of this Court is ordered to docket a copy of the March 2, 2015 “promissory note” and related documents as a private entry on the docket. The “promissory note” should be file stamped with its “received” date on the back page of the document, which will become page 2, so as not to obliterate any text or markings thereon. These documents contain “IRS ID” numbers, “bond” numbers, and other unrecognizable, but potentially identifying, marks. As a result, the Court will docket

²² Various capitalization and colored print is used throughout the document, but this is omitted in the Court’s quotation.

²³ See *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (“A pro se litigant’s pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers.”).

²⁴ *Drake v. City of Fort Collins*, 927 F.2d 1156, 1159 (10th Cir. 1991) (stating that courts should not “construct arguments or theories” for litigants “in the absence of any discussion on those issues”).

the “promissory note” and related documents privately, in case these marks are banking numbers or other private information. The Clerk is ordered to retain the “promissory note” and related documents until such time as the Court determines they are no longer needed.

As noted supra, in footnote 14, Debtor has also submitted a lengthy certified copy of the state court record in her prior litigation with Wells Fargo. These documents have been docketed as an electronic entry on the Court’s docket. If Debtor wishes to retrieve the hard copy of these documents, she should personally retrieve them within seven business days of the date of this order. Failure to retrieve these originals of the submitted certified copies will be deemed a waiver of Debtor’s claim to them, and the Clerk is ordered to thereafter immediately discard the hard copy of the entire file.

Because this case is dismissed, all future hearings and trial dates previously scheduled are cancelled.

It is so ordered.

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