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Hon. Samuel J. Steiner
Chapter 7
Hearing Date: May 14, 2003
Hearing Time: Everett 10:00 a.m.
Response Date: April 30, 2003

5
6 UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

7 In Re:) No. 03-9
8 ,)
9 Debtor.) DEBTOR'S BRIEF IN OPPOSITION TO
DISMISSAL
10 _____)

11 FACTS

12 1. The Debtor, , is a United States Citizen. She also has landed immigrant
13 status in Canada.

14 2. Her parents are domiciled in Edmonds, Washington. She has consistently used
15 the Edmonds address for all United States creditors. There are no Canadian creditors and the
16 effect of an American bankruptcy discharge on Canadian creditors is not an issue in this case.

17 3. The uncontroverted affidavits on file represent that she spends an average of 8 - 9
18 days in Edmonds at the family residence and maintains that location as a residence. She is
19 registered to vote in Edmonds, Washington.

20 4. The uncontroverted facts also show that she has furniture, dishes, and glassware
21 and misc. household goods located in Edmonds, Washington.

22 ISSUE PRESENTED

23 Is a United States citizen deprived of the ability to file a bankruptcy petition dealing with
24 American Creditors because she is domiciled in Canada but maintains a residence in the United
25 States?

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LEGAL ARGUMENT

1
2 The trustee's motion to dismiss is based upon a misreading of §109. Section 109 reads in
3 part

4 (a) Notwithstanding any other provision of this section, only a
5 person that **resides** or has a domicile, a place of business, or
6 **property in the United States**, or a municipality, may be a debtor
under this title. [emphasis supplied]

7 While it is true that a person may have only one domicile, she may have many residences.
8 No one disputes that a person can have more than one residence, but only one domicile. *See, In*
9 *re Saunders*, 240 B.R. 636, 641 (S.D.Fla. 1999) The debtor submits that a person who spends
10 approximately one week per month in a house resides there, even though she may have a
11 different domicile. Counsel has been able to find no cases dealing with the amount of time a
12 person must spend at a location to meet the "resides at" requirement of §109(a).

13 The uncontroverted fact is that she maintains a residence in the United States and within
14 the district.

15 The property issue, been litigated. In *Bank of America, v. World of English*, 23 B.R.
16 1015; (D ND Ga 1982) the District Court upheld the Bankruptcy Court's decision that the
17 existence of a bank account in the United States provided sufficient "property" within the United
18 States so as to give the court jurisdiction. The court held:

19 [C]ourts have analyzed the "property" requirement . . . focusing on
20 the need to have "efficient control" and to protect creditors. In *In*
re San Antonio Land & Irrigation Co., 228 F. 984 (S.D.N.Y.
21 1916), the court [**25] stated that:

22 a bankruptcy proceeding is a kind of equitable
23 attachment, which should be held to reach whatever
24 assets any available judicial process *can* reach.
25 Consequently, the situs of property is not to be
26 determined by general doctrines, such as "*mobilia*
sequuntur personam," which may well be applicable
27 in matters like the law of inheritance, but by power
28 of efficient control in order to protect creditors
and safeguard the taxing power.

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1 228 F. at 990. The court then held that the debtor's balance of
2 \$8.06 in a New York bank account was "property" in New York
 within the meaning of the Bankruptcy Act. 228 F. at 990.

3 More recently, in *in Re: Laura Farmer*, 288 B.R. 31; (Bcy N.D. NY 2002) the court held
4 that the debtor was eligible to file based upon a bank account within the United States. In ruling
5 the court quoted with approval *In re McTague*, 198 B.R. 428 (Bankr. W.D.N.Y. 1996).

6 Judge Kaplan concluded that the court did not have
7 discretion to look behind the language of Code §109(a) and declare
8 that the quantity of property in the United States is decisive on the
9 issue of eligibility to be a debtor under the Code whether it is "a
 dollar, a dime or a peppercorn located in the United States." *Id. at*
 432. The court then denied the UST's motion to dismiss, which
 was based only on Code §109(a).

10 *In Re: Iglesias*, Debtor. 226 B.R. 721; (B SD Fl. 1998) presents another case with a
11 similar result. The debtor's sole asset within the United States was a bank account with a
12 balance of \$520.00

13 Thus, notwithstanding the fact the Debtor does not have a
14 place of residence, domicile or business in the United States,
15 Debtor's principal asset has its situs within [**5] this district, and
16 venue is therefore proper in this Court. Moreover, the Debtor has
17 no other assets in any other district of the United States, so venue
 would not lie in any other district pursuant to 28 U.S.C. § 1408.
 Accordingly, this district is the proper venue for this Debtor's
 bankruptcy case.

18 The Court is bewildered as to why this Debtor's creditors,
19 who appear to be primarily credit card issuers from the United
20 States, would extend credit to someone with only \$ 522.00 in his
 bank account and whose income is only \$ 522.00 per month, but
 the Court is hopeful that, during the course of these proceedings,
 its questions will be answered.

21 The facts demonstrate that the debtor has assets in this judicial district. The fact that the
22 assets may be exempt is not relevant.

23 the statute does not appear to be vague or ambiguous, and it seems
24 to have such a plain meaning as to leave the Court no discretion to
25 consider whether it was the intent of Congress to permit someone
 to obtain a bankruptcy discharge solely on the basis of having a

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1 dollar, a dime or a peppercorn located in the United States. The
2 Court will so rule

3 *In re McTague, supra* at 432.

4 CONCLUSION

5 In the case before the court the debtor has substantial property located in this judicial
6 district in the nature of exempt furniture and household goods which she uses on a regular basis.
7 She has a residence here and she spends approximately a week per month at the property. She is
8 registered to vote. She is clearly eligible to be a debtor in this proceeding.

9 Respectfully submitted this April 28, 2003

10 /s/ Marc S. Stern

Marc S. Stern

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Attorney for Debtor