

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-660

Order Denying Motion to Dismiss

The relief set forth on the following pages, for a total of 4 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
11/30/2007



Entered: 11/30/2007


US Bankruptcy Court Judge
District of South Carolina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

C/A No. 07-00660-HB

Susan Diane Hendricks,

Chapter 7

Debtor.

ORDER DENYING DEBTOR'S MOTION TO DISMISS

This matter comes before the Court upon a motion of the Debtor to dismiss her voluntary Chapter 7 case. Debtor's motion was filed *pro se* on October 22, 2007, and the matter was scheduled for a hearing after service of the Notice of Hearing on all creditors and parties in interest. The Chapter 7 Panel Trustee, Randy A. Skinner, ("Trustee") filed the sole objection to the motion. At the time of her motion, Debtor was represented by counsel. However, her attorney thereafter filed a Motion to Withdraw as Counsel, and that motion was granted without objection shortly before the hearing on this matter.

At the hearing on the motion, the Court heard arguments from the Debtor and from the Trustee. The Debtor's motion stated that she was concerned that the Trustee is interested in what her father owned and his life insurance. The Debtor's father died shortly before she filed her bankruptcy case, and she has or may inherit or control certain property as a result. She contends that the assets in question are for the support of her step-mother, who is allegedly mentally challenged and living with the Debtor. The Trustee has filed adversary proceedings numbered 07-80112-hb and 07-80113-hb which relate to these facts, and the Debtor has filed Answers in both matters. One of the matters seeks to deny the Debtor's discharge pursuant to 11 U.S.C.

§ 727. Debtor was also concerned that the Trustee may recover more money as a result of his actions than what is actually owed to creditors in her case. The Debtor stated that she wished to dismiss her bankruptcy to work out alternative financial arrangements with her creditors, but did not describe any specific plan.

The Trustee asserted that there are potentially assets available for creditors to be paid through the bankruptcy and the related adversary proceedings and that he believed the best chance of payment to creditors is through the bankruptcy case. He argued that the Debtor did not initially disclose the assets in question, that some of the assets may already be unreachable and that therefore creditors would be prejudiced if the case is dismissed.

DISCUSSION

Section 707(a) of 11 U.S.C. provides for dismissal of a case under Chapter 7 only after notice and a hearing and only for cause. Solvency alone may not be cause to dismiss a Chapter 7 case, and a debtor's motion to dismiss may be denied if the debtor fails to honestly account for assets and there are likely to be future questionable practices that may injure creditors. In determining whether cause is shown, courts look to whether (1) all creditors consent; (2) the debtor is acting in good faith; (3) dismissal may result in prejudicial delay in payment; (4) dismissal may result in reordering of priorities; (5) there is another proceeding in which payment of claims may be handled; and (6) there is pending an objection to discharge or exemptions, or a preference action. In re Turpen, 244 B.R. 431, 434 (B.A.P. 8th Cir. 2000).

The Debtor has not provided evidence of the consent of any creditors to her motion to dismiss. Further, the Trustee has timely objected. The Debtor's motion to dismiss was not filed until after her case was declared to be an asset case and until after lawsuits for recovery of assets

and for denial of discharge were filed and well underway. The Debtor denies that the Trustee, and therefore her creditors, are entitled to any of the assets in question. Therefore, it appears that those potential assets will be lost for this Debtor's creditors if the case is dismissed, resulting in an undue prejudicial delay in payment or the chance of payment.

From the evidence and arguments presented at the hearing, it appears that the Debtor lacks cause to substantiate a dismissal of her voluntary bankruptcy case. She has raised defenses to the Trustee's adversary actions which mirror her reasons given for dismissal of this case. Those issues can best be determined after discovery and trial in those adversary proceedings. It is therefore,

ORDERED, that the motion of the Debtor to dismiss her voluntary Chapter 7 bankruptcy case is denied.