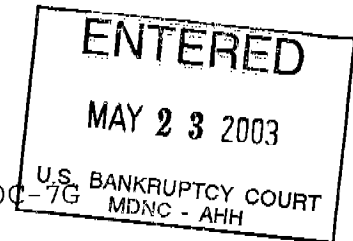


UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION



IN RE:

Gary I. Terry,

Debtor.

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Case No. 01-12750C-7G

ORDER

This case came before the court on May 13, 2003, for hearing upon a motion by the Debtor to dismiss this Chapter 7 case. The Debtor appeared pro se and Sarah F. Sparrow appeared as Trustee.

Unlike under Chapter 13<sup>1</sup>, the debtor in a Chapter 7 case has no absolute right to dismissal of his or her case. See In re Klein, 39 B.R. 530, 532 (Bankr. E.D.N.Y. 1984) ("While a debtor may voluntarily choose to place himself in bankruptcy he does not enjoy the same discretion to withdraw his case once it has been commenced."). In accord In re Turpen, 244 B.R. 431, 434 (8th Cir. BAP 2000); In re Leach, 130 B.R. 855, 857 n. 5 (9th Cir. BAP 1991).

In order to obtain the dismissal of a Chapter 7 case pursuant to § 707<sup>2</sup>, the debtor must make a showing of cause and demonstrate why a dismissal is justified. See In re Watkins, 229 B.R. 907, 908 (Bankr. N.D. Ill. 1999); In re Harker, 181 B.R. 326, 328 (Bankr.

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<sup>1</sup>Section 1307(b) provides that "[o]n request of the debtor at any time, if the case as not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter." Chapter 7 of title 11 does not contain a comparable provision.

<sup>2</sup>Section 707(a) provides that the court may dismiss a Chapter 7 case "only after notice and a hearing and only for cause . . . ."

E.D. Tenn. 1995). However, in the context of a motion to dismiss a Chapter 7 case, the interest of the creditors is paramount, and the debtor's motion to dismiss should be denied if there would be any prejudice to creditors as a result of dismissal. See In re Haney, 241 B.R. 430, 432 (Bankr. E.D. Ark. 1999); In re Watkins, 229 B.R. at 909; In re Eichelberger, 225 B.R. 437, 439 (Bankr. E.D. Mo. 1998).

In deciding whether a debtor's motion to dismiss should be granted, courts have considered the following factors: (1) whether all of the creditors have consented; (2) whether the debtor is acting in good faith; (3) whether dismissal would result in a prejudicial delay in payment; (4) whether dismissal would result in a reordering of priorities; (5) whether there is another proceeding through which the payment of claims can be handled; and (6) whether an objection to discharge, an objection to exemptions, or a preference claim is pending. See In re Turpen, 244 B.R. at 434. Consideration of these factors in the present case convinces the court that the Debtor's motion to dismiss should be denied. None of the creditors in this case has consented to the dismissal and, in fact, dismissal is opposed by the Trustee. No other proceeding is pending elsewhere through which the payment of Debtor's creditors could be handled. The Trustee presently holds \$9,200.00 and expects to receive an additional \$17,300.00 as a distribution from the pending case of a corporate debtor in which the Debtor

owns an interest. If this case were dismissed, these funds would be returned to the Debtor and the creditors in this case would be relegated to their state court remedies in order to recover on their claims. This would inject an unacceptable degree of risk of the creditors not getting paid or experiencing significant additional delay in being paid. Additionally, the Debtor in this case has never filed schedules in accordance with § 521 and Bankruptcy Rules 1007 and 1008, and has refused to answer questions at the § 341 meeting of creditors. As a result, it is not known whether there are other assets or bankruptcy causes of action that could be pursued by the Trustee and made available to creditors. The fact that the Debtor is seeking dismissal of this case without having made a voluntary disclosure regarding his assets and financial affairs raises a serious question as to whether the Debtor is proceeding in good faith in seeking dismissal.

In the motion the Debtor asserts as a ground for the dismissal of this case, "creditor's misconduct, whereas the government's attorney Bohling submitted to this court a claim to dismiss Terry's Chapter 13 petition no. 01-10713 that was knowingly false and misleading when made thereby causing injury to or the deprivation of Terry's substantive rights to due process." Even if it is assumed for sake of argument that there was misconduct on the part of a creditor in the Debtor's Chapter 13 case, such misconduct would not constitute a ground for the dismissal of this Chapter 7

case. Even if such misconduct occurred on the part of one creditor, it would not justify the dismissal of this case to the prejudice of other, unrelated creditors who have presented claims in this case. Moreover, contrary to Debtor's assertion, the dismissal of Debtor's Chapter 13 case did not result in the commencement of this Chapter 7 case. This case is a voluntary Chapter 7 case which the Debtor, of his own volition, filed on September 27, 2001, while represented by counsel.

Having considered Debtor's motion and the evidence and arguments submitted in support of the motion, the court concludes that the Debtor has presented no evidence or rational argument that could be regarded as establishing cause for the dismissal of this case. Moreover, it is clear that a dismissal would be prejudicial to the creditors in this case. These creditors have been stayed from attempting to collect their claims from the Debtor for more than eighteen months and should not be deprived of the opportunity of having the funds recovered by the Trustee distributed to them within the framework of this bankruptcy proceeding. Accordingly, the Debtor's motion to dismiss this case will be denied.

IT IS SO ORDERED.

This 23<sup>rd</sup> day of May, 2003.

**William L. Stocks**

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WILLIAM L. STOCKS  
United States Bankruptcy Judge