

In the United States Bankruptcy Court

for the Northern District of Iowa

LARRY DeBOEST
Debtor.

Bankruptcy No. 93-41943XM
Chapter 7

ORDER RE: MOTION TO DISMISS

The matter before the court is Larry DeBoest's Motion to Dismiss his Chapter 7 case. The motion was filed March 9, 1994. Hearing was held May 24, 1994 in Mason City, Iowa.

DeBoest filed a Chapter 7 petition on December 1, 1993. He listed the following creditors in his schedules:

Schedule D -- Creditors Holding Secured Claims:

	Claim Amount	Unsecured Portion
FmHA	\$38,014.00	\$30,028.00
Ford Motor Credit Co.	13,456.40	11,101.53

Schedule A indicates the value of the real property mortgaged to the FmHA is \$46,000.00. Schedule B shows the value of the pickup truck DeBoest is buying from Fort Motor Credit is \$15,811.27.

Schedule F -- Creditors Holding Unsecured Claims:

	Amount
Chase Manhattan Visa	\$ 880.17
CitiBank Classic Visa	953.43
Credit Bureau Enterprise	599.58
J. C. Penney	70.00
Master Card	817.11
Visa, M.B.N.A.	1,310.62
Visa, Citizens National Bank	562.00
Visa/Mastercard	336.41
TOTAL	\$ 5,529.32

DeBoest stated his occupation on Schedule I as "road construction and concrete" for Allied Construction/Redimix in Charles City. He listed his income as an estimate of average monthly income. DeBoest's Schedule I shows net monthly take-home pay of \$2,485.90. His Schedule J lists \$1,710.61 of monthly expenses. The difference between monthly net income and expenses is \$775.29. DeBoest is single and has no dependents.

Larry Eide, Chapter 7 trustee, inquired about DeBoest's assets and discovered that DeBoest had interests in accrued wages and tax refunds in excess of the \$1,000.00 exemption amount. Eide did not investigate further upon learning of the motion to dismiss. DeBoest testified he received a 1993 federal tax refund of approximately \$2,000.00. On the date of the bankruptcy petition, he had one-week's accrued wages. DeBoest estimated the gross amount for the week was \$400.00.

In response to the motion to dismiss, the U. S. Trustee commented that the case would be appropriate for dismissal under 11 U.S.C. § 707(b) for "substantial abuse," but stated that the U. S. Trustee did not object to dismissal if the Chapter 7 trustee does not object and if the creditors consent to the motion.

Before filing his Chapter 7 petition, DeBoest attempted to work out a settlement of his debts with his creditors. At that time, his creditors were unwilling to compromise their claims. However, after he filed his bankruptcy petition, DeBoest said his creditors were willing to settle with him. DeBoest testified that each creditor has now agreed to a settlement, and he has paid all but one. The agreements were not for payment in full. DeBoest asked each creditor how much it would accept. DeBoest said he paid the creditors various amounts, and estimated the total paid was \$1,800.00 to \$2,000.00. He said CitiBank, the remaining unpaid creditor, will accept \$600.00. Attached to DeBoest's motion are copies of correspondence from two creditors regarding settlement of their debts. DeBoest apparently plans to continue making regular payments to his secured creditors, FmHA and Ford Motor Credit.

A debtor must show cause to voluntarily dismiss a Chapter 7 case. 11 U.S.C. § 707(a). The debtor must show there would be no prejudice to creditors from the dismissal. In re Van Leuven, Bankruptcy No. 92-32200XF (Bankr. N.D. Iowa, Feb. 16, 1993).

It appears that DeBoest may have used his Chapter 7 filing as leverage in dealing with his creditors. The case would have been subject to dismissal for substantial abuse because of his ability to pay creditors out of future earnings. In re Walton, 866 F.2d 981 (8th Cir. 1989). DeBoest has disposable income of \$775.00 per month which could have funded a Chapter 13 plan. After subtracting the trustee's fee, a three-year plan would have generated approximately \$25,000.00 to pay creditors. Even assuming that FmHA and Ford Motor Credit are undersecured creditors, DeBoest could have paid a substantial portion of his debts through a Chapter 13 plan. Assuming that the property values in Schedules A and B are correct and that FmHA and Ford Motor Credit are fully secured, DeBoest could have paid all his unsecured creditors in full in approximately eight months.

DeBoest has not submitted documentary evidence of settlement with his creditors other than the two letters attached to his motion. There is no evidence regarding any agreement with his two largest creditors, FmHA and Ford Motor Credit. DeBoest presented no evidence that any of his creditors have consented to DeBoest's dismissal. Therefore, the court finds and concludes that DeBoest has not sufficiently shown that his creditors would not be prejudiced by dismissal of his case.

ORDER

IT IS ORDERED that Larry DeBoest's Motion to Dismiss is denied.

SO ORDERED ON THIS 2nd DAY OF JUNE, 1994.

William L. Edmonds
Chief Bankruptcy Judge

I certify that on _____ I mailed a copy of this order and a judgment by U. S. mail to: Roger Sutton, Larry Eide and U. S. trustee.