

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

RODGER OREN COCKRUM,
Engaged in Farming,
Debtor.

Case No. 86-2998-C
Chapter 7

ORDER ON MOTION TO REINSTATE STAY AND MOTION TO DISMISS

At Des Moines, in the Southern District of Iowa on the 30th day of July, 1987.

On July 24, 1987 the above-named debtor filed a motion to reinstate stay. A consent order approving relief from the automatic stay as to the Union State Bank of Winterset was entered on February 3, 1987. Prior to the entry of the order for relief from stay the debtor filed a motion to dismiss for the purpose of refileing under Chapter 12. A hearing was held on creditors' resistances to the motion to dismiss on April 7, 1987. Douglas R. Smalley appeared on behalf of the debtor, John E. Casper appeared on behalf of the Union State Bank of Winterset and David B. Russell appeared on behalf of Credithrift, Inc. The motion to dismiss was taken under advisement and was considered fully submitted on May 4, 1987.

The debtor states in his motion to reinstate stay that the Union State Bank of Winterset has scheduled a sheriff's sale of the subject property for July 31, 1987. The debtor claims that he will be irrevocably damaged if the sale is permitted to occur prior to this court's decision on the pending motion

to dismiss. The debtor's argument necessarily presumes that dismissal to allow the filing under Chapter 12 will be granted. On July 28, 1987 the Union State Bank of Winterset filed a resistance to the debtor's motion to reinstate stay. Given the urgency asserted by the debtor and the relationship of the two motions, the court will now rule on both the motion to reinstate stay and the motion to dismiss.

The debtor's motion to dismiss is governed by 11 U.S.C. section 707. Section 707(a) provides that the court may dismiss a Chapter 7 case only after notice and hearing and only for cause. The cause requirement for dismissal of a Chapter 7 case applies to a debtor seeking voluntary dismissal of his own petition. In re Schwartz, 58 B.R. 923, 925 (Bankr. S.D. N.Y. 1986).

In determining whether cause exists, the test is whether dismissal is in the best interest of the debtor and his creditors. As to a debtor, best interest lies generally in securing an effective fresh start upon discharge and in the reduction of administrative expenses leaving him with resources to work out his debts. As to creditors, the issue is one of prejudice, and if delay is said to have prejudiced them, whether, as § 707(a) provides, the delay has been unreasonable. They are generally not prejudiced by dismissal since they will no longer be stayed from resorting to the state courts to enforce and realize upon their claims. But creditors can be prejudiced if the motion to dismiss is brought after the passage of a considerable amount of time and they have been forestalled from collecting the amounts owed to them. A prejudicial delay also creates the appearance that such an abusive practice is implicitly condoned by the Code.

id.

The debtor's only asserted cause for dismissal of this case is his desire to refile for relief under Chapter 12. For the following reasons the court finds that the debtor has failed to establish sufficient cause to warrant dismissal.

Prejudice to creditors is all too evident in this case. The debtor's Chapter 7 petition was filed on November 5, 1986, two days prior to the originally scheduled sheriff's sale. Prior to the filing the Union State Bank of Winterset had received a decree of foreclosure and a receiver had been in place for over six months. At the January 21, 1987 telephonic hearing on motion for relief from stay the debtor clearly admitted a lack of equity in the subject property and on February 3, 1987 consented to the entry of an order lifting the stay. Now, six months later and eight days before the second scheduled sheriff's sale, the debtor seeks to further delay the creditors' collection efforts by reinstating the stay. Dismissal for the express purpose of refileing under Chapter 12 would result in additional delay and further prejudice to the creditors in this case.

It is not clear to the court how the debtor will be benefitted by an order authorizing dismissal. The court file reflects the filing of a request for relief from the automatic stay prior to the request for voluntary dismissal. Therefore, by virtue of 11 U.S.C. section 109(g)(2), even if dismissal was granted, the debtor could not successfully petition for relief under any chapter of the Code for 180 days. Presumably the creditor could reschedule a sheriff's sale within that

180-day time period and this court would be without power to intercede.

Finally, the debtor's desire to refile for relief under Chapter 12 does not convince the court that dismissal-is warranted. This court has held that cases pending on November 26, 1986, the effective date for Chapter 12, cannot be converted to cases under Chapter 12. Matter of Spears, 69 B.R. 511 (Bankr. S.D. Iowa 1987). Moreover, the conference reports to both the existing Chapter 12 provisions and to the new Chapter 12 legislation fail to mention conversion to Chapter 12 from existing Chapter 7 cases. It may be inferred at this juncture that it was not the intent of Congress to permit dismissals of existing Chapter 7 cases in an effort to accomplish indirectly what is not provided for directly. Nevertheless, the court notes that the debtor's schedules reveal a total aggregate debt of \$1,609,681.90. Accordingly, under 11 U.S.C. section 101(17) the debtor would not qualify as a "family farmer" for purposes of Chapter 12.

THEREFORE, based on the facts of this case and the foregoing analysis, the court hereby denies the debtor's motion to dismiss his- Chapter 7 case. Since the debtor's motion to reinstate the stay is dependent upon the motion to dismiss, the debtor's motion to reinstate the stay is likewise hereby denied.

LEE M. JACKWIG

U.S. BANKRUPTCY JUDGE