

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

Case No. 6:06-bk-00515-ABB
Chapter 7

UNITED STATES OF AMERICA,
et al.,
Debtors.

ARNIE PORTER,

Plaintiff,

vs.

Adv. Pro. No. 6:06-ap-00082-ABB

UNITED STATES OF AMERICA,
et al.
Defendants.

REINALDO VALLE SANTOS,

Plaintiff,

vs.

Adv. Pro. No. 6:06-ap-00086-ABB

UNITED STATES OF AMERICA,
et al.
Defendants.

ORDER

This matter came before the Court on the Motion to Dismiss Involuntary Petition (“Motion to Dismiss”)¹ filed by the United States of America, an involuntary Chapter 7 Debtor herein (“United States”), seeking dismissal of the involuntary bankruptcy petition (“Involuntary Petition”) filed on March 20, 2006 by the *pro se* petitioning creditors Darcy Lamont McKneely, Arnie Porter, and Reinaldo Valle Santos (collectively, the “Petitioning Creditors”).² The Petitioning Creditors are incarcerated in a federal prison in Florida and assert

secured claims against the United States totaling \$200,300,000,000.00 in their Involuntary Petition.³

The Involuntary Petition names “In re United States of America Et. Al.” also known as “U.S.A. United States” as the debtor, but fails to name any other involuntary debtors. The Petitioning Creditors subsequently filed a Motion to Amend Involuntary Chapter 7 Proceeding (Doc. No. 15) to name “United States of America, Inc.” as the involuntary debtor. The Petitioning Creditors also filed a Notice of Non Service of Summons to Additional Alleged Debtors and Request for Summons to be issued on “Et al” Alleged Debtors (Doc. No. 16) apparently attempting to name Alberto Gonzales, Harley Lappin, and Tracy Johns as involuntary debtors.

An Order⁴ was entered on April 25, 2006 granting the Petitioning Creditors twenty-one days to file a response to the Motion to Dismiss. The Petitioning Creditors filed in response: (i) Petitioner[s]’ Response in Opposition to Debtor’s Motion to Dismiss Petition; (ii) Request for Oral Argument Hearing on the Petitioner[s]’ Response in Opposition to Debtor’s Motion to Dismiss Petition; and (iii) Petition for Writ of Habeas Corpus Ad Testificandum, in which the Petitioning Creditors seek to be transported to the Court to make an appearance.

This involuntary case is due to be dismissed on several grounds. The United States Government cannot be a debtor in bankruptcy. An involuntary case may only be commenced “against a person, except a farmer, family farmer, or a corporation that is not a moneyed, business, or commercial corporation, that may be a debtor under the chapter under which such case is commenced.” 11 U.S.C. § 303(a) (2005). Section 109(a) sets forth “only a person . . . or a municipality, may be a debtor under this title.” 11 U.S.C. § 109(a). “Person” is defined to include an “individual, partnership, and corporation, but does not include a governmental unit. . . .”⁵ 11 U.S.C. § 101(41). A “municipality” is a “political subdivision or public agency or instrumentality of a State.” 11 U.S.C. § 101(40). The United States Government is neither a “person” nor a

¹ Doc. No. 11.

² A Motion to Join Chapter 7 Involuntary Proceeding as Petitioning Creditor, Pursuant to 11 U.S.C. 303(c) was filed by “Nick-Anozil: Baussan” (*pro se*) on April 17, 2006. (Doc. No. 12)

³ Doc. No. 1.

⁴ Doc. No. 17.

⁵ The statute sets forth three exceptions whereby a governmental unit can be a “person.” None of the exceptions are applicable to this matter.

“municipality” and cannot be a bankruptcy debtor.⁶ The Petitioning Creditors’ subsequent addition of “Inc.” to the United States in their pleadings does not change this result. There is no such entity as “United States Inc.”

The doctrine of sovereign immunity prohibits the United States Government from being an involuntary debtor.⁷ The United States has not waived its immunity nor consented to suit. Section 106 of the Bankruptcy Code provides a limited waiver of sovereign immunity to permit adjudications of certain bankruptcy matters, the offset of mutual claims, and the assertion by a debtor or trustee of specified counterclaims against a governmental unit. 11 U.S.C. § 106. “By no stretch of the imagination can that ‘limited waiver’ be construed to encompass a consent to be sued on an involuntary bankruptcy petition.”⁸

Section 303(b)(1) sets forth who may commence an involuntary bankruptcy case:

by three or more entities, each of which is either a holder of a claim against [the debtor] that is not contingent as to liability or the subject of a bona fide dispute *as to liability or amount*, or an indenture trustee representing such a holder, if such *noncontingent, undisputed* claims aggregate at least \$12,300 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

11 U.S.C. § 303(b)(1) (*emphasis added*).⁹ The Petitioning Creditors do not meet the qualifications of § 303(b)(1). There is an objective basis for factual and legal disputes as to the validity of the Petitioning Creditors’ alleged debts.¹⁰ Their claims are contingent and are subject to a bona fide dispute as to liability and amount. Their aggregate claims must be at least \$12,300 of *unsecured* debt. 11 U.S.C. § 303(b)(1); 2 COLLIER ON BANKRUPTCY ¶303.03, at 303-22 (15th ed. rev. 2005). The Petitioning Creditors assert only secured claims, as set forth in the Involuntary Petition. They are not qualified

petitioning creditors eligible to file an involuntary petition pursuant to § 303(b).

Section 303 implicitly requires a petitioning creditor to act in good faith. 11 U.S.C. § 303(i). Consequences of a bad faith filing include dismissal and damages, including punitive damages. *Id.* A court is empowered to *sua sponte* dismiss a case pursuant to § 305(a) to prevent abuse of the bankruptcy system. 11 U.S.C. § 305(a)(1). The Petitioning Creditors did not file this case in good faith and the filing is an abuse of the bankruptcy system. The interests of the alleged creditors and the United States would be best served by dismissal of this case.¹¹

The Petitioning Creditors instituted certain adversary proceedings (as captioned above) relating to the underlying bankruptcy case and were not filed in good faith. No basis exists for retention of jurisdiction over the adversary proceedings and are due to be dismissed with the dismissal of the main case.¹²

Accordingly, it is

ORDERED, ADJUDGED and DECREED that the United States’ Motion to Dismiss is hereby **GRANTED**; and it is further

ORDERED, ADJUDGED and DECREED that the above-captioned case and all related adversary proceedings and motions are hereby **DISMISSED**.

Dated this 1st day of June, 2006.

/s/Arthur B. Briskman
ARTHUR B. BRISKMAN
United States Bankruptcy Judge

⁶ *In re President of the United States*, 88 B.R. 1, 3 (Bankr. D.C. 1985).

⁷ *In re President of the United States*, 88 B.R. at 3-4.

⁸ *In re President of the United States*, 88 B.R. at 4.

⁹ The italicized words were added by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

¹⁰ *In re Biogenetic Tech., Inc.*, 248 B.R. 852, 856 (Bankr. M.D. Fla. 1999).

¹¹ *In re AXL Indus., Inc.*, 127 B.R. 482 (S.D. Fla. 1991), *aff’d*, 977 F.2d 598 (11th Cir. 1992).

¹² See *In re Morris*, 950 F.2d 1531, 1535 (11th Cir. 1992) (holding that dismissal of a bankruptcy case usually results in dismissal of all adversary proceedings, but bankruptcy court may exercise discretion to retain jurisdiction over an adversary proceeding).