

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
Sophie Serrato,
Debtor.

Case No. 90-54408
Chapter 7

**MEMORANDUM DECISION RE
MOTION TO COMPEL COOPERATION
OF DEBTOR AND FOR SANCTIONS**

FACTS

This matter comes before the Court on the Trustee's Motion to Compel Cooperation of Debtor and for Sanctions. The dispute involves the Trustee's ability to discover information from the Debtor relating to a promissory note, the "West Note", executed in favor of the Debtor in an effort to collect on that note for the benefit of the estate.

DISCUSSION

1. Motion to Compel Cooperation

Bankruptcy Code Sections 521(a)(3) and 521(a)(4) provide that the debtor shall cooperate with the trustee as necessary to enable the trustee to perform her duties under the Bankruptcy Code and surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate. 11 U.S.C. §§ 521(a)(3) & (4). The duty of the Debtor is clearly and explicitly set forth in the Code. The duties imposed by Section 521 are affirmative obligations. In re Sowers, 97 Bankr. 480, 487 (Bankr. N.D.Ind. 1989). The

1 Trustee should not have to be chasing debtors into court in order to gain their cooperation, *Id.*; In re
2 Bianco, 5 Bankr. 466, 468 (Bankr. D.Mass. 1980), or to retrieve necessary information. In re
3 McDonald, 25 Bankr. 186, 189 (Bankr. N.D.Ohio 1982). That appears to be the case here. This
4 Court has the authority to order the delivery of books and records to the trustee, *Babbitt v. Dutcher*,
5 216 U.S. 102, 105 (1910); therefore, the Trustee's request for an order compelling the Debtor to
6 cooperate is granted.

2. Motion for Sanctions

7
8
9 With respect to the Trustee's Motion for Sanctions against the Debtor, the Trustee in her
10 Memorandum of Points and Authorities has failed to cite any authorities that would warrant the grant
11 of sanctions. The Court believes that it would not be appropriate to award sanctions at this juncture,
12 particularly in view of the fact that the Debtor has not violated an order of this Court. However, the
13 Court has noted that other courts have found a debtor's violation of a duty imposed by the Code to be
14 the functional equivalent of a violation of a definite order of the court as a basis for a finding of
15 contempt. See *In re Crabtree*, 39 Bankr. 702, 710 (Bankr. E.D.Tenn. 1984). The Trustee's Motion
16 for Sanctions is hereby denied.

17 This does not preclude the Trustee from coming in at a later date to seek sanctions based on
18 the Debtor's contempt of the order compelling her to cooperate with the Trustee. Nor should the
19 Trustee overlook her other remedies if the Debtor should continue to fail to cooperate. That includes
20 the initiation of formal discovery under Bankruptcy Rule 2004, seeking a denial of discharge under
21 Section 727(a)(4)(D), see *In re Kent*, 92 Bankr. 540, 543 (Bankr. S.D.Fla. 1988), and seeking a
22 dismissal of this case under Section 707(a).