

In the United States Bankruptcy Court

for the Northern District of Iowa

PAUL F. PFAB
Debtor(s).

Bankruptcy No. 93-21955KD
Chapter 12

ORDER

On June 6, 1994, the above-captioned matter came on for hearing pursuant to assignment. Debtor appeared with Attorney Frances Henkels. Also appearing was John Schmillen of the U.S. Trustee's Office and Attorney Roberta Gilbert representing Farm Credit Bank. The matters were argued after which the Court took the matter under advisement.

The matters before the Court are:

- a. An Application to Withdraw as Counsel by Attorney Frances Henkels.
- b. Trustee's Motion to Dismiss.
- c. Farm Credit Bank's Motion to Dismiss.

The parties first argued the Motion to Withdraw as Counsel filed by Attorney Frances Henkels. Mr. Henkels was allowed to present his reasons on the record for withdrawal as counsel. Debtor Paul Pfab was also allowed to address the Court. Mr. Pfab requested that the Court deny the Motion to Withdraw and require that Mr. Henkels remain as attorney of record. The Court is satisfied that the reasons precipitating the Motion to Withdraw are not primarily of a financial nature. The working relationship between Debtor and counsel has deteriorated to the point that it is impossible for Mr. Henkels to continue as counsel. The Court finds that the Motion to Withdraw is filed in good faith and that good cause is shown to grant the Motion. On the record and pursuant to the record made, the Court allowed Mr. Henkels to withdraw as counsel on the date of hearing.

The second matter before the Court is the Trustee's Motion to Dismiss and Farm Credit Bank's Motion to Dismiss. In essence, both Motions to Dismiss are identical. They allege that Debtor has failed to comply with 11 U.S.C. § 1208(c)(3). This section states that:

(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this Chapter for cause, including -

...

(3) failure to file a plan timely under § 1221 of this title.

The uncontested record establishes that a voluntary Chapter 12 Petition was filed by Debtor on December 3, 1993. Debtor is statutorily required to file a plan not later than 90 days after the Order

for Relief under this Chapter. 11 U.S.C. § 1221. The original deadline for filing of Debtor's Chapter 12 plan was March 3, 1994. Debtor made application and was subsequently granted an extension of time to file his plan until April 5, 1994. That time period has expired and Debtor has not sought an additional extension of time within which to file a plan. Based upon the record made at the hearing on June 6, 1994, there was no indication made to the Court that the filing of a plan is imminent.

The entire framework of Chapter 12 is designed to have a case move to completion on a rapid basis. Because of this, 11 U.S.C. § 1208(c)(3) authorizes dismissal if a plan is not filed within 90 days after commencement of the case unless good cause exists to grant an extension of time. In this case, the Court granted an initial extension from March 3 until April 5, 1994. More than 180 days has transpired from the filing of the Petition with no prospect of a feasible plan on the horizon. This issue has been addressed by the Bankruptcy Court in the Western District of Missouri. The Court stated:

However, there comes a point at which the Court can only look to and apply the law as set out in the statute itself. Section 1221 provides that a plan "shall be filed not later than ninety days after the order for relief". In this case no plan has been filed although one hundred and ten (110) days have passed since the Order for Relief was entered. The comments of Senator Grassley contained in the Conference Reports are clear and unequivocal as to what should happen under such circumstances.

In re Offield, 77 B.R. 222, 223 (Bankr. W.D. Mo. 1987).

There is little to distinguish the present case from Offield except the time that has transpired since the filing of the Petition is longer and the likelihood of a confirmable plan being filed in the immediate future is more remote. As stated in Offield, no justifiable reason exists to grant additional delays. As such, the Motion to Dismiss filed by both Farm Credit Bank of Omaha as well as the Trustee should be sustained.

WHEREFORE, the Motion to Withdraw as Counsel filed by Attorney Frances Henkels is GRANTED without further filing.

FURTHER, the Motion to Dismiss filed by the Trustee is GRANTED.

FURTHER, on the same grounds, the Motion to Dismiss filed by Farm Credit Bank of Omaha is GRANTED.

FURTHER, based on the foregoing, this case is DISMISSED.

SO ORDERED this 16th day of June, 1994.

Paul J. Kilburg
U.S. Bankruptcy Judge