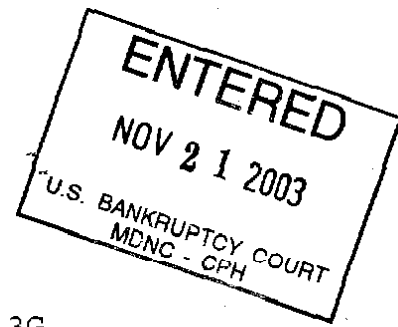


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



IN RE: )  
 )  
Thelma Mae Easter, ) Case No. 03-12674C-13G  
 )  
Debtor. )  
 )

AMENDED ORDER

This case came before the court on October 21, 2003, for hearing upon a motion to allow an attorney-in-fact to file this Chapter 13 case on behalf of Thelma Mae Easter. This case was filed by Janie Franklin in the name of Thelma Mae Easter purportedly pursuant to a power of attorney executed by Thelma Mae Easter. The motion asserts that the power of attorney satisfies the requirements of Rule 9010(c) and seeks approval of the filing. The court has concluded that the motion should be denied.

A bankruptcy case may be commenced by an attorney-in-fact acting pursuant to a lawful power of attorney under appropriate circumstances. See In re Curtis, 262 B.R. 619, 622 (Bankr. D. Vt. 2001). Assuming that there are circumstances that necessitate the commencement of a case under a power of attorney, an attorney-in-fact may commence a bankruptcy proceeding where the debtor qualifies for relief under § 109 of the Bankruptcy Code, the commencement of the case is within the language contained in the document granting the power of attorney and such action by the attorney-in-fact does not constitute the practice of law. See n

re Hurt, 234 B.R. 1 (Bankr. D.N.H. 1999). While Thelma Mae Easter qualifies as a debtor under § 109 and the filing of this case by an attorney retained to represent Thelma Mae Easter did not involve the practice of law by the attorney-in-fact, the commencement of this case is not within the language used in the power of attorney. The power of attorney in the present case does not contain language that authorizes the attorney-in-fact to commence and prosecute bankruptcy proceedings on behalf of Thelma Mae Easter nor language that authorizes the attorney-in-fact to commence and prosecute legal proceedings in general on behalf of Thelma Mae Easter. See In re Gridley, 131 B.R. 447 (Bankr. D.S.D. 1991) (allowing filing by attorney-in-fact where the power of attorney contained a specific provision authorizing the filing of a bankruptcy proceeding); In re Hurt, 234 B.R. 1 (Bankr. D.N.H. 1999) (allowing filing pursuant to a power of attorney that granted "broad authority" and specifically mentioned authority to "commence and prosecute . . . all actions and proceedings"). The power of attorney now before the court does not mention the commencement of legal proceedings by the attorney-in-fact nor purport to authorize the attorney-in-fact to commence any type of legal proceeding and therefore is insufficient to authorize the filing of this case by the attorney-in-fact on behalf of Thelma Mae Easter. It follows that the motion to permit the filing of this case by the attorney-in-fact should be denied.

IT IS SO ORDERED.

This amended order is being entered to reflect that the matter heard on October 21, 2003, was the motion to allow the filing of this case by Janie Franklin as attorney-in-fact for Thelma Mae Easter rather than the Trustee's motion to dismiss. This order vacates and replaces the order entered on November 18, 2003, purporting to grant the motion to dismiss.

This 20th day of November, 2003.

**William L. Stocks**

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WILLIAM L. STOCKS  
United States Bankruptcy Judge