

DOCKET NUMBER: 95-11980

ADV. NUMBER: None

JUDGE: M. A. Mahoney

PARTIES: Kenneth May Nickles, Christine Coleman-Nickles

CHAPTER: 13

ATTORNEYS:

DATE: 6/19/96

KEY WORDS:

PUBLISHED:

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ALABAMA

In Re

KENNETH MAY NICKLES  
CHRISTINE COLEMAN-NICKLES,

Case No. 95-11980-MAM-13

Debtors.

**ORDER COMPELLING ATTENDANCE OF DEBTORS**  
**AT EXAMINATION**

This matter is before the Court on the Motion of G.N.S. and Associates, Inc. d/b/a Aaron's Rent-to-Own for sanctions against the debtors for failure to appear at 2004 examination and for reinstatement of the case. The Court has jurisdiction to hear these matters pursuant to 28 U.S.C. §§ 157 and 1334 and the Order of Reference of the District Court. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). For the reasons indicated below, the Court is partially granting the motion of G.N.S. and Associates at this time.

**FACTS**

These debtors filed this Chapter 13 case on August 7, 1995. On August 5, 1995, the debtors had rented a big screen television, a dining room table, 4 chairs, and hutch and buffet at a cost of \$333.55 per month from G.N.S. They never made any payments on this rental after the case was filed. They caused G.N.S. to expend a large amount of time, money, and effort to enforce their rights during the bankruptcy case. The debtors never paid any money to the Chapter 13 Trustee either for payment to creditors after the filing of their case. The Nickles got every benefit offered by Chapter 13, but to date have suffered none of the consequences.

On August 29, 1995, G.N.S. moved for relief from the automatic stay to repossess its rental merchandise. On October 6, 1995, the motion was conditionally denied based on debtors' agreement to comply with a payment schedule. The payments were never made. The merchandise was never returned.

Based upon the agreed conditional denial of the relief from stay, the Chapter 13 Trustee sought to have the G.N.S. claim disallowed. The disallowance would prevent double payment to G.N.S. The motion was granted on November 6, 1995. G.N.S. moved for reconsideration of that order when the debtors defaulted in their compliance with the stay order. After the debtors' default, G.N.S. wanted to be paid through the plan. The motion was granted.

The Court also granted G.N.S.'s motion for an examination of the debtors pursuant to Fed. R. Bankr. P. 2004 to determine the location and condition of their rental merchandise. The examination was scheduled for January 11, 1996 at 9:00 o'clock a.m. G.N.S. Exhibit 1, a transcript of the examination, shows what happened. The debtors actually knew of the examination and informed their counsel they would not attend.

On April 4, 1996, the Court dismissed the Chapter 13 case based upon the failure of the debtors to appear for their first meeting of creditors and plan confirmation hearing. On April 4, 1996, G.N.S. had filed a motion for sanctions which the Court ruled was moot due to the dismissal.

On April 16, 1996, G.N.S. moved the Court to reconsider the dismissal of the case based upon the need to sanction these debtors. The Court granted the motion to reconsider, set aside the dismissal, and set the sanctions motion for hearing on notice to the debtors, debtors' counsel, the Chapter 13 Trustee and the Bankruptcy Administrator. No notices were returned to the Court. At the hearing, debtors' counsel indicated debtors' telephone was disconnected and

Mrs. Nickles no longer was employed at the place indicated in their schedules, so debtors' counsel had not personally spoken with the debtors.

### PROCEDURAL HISTORY

At the hearing on the sanctions motion, the Court read findings of fact and conclusions of law into the record. The Court ruled that debtors had committed civil and criminal contempt and the Court's written ruling would so state. Upon further research and review, the Court believes an interim remedy is required first, prior to granting any civil or criminal contempt relief. This order modifies the Court's earlier oral ruling.

### LAW

The debtors failed to appear for an examination ordered by the Court pursuant to Fed. R. Bankr. P. 2004. The succeeding Rule, Fed. R. Bankr. P. 2005, applies directly to the situation.

It states:

(a) **Order to Compel Attendance for Examination.** On motion of any party in interest supported by an affidavit alleging . . . (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay . . .

The Court will order the debtors to comply with the Rule 2004 examination order first pursuant to the procedure established in Fed. R. Bankr. P. 2005. If they do not do so, the Court will consider other sanctions. See, *In re Younger*, 986 F. 2d 1376 (11th Cir. 1993). The statements of counsel, testimony of Mr. Reeves of G.N.S., and the transcript of the Rule 2004 examination are sufficient to constitute the information usually supplied by an affidavit under Rule 2005.

THEREFORE IT IS ORDERED that:

1. The dismissal order entered in this case is set aside and the case is reinstated;

2. The U.S. Marshal is directed to bring the debtors, Kenneth May Nickles and Christine Coleman-Nickles, before this Court for examination during business hours as soon as possible.

3. G.N.S. and Associates, Inc. shall be responsible for delivery of a copy of this order to the U.S. Marshal.

4. Both G.N.S. and Associates, Inc. and its counsel and debtors' counsel, Herman Padgett, shall cooperate with the U.S. Marshal to provide all information necessary to locate the debtors.

5. A further sanctions hearing shall be conducted in this matter, if necessary, on **July 31, 1996, at 10:30 o'clock a.m.** in Courtroom 2, U.S. Bankruptcy Court, 201 St. Louis Street, Mobile, AL 36602.

Dated: June 19, 1996

---

MARGARET A. MAHONEY  
CHIEF BANKRUPTCY JUDGE