

IN THE UNITED STATES BANKRUPTCY COURT

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FOR THE DISTRICT OF UTAH

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In re ) Bankruptcy Case No. 83C-00225  
 )  
JAMES V. BASTIEN and )  
RHONDA D. BASTIEN, )  
 )  
Debtors. ) MEMORANDUM DECISION AND ORDER

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On November 25, 1981, debtors filed a petition for relief under Chapter 7. At a hearing held on August 30, 1982, the Court ordered debtors to pay to the Chapter 7 trustee certain tax refunds and wages. That order was entered in written form on October 15, 1982. The order provided that if debtors did not comply with the order, their case would be dismissed with prejudice.

On October 1, 1982, the day after the trustee submitted the above order to the Court, debtors filed a petition for relief under Chapter 13. This Chapter 13 petition was dismissed for failure to file schedules on November 5, 1982.

On January 25, 1983, debtors filed a second Chapter 13 petition. Meanwhile, their Chapter 7 case was still pending and they had not complied with the Court's October 15, 1982 order. On March 3, 1983, the Chapter 7 trustee moved for dismissal of the Chapter 7 case. Debtors failed to respond. On April 5, 1983, the Court ordered that debtors' Chapter 7 case be dismissed with prejudice.

On May 4, 1983, debtors filed a motion to "cancel" their previous Chapter 7 case in order to permit them to "incorporate" all claims in that case in their second Chapter 13 case. On May 23, the Chapter 7 trustee objected to this motion.

Debtors' Chapter 13 filings represent an abuse of the bankruptcy law. Had debtors genuinely desired to seek Chapter 13 relief, the proper procedure would have been to request that their Chapter 7 case be converted to a case under Chapter 13. Their Chapter 13 filings served no purpose.

Debtors' failure to comply with this Court's order of October 15, 1982 demonstrates their unwillingness to obey the law. When the Court dismissed debtors' Chapter 7 case with prejudice, it did so with cause. See 11 U.S.C. §§ 349(a) and 727(b)(6)(A). Debtors have shown no reason for vacating that order.

IT IS THEREFORE ORDERED that debtors' motion filed on May 4, 1983 and described above is denied. Debtors are ordered to show cause on or before August 22, 1983, why their case under Chapter 13 should not be dismissed as an abusive filing. If by that date debtors have not filed affidavits and/or arguments showing why their Chapter 13 case should not be dismissed, the case will automatically be dismissed, with prejudice.

DATED this 4 day of August, 1983.

BY THE COURT:

  
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GLEN E. CLARK  
UNITED STATES BANKRUPTCY JUDGE