

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

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In re:

YING HUA TAM, aka YING HUA HUANG,  
Debtor.

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Case No. DK 12-06379  
Chapter 11  
Hon. Scott W. Dales

ORDER DENYING RULE 59 MOTION AND RELATED MOTIONS

PRESENT: HONORABLE SCOTT W. DALES  
United States Bankruptcy Judge

By order dated December 13, 2012 (the “Dismissal Order,” DN 61), the court dismissed the chapter 11 bankruptcy case of Ying Hua Tam for failure to pay the prescribed filing fee. *Pro se* litigant Yaodi Hu, claiming an interest in that bankruptcy estate, appeared at the dismissal hearing but could not show cause why the case should not be dismissed. After dismissal, he filed a Motion for Joint Administration Under Rule 1015(b), which the court treated in part as a motion seeking reconsideration of the Dismissal Order. The court denied that motion in an order dated December 28, 2012.

Next, Mr. Hu filed a Rule 59 Motion to Vacate Dismissal on January 15, 2013 (the “Rule 59 Motion,” DN 71), which the court will treat as referring to Rule 59’s bankruptcy cousins, Fed. R. Bankr. P. 9023 and 9024. On that same date, he filed a Motion for Declaratory Judgment and Injunctive Relief Under Rule 7065 that Local Rule 5.7(i) of this District Court is Facially Unconstitutional (the “Declaratory Judgment Motion,” DN 72). While those motions were pending, Mr. Hu filed yet another motion, this one seeking an order compelling the Debtor and her non-debtor husband to pay the filing fees and quarterly United States Trustee fees (the “Fee Motion,” DN 73).

For the reasons set forth in the Order Denying Joint Administration (DN 68), the court will deny the Rule 59 Motion and the Fee Motion. Moreover, as to the Fee Motion, the court is not disposed to order non-party, Warren Tam, to pay the filing fees for his wife's case, even if the court were satisfied that it had personal jurisdiction over Mr. Tam, to do so.

As for Mr. Hu's Declaratory Judgment Motion, it also suffers from several defects that preclude the court from granting the relief requested, and that warrant an order disposing of it summarily. First, a litigant in bankruptcy court may seek declaratory and injunctive relief only by filing a complaint and commencing an adversary proceeding, not by merely filing a motion as Mr. Hu has done. *See* Fed. R. Bankr. P. 7001. In addition to the procedural requirements governing pleadings in an adversary proceeding, a plaintiff must also pay a filing fee. Moreover, because the court will not vacate the Dismissal Order, the court will not entertain the filing of an adversary proceeding related to Ms. Tam's base case.

Second, L.Civ.R. 5.7(i) (W.D.Mich.), which is the subject of Mr. Hu's Declaratory Judgment Motion, is applicable in the United States District Court, not the United States Bankruptcy Court. The United States Bankruptcy Court has its own procedures for electronic filing.

Finally, Mr. Hu's statements that he is representing Ms. Tam in this proceeding, purportedly pursuant to a power of attorney, do nothing to dispel the notion that he is in effect engaging in the unauthorized practice of law by filing papers with the court and making legal argument on her behalf. In Michigan, the unauthorized practice of law is punishable as a contempt of the Michigan Supreme Court and the Circuit Court of the county in which the violation occurred. *See* M.C.L. § 600.916. For this and other reasons, Mr. Hu must refrain from

representing Ms. Tam in this case, and should consult counsel to assist him in connection with his own.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Rule 59 Motion (DN 71) is DENIED;
2. The Declaratory Judgment Motion (DN 72) is DENIED;
3. The Fee Motion (DN 73) is DENIED;
4. The Clerk shall deliver a copy of this Order to the Honorable Jeffrey R.

Hughes.

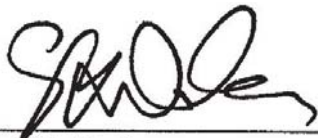
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Ying Hua Tam, Yaodi Hu, the Office of the United States Trustee, and all parties listed on the mailing matrix herein.

END OF ORDER

**IT IS SO ORDERED.**

Dated January 25, 2013



  
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Scott W. Dales  
United States Bankruptcy Judge