

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF IOWA**

IN THE MATTER OF:	:	
Norman Eugene Lettington,	:	Case No. 97-04083-C J
Maxine Ann Lettington,	:	
	:	Chapter 7
Debtors.	:	
	:	

MEMORANDUM OF DECISION

Pro se Creditor Clark W. Betts, Sr. (“Betts”) filed a motion to dismiss the Chapter 7 bankruptcy case of Debtors Norman Eugene and Maxine Ann Lettington (“Lettingtons”). In essence, Betts asks the Court to dismiss the Lettingtons’ Chapter 7 case pursuant to 11 U.S.C. section 707(a) and section 707(b).

Having reviewed the record in conjunction with the disposition of Adversary Proceeding No. 97-97284, the Court now enters its decision without further notice and hearing.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. section 1334 and the standing order of reference entered by the U.S. District Court for the Southern District of Iowa. This is a core matter under 28 U.S.C. section 157(b)(2)(A).

BACKGROUND

On September 5, 1997 the Lettingtons filed a petition for relief under Chapter 7 of the United States Bankruptcy Code.

On September 23, 1997 the Lettingtons filed their Schedules and Statement of Financial Affairs. In Schedule F (Creditors Holding Unsecured Nonpriority Claims), the

Lettingtons indicated they owed Betts \$17,000.00. Most of the remaining \$34,442.23 unsecured debt was for medical and legal services.

On December 9, 1997, the deadline for filing objections to discharge and certain complaints to determine dischargeability and the day after the Lettingtons had filed an 11 U.S.C. section 362(h) motion against him, Betts presented a document titled "Notice to Challenge Discharge of Debt" for filing. On December 12, 1997 the Court entered an Order returning that document because Betts had not paid the appropriate filing fee, had not prepared the cover sheet and summons, and had not included his address or telephone number.

The Court's automated docketing system generated the General Discharge Order in the interim -- on December 10, 1997.

On December 18, 1997 Betts filed a "Motion To Reconsider," in which he asked the Court to file the "Notice To Challenge Discharge Of Debt" as of the date it was originally tendered. He had corrected the deficiencies noted in the December 12, 1997 Order.

On December 22, 1997 the Court entered Betts' proposed order granting the motion but added the following: "Though pro se plaintiff does not cite any subsection of section 523(a) in the complaint, the court construes this action as one to determine the dischargeability of a debt and not as an action to challenge the general discharge of all debts." The Clerk's Office filed the complaint, as of December 9, 1997, under Adversary Proceeding No. 97-97284.

On December 8, 1998 Betts filed the pending “Motion For Good Cause To Dismissal Of Chapter 7 Bankruptcy For Bad Faith Filing.” He states his reasons for dismissal as follows:

1. That on September 5, 1997, Norman Eugene and Maxine Anne Lettington filed a fraudulent bankruptcy petition.
2. That this bankruptcy is nothing less than a bad faith filing is evident in the many false statements made in this petition. There are well over fifteen false statements and numerous inconsistencies.
3. That this bankruptcy violated the spirit of the bankruptcy law.
4. That this bankruptcy violated the purposes of the bankruptcy.
5. That this bankruptcy violated provisions of the bankruptcy law 11 U.S.C.A. s 707(a).
6. That there is ample evidence of fraud and numerous other crimes in perpetrating this bankruptcy to dismiss it outright.
7. That bankruptcy protection was not intended to assist those who are attempting to preserve a comfortable standard of living at the expense of their creditors.
8. That Clark Betts, Sr. has an income as a part time city school bus driver.
9. That bankruptcy petitioners Norman Eugene and Maxine Ann Lettington have an income three times that of creditor Clark Betts, Sr.
10. That the debtors Norman Eugene and Maxine Ann Lettington are attempting to over utilize protections afforded by the bankruptcy process to unconscionable detriment of creditors.
11. That the debtors filed this bankruptcy in response to a pending litigation to collect the debt.
12. That the debtors have sufficient resources to pay this debt and all others asked to be discharged.
13. That the debtors have inflated expenses to disguise financial well being.
14. That debtors failed to make a candid and full disclosure.

