

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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JUDITH ANN STONE  
*Debtor(s).*

Bankruptcy No. X88-00385S  
Chapter 7

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### ORDER RE: DEBTOR'S MOTION TO DISMISS

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The matter before the Court is the debtor's motion to dismiss her Chapter 7 case. Trustee has resisted. Hearing was held on July 7, 1988. The Court now issues the following ruling which shall constitute findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

#### FINDINGS OF FACT

Judith Ann Stone (Debtor) filed her individual voluntary petition under Chapter 7 of the Code on March 9, 1988. Donald Molstad was appointed trustee.

Debtor is a single parent with two small children. Her debts are primarily consumer debts. She was divorced on December 31, 1986. She began employment with Pioneer Tele Technologies in Sergeant Bluff, Iowa in January, 1987.

Debtor's earnings from Pioneer Tele Technologies have improved since her original hiring. She presently earns \$6.13 per hour for a 37-1/2 hour week. She also receives incentive pay which ranges between \$30 and \$75 per week.

At the time she filed her bankruptcy case, Debtor anticipated she would receive some state and federal income tax refunds but she had no idea what the amount of those refunds might be. While neither potential tax refunds nor accrued wages were listed on Debtor's schedule of personal property, she did claim accrued wages and tax refunds as exempt property to the extent of \$1,000 under Iowa Code § 627.6(10)(E). This exemption claim was apparently derived by using the maximum allowable amount rather than by using any known figures.

Debtor's tax returns were prepared after the filing of the bankruptcy case; it then became known that Debtor was entitled to refunds of approximately \$1,200 from the U. S. Internal Revenue Service and \$200 from the State of Iowa. Also, at the time of the filing of the bankruptcy case, she had earned but had not been paid \$303.45 in wages.

Debtor lists no priority or secured creditors on her schedules. She lists ten unsecured creditors (one disputed) with total unsecured debts of \$3,918.92. Her largest unsecured creditor is Mark Anthony Rossi to whom she owes \$1,288.00 for professional services for her marriage dissolution proceeding.

In administering this Chapter 7 case, Trustee rendered approximately 1-1/2 hours in services and accrued less than \$50 in expenses.

On May 23, 1988, Debtor sought dismissal of her case without prejudice. The application contained the following statement of cause:

Judith Ann Stone feels that she may very possibly work her way through her financial difficulties and may be able to pay her creditors so that she will not have to suffer through the embarrassment and inconvenience of Bankruptcy.

Notice of the application for dismissal was given to all creditors and parties-in-interest and creditors were advised that they had to and including June 14, 1988 to object. Trustee resisted the motion to dismiss and the matter was set for hearing before the undersigned.

At the hearing, Debtor testified that she wants to dismiss her Chapter 7 case and work out arrangements with her creditors so that she might settle her debts with them but at less than face value. Counsel for Debtor stated settlement negotiations with Rossi resulted in Rossi agreeing to take \$500 in full satisfaction of his \$1,288.00 claim. Negotiations with other unsecured creditors were postponed pending disposition of Debtor's motion to dismiss.

### DISCUSSION

While a debtor may voluntarily choose to file bankruptcy, a debtor does not enjoy absolute discretion in having the case dismissed. In re Blackmon, 3 B.R. 167, 169 (Bankr. S.D. Ohio 1980); In re Klein, 39 B.R. 530, 532 (Bankr. E.D. N.Y. 1984). Under 11 U.S.C. § 707, a motion to dismiss a Chapter 7 case may be granted for cause, However, the determination of cause rests within the sound discretion of the court. In re Heatley, 51 B.R. 518, 519 (Bankr. E.D. Pa. 1985).

A creditor's failure to resist does not constitute his consent to a dismissal. Penick v. Tice (In re Penick), 732 F.2d 1211, 1213 (4th Cir. 1984). Absent affirmative assent from all creditors, a debtor may not obtain a dismissal of her case if dismissal would cause legal prejudice. In re Astin, 77 B.R. 537, 538 (Bankr. W.D. Va. 1987); Klein, 39 B.R. at 532.

A trustee may resist a dismissal on any ground on behalf of unsecured creditors who do not affirmatively consent to the dismissal of the case. Penick, 732 F.2d at 1214.

No creditors objected to this motion to dismiss. Trustee, however, objected on the grounds that this dismissal is prejudicial to creditors because assets which may be distributed in the Chapter 7 case have now been discovered.

This Court agrees.

The filing of a bankruptcy case is a serious undertaking and should not be done hastily. What may be started so easily may prove difficult to stop and the Court believes this should be so. Otherwise, a debtor could file bankruptcy only when he perceives benefits and dismiss the case when unexpected detriments arise.

The Court finds a dismissal of this case would be prejudicial to creditors. Based on the evidence, Trustee would have approximately \$703 for payment of administrative expenses and for distribution to unsecured creditors. While this is not a large sum, it is something.

If the motion to dismiss were granted, there is no assurance that unsecured creditors will get anything or that they will share on a pro rata basis as they would in bankruptcy. Even Debtor admits in her motion and at trial that settlement with creditors at this time is only a possibility. Moreover, if negotiations fail and a subsequent Chapter 7 is filed, there may not then be assets for distribution.

Debtor's desire to work out her financial difficulties with her creditors without a bankruptcy is laudable but unsure and untimely. Were this Court to dismiss this case to allow her to pursue that goal, Debtor's failure could lead her back to this Court and the present creditors might lose the few assets they may look to now for distribution.

### **CONCLUSION OF LAW**

Debtor has failed to show good cause for the dismissal of her Chapter 7 case.

### **ORDER**

IT IS HEREBY ORDERED that Debtor's motion to dismiss this Chapter 7 case is denied.

SO ORDERED ON THIS 18th DAY OF JULY, 1988.

William L. Edmonds  
Chief Bankruptcy Judge