

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Cynthia Collie Holmes,

Debtor.

Case No. 19-01644-dd

Chapter 7

ORDER DISMISSING CASE

Before the Court is Debtor's motion to dismiss pursuant to 11 U.S.C. § 707 filed on June 30, 2021. Haynsworth Sinkler Boyd, PA ("HSB") filed an objection on July 16, 2021. Kevin Campbell, the chapter 7 trustee, filed a response on July 16, 2021, and did not object to dismissal. The Court held a hearing on July 20, 2021, at which Debtor appeared pro se and the trustee and HSB appeared by counsel. At the conclusion of the hearing, the Court took the matter under advisement. After careful consideration, the Court now grants Debtor's motion to dismiss.

The facts of this case are recited in orders entered in Debtor's bankruptcy case and three related adversary proceedings.¹ Only the facts germane to the motion to dismiss are discussed here. Debtor filed her chapter 7 voluntary petition on March 22, 2019. Debtor's schedules list an ownership interest in real property located at 1611 Poe Avenue, Sullivan's Island, SC ("Property"). Debtor lists the value of the Property as unknown. The trustee's initial valuation of the Property is based upon a vacant land value of approximately \$600,000, and HSB's analysis suggests a value of \$800,000. Neither the trustee nor HSB presented a current appraisal of the Property. The trustee stated that a mortgage on the Property has a balance of approximately \$125,000. The deed recorded with the Charleston County Register of Deeds reflects that Debtor and Mr. Holmes, Debtor's ex-husband, jointly own the Property. Debtor and Mr. Holmes are

¹ Adv. Pro. Nos. 19-80056-DD, 20-80046-DD, and 21-80003-DD.

engaged in protracted litigation in family court seeking a final determination regarding their equitable distribution interests in the Property. Two creditors filed bankruptcy proofs of claim: one by HSB in the amount of \$393,622.79 and the other by Capital One Bank (USA), N.A., in the amount of \$6,467.90. Both the trustee and Debtor indicate that Capital One's claim has been paid. This case is now a "two-party" dispute between Debtor and HSB.

HSB's claim against Debtor stems from a judgment entered on November 18, 2009. HSB's long running but perhaps sporadic efforts to collect against Debtor were stayed once this bankruptcy case was filed. After Debtor received a discharge on May 12, 2020, HSB moved to enforce its lien against the Property in state court. That court entered an order stating that HSB's judgment against Debtor has expired, notwithstanding this Court's determination that 11 U.S.C. § 108(c) extended the life of the judgment. HSB appealed the state court order. Debtor appealed this Court's § 108(c) determination. HSB contends that Debtor now seeks dismissal only because she has received a discharge and HSB has been prevented from enforcing its judgment lien against the Property. The trustee did not object to dismissal but requests that if Debtor's case is dismissed, it be conditioned on her payment of a portion of the trustee's attorney fees and costs, withdrawal of all appeals, dismissal of any pending adversary proceedings, and a one-year bar to filing another bankruptcy case. Debtor agreed to the conditions other than the bar to another filing. The trustee did not pursue the imposition of a prejudice period.

Debtor seeks to dismiss her case pursuant to § 707. Section 707(a) provides in relevant part that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause." In considering a motion to dismiss a chapter 7 case, a court in this district has stated:

While a debtor is free to file for bankruptcy protection, he does not enjoy the same discretion to withdraw his case once it has been commenced. The debtors

must make a showing of cause to dismiss their voluntary case. “Unlike a Chapter 13 bankruptcy case, where the debtor has an absolute right to dismissal, a debtor has no corresponding right to dismiss a Chapter 7 petition.” . . . “[A]dequate cause to dismiss does not necessarily exist upon a showing by the debtor of his ability to pay debts.” The most important consideration is the best interests of creditors.

In re Kirven, 188 B.R. 15, 16 (Bankr. D.S.C. 1994) (internal citations omitted). The Court has discretion in determining whether to dismiss a debtor’s case pursuant to section 707(a). *In re Dudley*, 405 B.R. 790, 800 (Bankr. W.D. Va. 2009). When making this decision, the Court should consider the totality of the circumstances. *McDow v. Smith*, 295 B.R. 69, 75 (E.D. Va. 2003). Here, Debtor asserts that cause for dismissal exists because she has resolved any issue of the trustee’s cost, satisfied Capital One’s claim, and the remaining two-party dispute with HSB is moving forward in state court. Although Debtor may request dismissal of her chapter 7 case, she does not have an absolute right to dismissal. Based on the facts of this case, dismissal is appropriate.

HSB objects to dismissal and requests that the trustee continue administration of the estate in an effort to satisfy or pay some distribution on its claims against Debtor. It appears the only asset available for liquidation is the Property and it is unclear whether any value will remain after administration is complete. The value of the real estate is unknown. There is a mortgage of \$125,000. Mr. Holmes holds some interest in the Property that is not subject to HSB’s claim. As between the trustee and Mr. Holmes, that interest has been established as a one-half interest. Debtor is entitled to a homestead exemption in the Property of \$60,975. After more than two years this case shows little progress. The trustee has not begun to liquidate the Property and, due to litigation, may not be in a position to do so for some time. Litigation is pending, including appeals in the District Court, Court of Appeals, and state appellate courts. Other litigation is pending trial here and in the family court. This litigation will likely consume much of, if not all,

the value of the bankruptcy estate. The trustee stated that he currently has costs and attorney's fees of \$31,786.02. Legal fees are likely to increase exponentially and there will also be fees for appraisers, real estate agents, and accountants. There may be capital gains taxes. No bankruptcy purpose is likely served with the continued administration of the case. Debtor already has her discharge and the possibility of a dividend for the one creditor is uncertain, perhaps remote.

Debtor's bankruptcy case and the related adversary proceeding (Adv. Pro. No. 21-80003) are hereby dismissed. Debtor and trustee are directed to seek dismissal of all pending appeals from Bankruptcy Court orders. Debtor is directed to tender to the trustee \$15,700. Trustee's request for a one-year ban on another bankruptcy filing by Debtor is denied.

AND IT IS SO ORDERED.

FILED BY THE COURT
08/03/2021



Entered: 08/03/2021



David R. Duncan
US Bankruptcy Judge
District of South Carolina