15. That the debtors debts are modest in relation to their assets and income.
16. That the debtors have made no lifestyle adjustments and continue living an affluent lifestyle.
17. That the unfairness of the use of a Chapter 7 bankruptcy by debtors Norman Eugene and Maxine Ann Lettington are numerous and many.
18. That the debtors have the ability to pay their debts.
19. That debtors are not unfortunate financially and there have been no allegations of ill health, calamity or other hardships.
20. That the totality of the circumstances including the timing of the filing make this a criminal act by itself.
21. That the debtors have made no effort to pay their debts.
22. That there has been no tragedy or financial misfortune that would cause debtors to be unable to pay their debts.
23. That the debtors are merely annoyed at the creditors and wish to escape their obligations and all creditors have an expectation of being repaid for money loaned or credit extended.
24. That the United States Trustee and Bankruptcy Court itself should have started proceedings on its own to dismiss this bankruptcy as a substantial abuse of Chapter 7.

On December 10, 1998 the Court conducted a final pretrial conference in the adversary proceeding. During that courtroom conference, the Court noted Betts' December 8, 1998 filing in the Chapter 7 case. With respect to Betts' allegations going to the Lettingtons' ability to pay their debts, the Court explained the active role of the United States Trustee in such matters in the Southern District of Iowa.

In the December 11, 1998 Order entered pursuant to the conference, the Court requested the United States Trustee's Office review Betts' December 8, 1998 Motion and "file an appropriate report with the Court by January 11, 1999 regarding that Office's prior review of the Chapter case, under either 11 U.S.C. section 707(a) or (b), and

regarding that Office's present need to take any further action." With respect to section 707(b), the Court intended only that the United States Trustee verify the obvious regarding its routine review of filings in this district. With respect to section 707(a), the Court anticipated that Office would provide an objective assessment for the Court's consideration.¹

On December 14, 1998 Betts filed a "Request To Give Evidence And Oral Testimony" in support of his motion to dismiss. On January 19, 1999 Betts filed a document captioned "Silence Of Court To Request To Give Evidence And Oral Testimony," in which he stated he would be pursuing another avenue of complaint because he concluded the Court's silence meant it would not allow him to present documents and testimony in support of his motion.

On March 19, 1999 the Court conducted a day long trial in the adversary proceeding. Betts presented testimony and 95 exhibits. At the close of his case-in-chief, the Lettingtons moved for a directed verdict. The Court granted that motion in a separate Memorandum of Decision and Order entered today in the adversary proceeding.

APPLICABLE LAW

11 U.S.C. section 707 provides:

- (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--
 - (1) unreasonable delay by the debtor that is prejudicial to creditors;
 - (2) nonpayment of any fees or charges required under chapter 123 of title 28; and
 - (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of

¹ The chapter case file and the adversary proceeding file do not contain such a report.

the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

- (b) After notice and a hearing, **the court, on its own motion or on a motion by the United States trustee, but not at the request or suggestion of any party in interest**, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of “charitable contribution” under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

11 U.S.C. § 707 (emphasis added).

DISCUSSION

A creditor has standing to bring a section 707(a) motion on grounds other than those that support a section 707(b) motion. See *In re Huckfeldt*, 39 F.3d 829, 831-32 (8th Cir. 1994). Though the three stated grounds for dismissal under section 707(a) are not exclusive, the “for cause” inquiry should focus on whether the filing is proper in light of the fundamental principles and purposes of Chapter 7. It should not focus on whether the filing was done in good or bad faith except in cases of extreme misconduct. Id. at 832. If a court finds it necessary to address a bad faith filing, it should not do so under section 707(a). Id.

