

In the United States Bankruptcy Court

for the Northern District of Iowa

KRISTEN SUE DAMGE
Debtor(s).

Bankruptcy No. 98-03694-W
Chapter 7

ORDER RE DEBTOR'S MOTION TO DISMISS

This matter came on for hearing in Independence, Iowa on March 24, 1999. The matter before the Court is a Motion to Dismiss filed by Debtor. Debtor appeared in person without counsel. Pursuant to the record made, Debtor was allowed to present her position. There are no objections filed of record. At the close of the hearing, the Court took the matter under advisement.

FACTS

Debtor, Kristen Damge, filed her voluntary Chapter 7 petition on December 14, 1998. Debtor elected to exempt all of her personal property. She listed Green Tree Financial Servicing Corporation (Green Tree) as the only secured creditor. Green Tree held a mortgage in the amount of \$31,776.08 on Debtor's 1999 Fortress Mobile Home. Debtor listed three unsecured nonpriority claims on her Schedule F: (a) Debtor's parents, Carol and Dave Damge, with a claim in the amount of \$2,000; (b) Columbia House with a claim of \$20; and (c) Providian Plus Visa Card with a claim of \$80.

In her Motion to Dismiss, Debtor states that her reason for filing the voluntary petition was to address the obligation which she owed to Green Tree. Debtor stated, at the time of hearing, that this mobile home was purchased with another individual in anticipation of marriage. In purchasing this mobile home, Debtor borrowed \$2,000 from her parents which constitutes the basis for their claim. When Debtor's anticipated marriage did not occur, she stated that she was unable to maintain the payments to Green Tree based on her individual income.

After the filing of the petition, Green Tree filed for relief from the automatic stay. This Motion was not resisted and was granted. Green Tree has now foreclosed on the property and, based upon information provided at the time of hearing, the mobile home has been sold and the remaining mortgage indebtedness, as well as all fees, interest and costs associated with the sale, have been paid. To the best of Debtor's knowledge, there exists no residual funds for distribution. Debtor also stated that, since the filing of the petition, she has paid in full the obligations owing to Columbia House and Providian Plus Visa. Debtor's mother, Carol Damge, was present at the hearing on the Motion to Dismiss. She stated to the Court that she and her husband have forgiven the \$2,000 indebtedness owed by Debtor and do not wish to be reimbursed.

Debtor takes the position that since all indebtedness listed at the time of the filing of the Chapter 7 petition has now been satisfied or released, a Motion to Dismiss is appropriate. All parties, including the Chapter 7 Trustee, have been notified and no objections to dismissal have been filed with the Court. Debtor asks the Court to dismiss her voluntary petition.

CONCLUSIONS

This Court is granted the authority to dismiss a case filed by a debtor which arises under Chapter 7 under certain circumstances. The Code provides that:

- (a) The Court may dismiss a case under this chapter only after notice and a hearing and only for cause.

11 U.S.C. §707(a).

Additionally, the Federal Rules of Bankruptcy Procedure address the proper methodology for considering such a motion:

- (a) Voluntary Dismissal

Except as provided in §§707(b), 1208(b), 1307(b) of the Code, a case shall not be dismissed on motion of the petitioner or for want of prosecution or other cause or by consent of the parties prior to the hearing on notice as provided in Rule 2002. For such notice the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other entity.

Fed.R.Bankr.P. 1017.

Debtor has complied with the procedural requirements of §707(a) and Rule 1017 in that the Court was provided with a list of all creditors, all creditors and parties-in-interest were provided with notice of the Motion to Dismiss and the matter was set for a scheduled hearing in court. The issue for the Court's determination is whether Debtor has satisfied the cause requirement of §707(a). While admittedly a somewhat ambiguous term, cause must be shown to justify dismissal. A debtor does not have an automatic right to such a dismissal.

A debtor who has filed a petition under Chapter 7 does not have an absolute right to dismiss [her] petition . . . This precept rests upon the tacit premise while a debtor may voluntarily choose to place [herself] in bankruptcy, [she] does not enjoy the same discretion to withdraw [her] case once it has been commenced.

In re Klein, 39 B.R. 530, 532 (Bankr. E.D.N.Y. 1984).

It is also clear that, in and of itself, the ability to pay does not constitute cause for dismissal. "The legislative history of [11 U.S.C. §707] makes clear that the ability of the debtor to repay [her] debts does not constitute adequate cause for dismissal." In re Williams, 15 B.R. 655, 657 (E.D. Mo. 1981).

Cause in the present context is a somewhat flexible standard. "The determination of cause rests within the sound discretion of the courts. In exercising such discretion, the courts have been guided by general equitable principles, including the balancing of competing interests." In re Heatley, 51 B.R. 518, 519 (Bankr. E.D. Pa. 1985); In re Paulsen, No. 96-60964KC, slip op. at 2 (Bankr. N.D. Iowa Jan. 9, 1997) (Chapter 7 case may only be dismissed for cause taking into account the best interests of creditors). However, when "dismissal would prejudice creditors, it will ordinarily be denied." In re Eichelberger, 225 B.R. 437, 439 (Bankr. E.D. Mo. 1998); In re Mosher, No. 96-41845XM, slip op. at 5 (Bankr. N.D. Iowa Jan. 24, 1997)(dismissal would result in legal prejudice to creditors).

For the reasons set out hereafter, the Court finds that Debtor has established cause to justify dismissal of this case. First, all creditors have been served with the Motion to Dismiss as well as the notice of hearing on the Motion to Dismiss. There have been no objections to Debtor's Motion. Second, although a debtor's ability to pay obligations does not constitute cause, a debtor's actual payment of debts may constitute good cause. In this case, the only secured creditor, Green Tree, has had its entire claim satisfied through the sale of Debtor's mobile home. Unsecured creditors Columbia House and Providian Plus Visa have received full payment of their outstanding claims. Debtor's parents have forgiven the \$2,000 debt for the down payment on the mobile home. As such, as of the time of hearing on this Motion to Dismiss, all scheduled debts as of the time of the filing of the Chapter 7 petition have been satisfied. Finally, no party will be prejudiced by a dismissal. As indicated, all creditors are either paid in full or have voluntarily relinquished their claims.

As a matter of general legislative intent, it is the feeling of this Court that it is inappropriate to accept the benefits of bankruptcy legislation while declining to assume all burdens that are imposed upon a debtor through filing. However, where no future purpose would be served by continuing a Chapter 7 petition through to completion, the Court should consider dismissal. In this case, it is the conclusion of this Court that Debtor has complied with all of the provisions of the Bankruptcy Code. She has complied with the procedural mandates in seeking dismissal. She has satisfied all creditors and no practical purpose would be served in denying this dismissal. The Court concludes that, based upon the entire record, cause has been established and Debtor's Motion to Dismiss should be granted.

WHEREFORE, for the reasons set forth herein, Debtor's Motion to Dismiss is GRANTED and this case is DISMISSED.

SO ORDERED this 9th day of April, 1999.

PAUL J. KILBURG

Paul J. Kilburg
U.S. Bankruptcy Judge