

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

ENTERED
MAY 14 2004
U.S. BANKRUPTCY COURT
MDNC - SD

IN RE:)
)
1103 Norwalk Street, L.L.C.,) Case No. 01-10059C-7G
)
Debtor.)
)

ORDER

This case is before the court for consideration of an application for leave to proceed in forma pauperis which was filed in this case by Gary Ivan Terry ("Applicant") on May 13, 2004. In the application the Applicant apparently seeks to proceed in forma pauperis with respect to an appeal to the District Court from an order entered by the court on May 11, 2004, denying a motion to vacate or set aside the order that converted this case from Chapter 11 to Chapter 7. The motion to vacate purportedly was filed on behalf of 1103 Norwalk Street, L.L.C., the corporate Debtor, by the Applicant, as was the notice of appeal from the order denying the motion to vacate. Having reviewed the application, the court is satisfied that oral argument is not needed for the proper resolution of the application and the application, therefore, will be decided without holding a hearing on the application.

There is some disagreement as to whether a bankruptcy court has authority under 28 U.S.C. § 1915 to authorize a debtor to proceed in forma pauperis in a bankruptcy case. Compare In re Perroton, 958 F.2d 889, 896 (9th Cir. 1992) (bankruptcy court cannot

waive filing fees), with In re Fitzgerald, 192 B.R. 861, 862-63 (Bankr. E.D. Va. 1996) (collecting cases and concluding that bankruptcy court cannot waive filing fee for bankruptcy petition but can waive fees for other proceedings within a bankruptcy case). However, having considered the application and affidavit submitted by the Applicant, the court has concluded that even if there is authority for this court to waive fees pursuant to 28 U.S.C. § 1915, this is not a case in which the court should do so.

Section 1915 was intended to provide indigent parties with the opportunity for meaningful access to the federal courts. However, even if a party is indigent, 28 U.S.C. § 1915 does not provide an unfettered, unlimited right to relief. Thus, relief under 28 U.S.C. § 1915 may be denied "if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious." In re Reed, 178 B.R. 817, 822 (Bankr. D. Ariz. 1995) (quoting from Neitzke v. Williams, 490 U.S. 319, 324, 109 S.Ct. 1827, 1831, 104 L.Ed.2d 338 (1989)). In the present case, the Applicant is not entitled to relief under 28 U.S.C. § 1915 because Applicant's appeal lacks an arguable basis in either law or fact and is frivolous as a matter of law.

In the first instance, the purported appeal on behalf of the corporate Debtor does not comply with Rule 9011 of the Federal Rules of Bankruptcy Procedure. Under Rule 9011 of the Federal Rules of Bankruptcy Procedure, "[e]very petition, pleading, written

motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name." The notice of appeal now before the court does not comply with this requirement of Rule 9011 because it is signed only by Mr. Terry who is not a licensed attorney or an attorney of record in this case.

While an individual party to a bankruptcy case or other court proceeding may represent himself or herself, it is well established that a corporation can appear only through a licensed attorney. See Rowland v. Cal. Men's Colony, 506 U.S. 194, 201-02, 113 S.Ct. 716, 721, 121 L.Ed.2d 656 (1993) (stating that "[i]t has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel"). This rule is applicable to all forms of business entities. See Id., 506 U.S. at 202, 113 S.Ct. at 721 ("[S]ave in a few aberrant cases, the lower courts have uniformly held that 28 U.S.C. § 1654, providing that 'parties may plead and conduct their own cases personally or by counsel,' does not allow corporations, partnerships, or associations to appear in federal court" other than through a licensed attorney); see also Harrison v. Wahotoyas, L.L.C., 253 F.3d 552, 556 (10th Cir. 2001) ("a corporation or other business entity can only appear in court through an attorney and not through a non-attorney corporate officer appearing pro se"); Tinkers & Chance v. Zowie Entertainment, Inc., 2001 WL 706908 (Fed.

Cir.) ("All artificial entities, such as corporations, partnerships, or associations, may only appear in federal court through a licensed attorney"); In re American West Airlines, 40 F.3d 1058, 1059 (9th Cir. 1994) ("Corporations and other unincorporated associations must appear in court through an attorney"); Runkle v. United States, 962 F. Supp. 1112, 1113 (N.D. Ind. 1997) ("Corporations must be represented in court by attorneys admitted to practice . . . [t]he same rule applies to partnerships and other unincorporated organizations"). Since the notice of appeal is not signed by an attorney, it constitutes a pro se pleading. Under the foregoing cases and Local Rule LBR9011-2, the Debtor, 1103 Norwalk Street, L.L.C., as a limited liability company, may not appear in this case or seek relief pro se. The result is that the notice of appeal does not comply with Rule 9011 of the Federal Rules of Bankruptcy Procedure or Local Rule LBR9011-2.

Secondly, even if the Applicant has standing to pursue an appeal on behalf of the Debtor, he is not entitled to do so in forma pauperis. The affidavit required under § 1915 must "state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." The affidavit filed by the Applicant states that the nature of the appeal is "redress the deprivation of Debtor's procedural rights to due process as guaranteed by the Fifth Amendment."

How the above-described grounds for appeal are related to an appeal from an order denying the motion to vacate the order that converted this case from Chapter 11 to Chapter 7 is unclear and unexplained. However, to the extent the foregoing language can be said to state an issue or matter for review in an appeal from such order, there is no rational argument in law or fact which would entitle the Applicant to relief with respect to such issue. Applicant's appeal presents no legal points that are arguable on the merits and is therefore without merit and frivolous as a matter of law. Accordingly, Applicant's application for leave to proceed in forma pauperis will be denied. Moreover, given the frivolousness of the appeal, the court certifies pursuant to 28 U.S.C. § 1915(a)(3) that such appeal has not been taken in good faith. See Meadows v. Trotter, 855 F. Supp. 217, 219 (W.D. Tenn. 1994) ("An appeal is not taken in good faith if the issue presented is frivolous.").

Now, therefore, Applicant's application pursuant to 11 U.S.C. § 1915 to proceed in forma pauperis with respect to an appeal from the order denying the motion to vacate that was purportedly filed on behalf of the Debtor is denied.

This 14th day of May, 2004.



WILLIAM L. STOCKS
United States Bankruptcy Judge