

Dated: March 23, 2017



Daniel P. Collins

Daniel P. Collins, Chief Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

)	Chapter 7 Proceedings
)	
In re Alejandrina Wilson)	Case No: 3:16-bk-12342-DPC
)	
Debtor.)	Under Advisement Ruling on Validity of Bankruptcy Filing
)	
)	[NOT FOR PUBLICATION]

This matter came before the Court on Trustee’s Motion to Determine Validity of Bankruptcy Filing. Trustee disputes the validity of the Debtor’s chapter 7 filing because the Declaration of Electronic Filing was signed by Debtor’s daughter Alisa Hake who, at the time, held a power of attorney for the Debtor. After consideration, the Court now confirms the validity of this proceeding.

I. Background

Alejandrina Wilson (“Debtor”) filed the instant chapter 7 petition on October 26, 2016. (DE¹ 1). The first meeting of creditors under 11 U.S.C. § 341 was scheduled for December 16, 2016. (DEs 2 & 7). According to Trustee’s Motion to Determine Validity of Bankruptcy Filing (“Motion for Determination”) (DE 13), Debtor did not appear at the 341 meeting. *Id.* Instead, Debtor’s daughter, Ms. Alisa Hake, appeared claiming that she held a power of attorney for the Debtor. *Id.* Following the first meeting of creditors, Trustee filed the Motion for Determination and the Court set a hearing for January 27, 2017. (DEs 13 & 14). On January 11, 2017, Debtor, through counsel, filed a Response to the Motion for Determination (DE 15), and the Court heard argument on January 27,

¹ DE will hereinafter refer to docket entries from the administrative case 3:16-bk-12342-DPC.

1 2017. (DE 17). At the hearing, counsel for Trustee appeared and argued the applicability
2 of *In re Brown*, 163 B.R. 596 (Bankr. N.D. Fla. 1993), a case not cited in the Motion for
3 Determination. Debtor's counsel discussed amending the documents in question to
4 reflect the arrangement between the Debtor, her daughter, and the power of attorney.
5 (DEs 16 & 17). The Court subsequently took this matter under advisement. After the
6 hearing, on February 3, 2017, Debtor filed a Memorandum in Support of Response to
7 Trustee's Motion for Determination. (DE 18). On February 8, 2017, Debtor filed an
8 Amended Declaration Re: Electronic Filing, this time signed by Debtor. (DE 19).

9 **II. Issue**

10 Is this case a valid chapter 7 filing despite the Debtor's failure to personally sign
11 the original Declaration Re: Electronic Filing?

12 **III. Analysis**

13 At the January 27, 2017 hearing, Trustee referenced a case from the Bankruptcy
14 Court for the Northern District of Florida called *In re Brown*, 163 B.R. 596 (Bankr. N.D.
15 Fla. 1993). There, the signature on the bankruptcy petition was forged by the debtor's
16 non-filing spouse. *Id.* at 598. While the Debtor's spouse had a power of attorney over
17 the Debtor's financial affairs, the power of attorney made no reference to filing a
18 bankruptcy petition. *Id.* at 597. Because the signature on the petition was a forgery, the
19 power of attorney did not authorize a bankruptcy filing, and the Debtor had passed away
20 by the time the issue was raised, the *Brown* court used its inherent authority under
21 11 U.S.C. § 105 to find that the bankruptcy filing was invalid and dismiss the case. *Id.*
22 at 598.

23 The facts before this Court are significantly different from those in *Brown*. First,
24 the Debtor did in fact sign the petition, schedules, and statements, albeit electronically.
25 *See* (DE 1 pp. 4, 10, 29, 38, 40). These were not forged signatures, but electronic
26 signatures that Debtor, through counsel, has affirmed were her own. (DE 18, p.2, ¶4).

1 Debtor's daughter originally signed the Declaration Re: Electronic Filing (DE 8),
2 however Debtor subsequently uploaded an Amended Declaration Re: Electronic Filing
3 (DE 19) which bears Debtor's actual signature. Third, the Durable Power of Attorney
4 attached to the Response to the Motion for Determination (DE 15) specifically provides
5 that Ms. Hake may act on Debtor's behalf to "research and initiate bankruptcy
6 proceedings." (DE 15, Exhibit 1, p. 3, ¶11). Finally, unlike the *Brown* case, here the
7 Debtor is alive and has affirmed through counsel that she signed the documents
8 underlying this proceeding. (DE 18, p.2, ¶4).

9 **IV. Conclusion**

10 The Court finds no reason why Debtor should not be allowed to proceed with her
11 chapter 7 case.

12 **IT IS ORDERED**, denying the Motion for Determination and confirming the
13 validity of Debtor's chapter 7 filing.

14
15 **Signed and Dated Above.**

16
17 COPY of the foregoing mailed by the BNC and/or
18 sent by auto-generated mail to:

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Notice Recipients

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