

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

“Alleged Debtor” Lee D. Mitchell, Sr.

Case No. 04-14299 K

Debtor

This Involuntary Petition was filed by Yolanda Mitchell, acting *pro se*. It appears to have been filed for the sole purpose of collecting support arrears pursuant to a March 18, 2003 Order of New York State Supreme Court.

The Court directed the petitioning Creditor, Yolanda Mitchell, to ascertain whether the alleged Debtor, Lee Mitchell, is or is not on active duty in the military. By Affidavit, Yolanda Mitchell has made it clear that in fact the Alleged Debtor, Lee Mitchell, is on active duty in the military.

The “Soldiers and Sailors Civil Relief Act” was amended just a few months ago (December 19, 2003) to greatly expand the protections accorded those in military service. In particular, see 50 U.S.C. Appendix § 521.

The protections accorded to the involuntary alleged debtor who is in military service are presently irreconcilable with the many procedural requirements of an involuntary bankruptcy.¹

There being no indication that this Involuntary Petition would serve any purpose other than to assist Yolanda Mitchell in enforcing a State Court Order that became effective months before the amendments to the Soldiers and Sailors Civil Relief Act, the Court *sua sponte* dismisses this Involuntary Bankruptcy Petition *ab initio*, and instructs Yolanda Mitchell to refrain from filing any

¹See, for example, 11 U.S.C. § 303(h) and Rules 1007(a)(2), 1010, 1011, 1013, 1018 F.R.B.P.

further Involuntary Bankruptcy Petition against Lee Mitchell until she can attest that he is available to accept service of process and to appear here to defend himself. In the alternative, she may return to State Supreme Court for instructions regarding the enforcement of the language of the Order that expressly dealt with deductions from his military pay if he was to be deployed.

Case dismissed *ab initio*.

SO ORDERED.

Dated: Buffalo, New York
August 25, 2004

U.S.B.J.