

# In the United States Bankruptcy Court

## for the Northern District of Iowa

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JAMES KENNETH PAULSEN

Debtor.

Bankruptcy No. 96-60964KW

Chapter 7

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### ORDER

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Debtor filed his Chapter 7 petition April 23, 1996. This is a no-asset case. Discharge was entered August 1, 1996.

Trustee filed two adversary proceedings. In Fokkena v. Paulsen, Adv. No. 96-6150KW, the Court entered an Order Revoking Discharge on November 13, 1996. Trustee's complaint alleges that Debtor concealed the transfer of a Harley Davidson motorcycle which constitutes a fraudulent transfer and grounds to revoke the discharge under 727(d)(1). The Court granted default judgment.

In the second adversary proceeding, Trustee seeks to recover the value of the transferred Harley from Debtor's common law wife, Defendant Patricia Murphy. Trustee filed this adversary proceeding November 14, 1996. Defendant Murphy was served November 18, 1996. No answer yet appears in the file.

On December 30, 1996, Debtor, represented by Donna Lesyshen, filed a "Dismissal of Chapter 7 Petition".

Unlike Chapter 13 bankruptcy cases where the debtor has an absolute right to dismiss, a debtor has no corresponding right to dismiss a Chapter 7 petition. In re Wilde, 160 B.R. 625, 627 (Bankr. W.D. Mo. 1993). A Chapter 7 bankruptcy case may only be dismissed "for cause" under 707(a), which is applicable to voluntary dismissal by a debtor. In re Churchill, 178 B.R. 478, 479 (Bankr. D. Neb. 1995). Determining whether cause exists requires a balancing of the interests of the debtor and creditors. Id. "The most important consideration is whether dismissal is in the best interests of creditors." Wilde, 160 B.R. at 627.

The Court may dismiss a case for cause under 707(a) after notice and a hearing. Feb. R. Bankr. P. 1017(a). As the Code does not define "cause", a judicial determination of cause warranting dismissal rests in the sound discretion of the bankruptcy court. In re Cecil, 71 B.R. 730, 734 (Bankr. W.D. Va. 1987); see In re Ouverson, 79 B.R. 830, 832 (Bankr. N.D. Iowa 1987) (in Chapter 12, lack of good faith constitutes cause for lifting the stay or for dismissal of the case). A list of factors that may be considered in determining whether good cause exists to dismiss a bankruptcy petition is set out in 707(a). This list is neither exclusive nor exhaustive. In re Huckfeldt, 39 F.3d 829, 831 (8th Cir. 1994); In re Atlas Supply Corp., 857 F.2d 1061, 1063 (5th Cir. 1988). In evaluating a motion to dismiss, "[t]he court must balance the equities and weigh the benefits and prejudices of a dismissal." Atlas Supply, 857 F.2d at 1063.

In order to be entitled to voluntary dismissal of this case, Debtor must demonstrate cause at a hearing after notice. The Court must determine whether dismissal is in the best interests of creditors and weigh the benefits and prejudices of dismissal. As such, Debtor's pleading entitled "Dismissal of Chapter 7 Petition" does not in fact terminate this case and can not be done ex parte without notice to all creditors, a hearing and judicial approval.

**WHEREFORE**, Debtor's pleading captioned "Dismissal of Chapter 7 Petition" is of no force and effect in terminating this case.

**FURTHER**, if Debtor feels grounds exist to dismiss this case, it must be done in the context of a Motion to Dismiss with notice to all creditors and parties in interest.

**FURTHER**, unless further pleadings are filed on this issue, no further Court action will occur on this Motion as it is a nullity and any pending matters in this file or associated adversary proceedings are to continue as scheduled.

**SO ORDERED** this 9<sup>th</sup> day of January, 1997.

Paul J. Kilburg  
U.S. Bankruptcy Judge