

**FILED**

FEB 02 2007

U.S. BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In re:	)	Chapter 7
THOMAS G. BACH,	)	No. 4:06-bk-01608-JMM
_____	)	No. 4:06-bk-01614-JMM
Debtor.	)	
In re:	)	<b>MEMORANDUM DECISION</b>
GEORGIA C. BACH,	)	
_____	)	
Debtor.	)	

The Debtors have requested that this court:

1. reinstate their dismissed cases;
2. alter the statutory filing fee requirements; and
3. waive their filing fees.

This procedural request suffers from numerous defects which this court is unable to cure.

The federal statute which governs bankruptcy fees is 28 U.S.C. § 1930. Waiver of the filing fee is only authorized in a chapter 7 case, and then only with specific proof that the individual has income which is less than 150 percent of the official poverty line. For a family of two, that figure is \$20,535. What this statute means is that the appropriate case fee is based upon the initial chapter chosen by the parties, not the one to which the case may be later converted. Additionally, no information has been provided to the court regarding the Debtors' income and expenses in case nos. 06-1608 and 06-1614, because the Debtors never filed schedules or statement of affairs in those cases, despite this court's order which required that they do so over a month ago. (See 06-1608, Dkt. #5 requiring such documents by December 28, 2006; see 06-1614, Dkt. #4 requiring such documents by December 28, 2006.)

1           Despite the fact that neither Debtor, in either case, paid their entire filing fee, nor filed  
2 schedules and statements of affairs, they nonetheless were allowed to present a full defense to a secured  
3 creditor's stay relief motion on January 5, 2007. This hearing took place while their cases were still in  
4 chapter 11, and despite the Debtors having neither paid their full filing fees or their having complied with  
5 the court's orders, and their duties, to file their schedules and statements of affairs.

6           Simply because the Debtors were unable to succeed in chapter 11, and they asked for--and  
7 were granted--leave to convert their case chapters to ones under chapter 7, does not dispense with the  
8 requirement that they must still pay the fee for the cases under the chapter which they originally chose,  
9 chapter 11.

10           In short, the court has no statutory authority to waive the chapter 11 filing fees, the chapter  
11 chosen by the Debtors in the first instance.<sup>1</sup>

12           The unpaid filing fee necessary to reinstate each of these cases is:

13			
14	Thomas G. Bach	06-1608	\$989
15	Georgia C. Bach	06-1614	\$989
16			

17 As noted, the court has no statutory power to waive those fees. Simply because there may have been  
18 "discussions" with the clerk's office staff does not alter these hard facts, nor change the law, nor even allow  
19 the court to invoke its discretion. Indeed, the clerk's staff's comments that the Debtors owed the balance of  
20 the chapter 11 fees were correct. Even so, the clerk's office cannot give legal advice, nor can informal  
21 discussions with court staff change what Congress has mandated.

22           Therefore, the court will not consider reinstating the Debtors' cases 06-1608 and 06-1614  
23 unless the balance of the filing fees, noted above, are paid.

24           The Debtors may, if they choose, file a new joint petition under chapter 7, provided that they  
25 comply with all of chapter 7's requirements, and pay or gain a waiver of the \$299 filing fee.

---

26  
27  
28           <sup>1</sup> Nor does it matter if those cases were later consolidated. The amount of the fee is  
determined by the chapter chosen on the first day of the case.

1 Or, additionally, if the Debtors remain unconvinced by either the law or the reasoning behind  
2 this decision, they may file an appeal within ten days.

3 Accordingly, a separate order will be entered which:

- 4 A. DENIES the Debtors' joint motion to reinstate their dismissed cases;
- 5 B. DENIES their motion to alter the statutory filing fee requirements; and
- 6 C. DENIES, as moot, their motion to waive the filing fees.

7 Any appeal of this order must be taken within ten days. FED. R. BANKR. P. 8002.

8  
9 DATED: February 2, 2007.

10  
11   
12 JAMES M. MARLAR  
UNITED STATES BANKRUPTCY JUDGE

13 COPIES served as indicated below  
14 this 2nd day of February, 2007, upon:

15 Thomas G. Bach  
16 1967 West Calle Mecedora  
Tucson, AZ 85745  
Email gbach@extremezone.com

17 Georgia C. Bach  
18 1967 West Calle Mecedora  
Tucson, AZ 85745  
Email gbach@extremezone.com

19 Gayle Eskay Mills  
20 P.O. Box 36317  
Tucson, AZ 85740  
21 Chapter 7 Trustee  
Email Gayle.Mills@azbar.org

22 Office of the United States Trustee  
23 230 North First Avenue, Suite 204  
Phoenix, AZ 85003-1706  
24 U.S. Mail

25 By /s/ M. B. Thompson  
26 Judicial Assistant