

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
Ashland Division**

IN RE:

**ED EDWARDS AND
SALLY EDWARDS,**

Debtors

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**Chapter 7
Case No. 10-10435
Judge Joseph M. Scott**

ORDER DENYING MOTION TO REMOVE TRUSTEE

In this very contentious case, pro se debtor, Ed Edwards (“Debtor”),¹ filed a Motion to Remove Trustee (“Original Motion”) and a Supplement to Debtor’s Motion to Remove Trustee (“Supplement,” and together with the Original Motion, the “Motion”) (Docs. 184 & 199). The Motion was filed pursuant to 11 U.S.C. § 324(a), which provides that after notice and a hearing, the Court may remove a trustee for cause. Responses and objections were filed to the Motion by Phaedra Spradlin, the Chapter 7 Trustee (“Trustee”) (Doc. 196), John O. Morgan, Jr., counsel for the Trustee (Doc. 196), and the United States Trustee (“UST”) (Doc. 220). A hearing was held on June 19, 2012, and an Order (“Order to Supplement”) (Doc. 212) was entered requiring the Debtor to supplement the record with affidavits to support the allegations made in the Motion. The Order to Supplement further advised that the Court would determine the necessity of conducting an additional hearing based upon the substance and content of the affidavits. After review of the pleadings, including the affidavit of Debtor (“Debtor’s Affidavit”)² (Doc. 228), the arguments of counsel, and the record in this case, the Court determines that further hearing on the Motion is unnecessary. The Court further finds that the Debtor has failed to support the allegations in his Motion; and, therefore the Motion will be denied.

¹ Due to the death of Sally Edwards after the filing of the petition, Ed Edwards is the sole Debtor in this case.

² The Debtor’s Affidavit was not properly notarized so as to constitute evidence or provide any reason for the Court to conduct an additional hearing.

Venue for Debtors' Chapter 7 case is proper in this District under 28 U.S.C. §§ 1408 and 1409. This Court has jurisdiction of this Chapter 7 case pursuant to 28 U.S.C. § 1334(b). This matter arising under 11 U.S.C. § 324(a) constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

THE MOTION

As "cause" to remove the Trustee, Debtor asserts that the "Trustee has coerced factually inaccurate affidavits from several financially interested individuals and has fiscally mismanaged the estate." (Original Motion at 1). Debtor further asserts that the Trustee has allowed her counsel, John O. Morgan, Jr., to overcharge for fees in this case.³ "The Debtor fully believes that his life's work has been liquidated solely for the purpose of enriching the Trustee Phaedra Spradlin and John O. Morgan, Jr. in an unethical and possible illegal practice known as 'double dipping' in bankruptcy fraud terminology. . . ." (Supplement at 1).

In support of his accusations regarding the false affidavits submitted by the Trustee during this bankruptcy case, the Debtor states that he "is certain that [the affiants] did not personally write these statements" and "that each of the four individuals had a direct financial interest in cooperating with the Trustee at the time each affidavit was signed (presumably) by each." (Original Motion at 1).

In support of his contention that the Trustee has mismanaged the estate, Debtor states that the Trustee has failed to collect rents from the tenants residing in his property located on Chestnut Hill Drive, Ashland, Kentucky ("Chestnut Property") and that she failed to obtain renters for the property located on Jackson Avenue, Ashland, Kentucky ("Jackson Property") after a sale of that property fell through and the prior tenant vacated the property.

LAW AND DISCUSSION

Removal of a trustee for "cause" is "left to the sound discretion of the bankruptcy court." *Shapiro v. French (In re Connolly N. Am., LLC)*, Nos. 09-14179, 01-57090, 2010 WL 4822605, at

³ The Debtor has also filed a motion to compel the return of fees to the bankruptcy estate (Doc. 201) which will be dealt with in a separate order.

*2 (E.D. Mich. Nov. 2, 2010) (internal quotations and citation omitted). The Debtor, as the party seeking removal has the burden of establishing cause by specific facts that support removal. *Id.* at 3. “Conclusory contentions not supported by specific facts are insufficient grounds for removal of a trustee.” *Boyd v. Rabin (In re Boyd)*, 397 B.R. 544, 2008 WL 4372948, at *3 (B.A.P. 6th Cir. Sept. 23 2008) (table decision). Removal of a trustee is an extreme remedy and “cause” is to be determined on a case-by-case basis. *In re Boyd*, 2008 WL 4372948, at *3 (citing *Beery v. Gonzales (In re Berry)*, No. 06-1154 M, 2007 WL 1575278, *5 (Bankr. D.N.M. May 30, 2007)). “Typical cause for removal includes incompetence, misconduct in office, conflict of interest, or other violations of fiduciary duties the trustee owes to the estate and its creditors.” *Id.* at *3 (citation omitted); see also *United States ex rel. Peoples Banking Co. v. Derryberry (In re Hartley)*, 50 B.R. 852, 859 (Bankr. N.D. Ohio 1985) (as grounds for removal of a trustee in bankruptcy, “[w]e have traditionally stressed the elements of fraud and actual injury to the debtor’s interests”) (internal quotations and citation omitted).

As noted above, the Court advised Debtor at the hearing on June 19, 2012, and in the Order to Supplement, that the allegations in the Motion must be supported by sworn testimony. Debtor was given sufficient time to obtain affidavits to support the multiple unsubstantiated, conclusory allegations contained in his Motion. However, he did not do so. The only affidavit provided was the Debtor’s Affidavit which provided absolutely no evidence that the Trustee coerced any false statements from any individual or that any of the other typical causes for removal, including fraud and injury to the bankruptcy estate, were present.

The Debtor’s contention that the Trustee mismanaged the estate by failing to collect rents from the Chestnut Property and/or the Jackson Property is also without merit. The Court notes that the Trustee’s primary responsibility in a chapter 7 bankruptcy case is to liquidate the assets of the estate. *United States, ex rel. Peoples Banking Co. v. Derryberry (In re Miller)*, 50 B.R. 870, 873 (N.D. Ohio 1985). Encumbering real property with a lease and tenancy rights is not compatible with a quick sale. *In re Miller*, 50 B.R. at 873. The record clearly reflects that the

Trustee has attempted to liquidate the estate property as quickly as possible, but that she has been met with continuing resistance from the Debtor. Thus the Debtor's own actions have prolonged the process and prevented the Trustee from expeditiously selling the property of the estate. The Court also agrees with the Trustee that renting property is not necessarily in the best interests of the bankruptcy estate due to the possible liability to the estate.

CONCLUSION

The Court finds that the Debtor has failed to carry his burden of proving "cause" to remove the Trustee.

IT IS HEREBY ORDERED that the Motion is **DENIED**.

Copies to:
Phaedra Spradlin, Chapter 7 Trustee
John O. Morgan, Jr., Esq.
Rachelle C. Dodson, Esq.
Ed Edwards, Debtor

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***The affixing of this Court's electronic seal below is proof this document has been signed by the Judge and electronically entered by the Clerk in the official record of this case.***



**Signed By:**  
**Joseph M. Scott, Jr.**  
**Bankruptcy Judge**  
**Dated: Tuesday, September 04, 2012**  
**(jms)**