Betts’ allegations in support of dismissal under section 707(a) fall generally into three categories: (1) generic ultimate factual allegations—Paragraphs 3, 4, 5, 10, 17, and 23; (2) allegations of fraud, false statements and bad faith—Paragraphs 1, 2, 6, 11, 14 and 20; and (3) allegations regarding ability to pay—Paragraphs 7, 8, 9, 12, 13, 15, 16, 18, 19, 21, 22, and 24.

With respect to the first group of allegations, the Court observes that section 707(a)(1) concerns postpetition delays. See Matter of Lang, 5 B.R. 371 (Bankr. S.D. N.Y. 1980). See also In re Dinova, 212 B.R. 437, 444 (B.A.P. 2nd Cir. 1997) (stating a debtor's refusal to attend meeting of creditors would constitute cause for dismissal); In re Green, 119 B.R. 72 (Bankr. D. Md. 1990) (finding a debtor's failure to comply with the court's order to file statement of intent constituted an unreasonable delay warranting dismissal of the debtor's case for cause). The Lettingtons appeared at the meeting of creditors and at subsequent court hearings and have otherwise complied with all court orders. They have not caused any postpetition delays. With respect to section 707(a)(2), the Lettingtons paid the filing fee in full on September 5, 1997. With respect to section 707(a)(3), the Court notes parenthetically that the Lettingtons timely filed the statutorily required information.²

As for the second group of allegations, the Court finds that those statements focus on bad faith and imply there were grounds warranting a denial of the general discharge of debts. However, as indicated at the outset of this discussion, a section 707(a) inquiry should not be framed in terms of a debtor's good or bad faith except in cases of extreme misconduct. This is not such a case.

As revealed in the March 3, 1998 section 362(h) hearing in this case and in the March 19, 1999 trial in the adversary proceeding, the Lettingtons incurred most of the unsecured debt listed on Schedule F as a result of a tragic event that occurred in 1995. Betts is just one of many unsecured creditors whose debts were covered by the general discharge of debts. No other creditor has filed a nondischargeability complaint.

² According to the statute, only the U.S. Trustee may bring a motion to dismiss under section 707(a)(3).

Although Betts contends the Lettingtons filed bankruptcy in response to his pending state court litigation to collect a debt, their mere exercise of a legal right does not support a finding of bad faith. See Huckfeldt, 39 F.3d at 832 n.4.

The Court construed Betts' "Notice To Challenge Discharge Of Debt" as a dischargeability action and not as an objection to the discharge of all the listed debts. His section 707(a) motion, filed almost a year after the discharge of debts was entered, contains allegations more appropriate for an objection to discharge or a complaint to determine dischargeability of debt. A section 707(a) motion is not a substitute for either pleading. See In re Padilla, 214 B.R. 496, 499-500 (B.A.P. 9th Cir. 1997). See also Matter of Atlas Supply Corp., 857 F.2d 1061, 1064 (5th Cir. 1988) (holding that administratrix of estate of deceased 50% shareholder in debtor corporation forewent right to pursue dismissal pursuant to section 707(a) by waiting over a year to object that bankruptcy petition was not authorized by corporation).

With respect to the third group of allegations, the Court finds that they are not properly considered under section 707(a). Since the allegations generally address whether the Lettingtons have the ability to pay a substantial portion of their debt, they fall under section 707(b). See In re Koch, 109 F.3d 1285 (8th Cir. 1997); Fonder v. United States, 974 F.2d 996 (8th Cir. 1992); U.S. Trustee v. Harris, 960 F.2d 74 (8th Cir. 1992); In re Walton, 866 F.2d 981(8th Cir. 1989). However, only the Court or the United States Trustee may pursue such a motion. Betts lacks standing to do so. See In re Joseph, 208 B.R. 55, 60 (B.A.P. 9th Cir. 1997); In re Wisher, 222 B.R. 634, 636 (Bankr. D. Colo. 1998); In re Barnes, 158 B.R. 105, 107 (Bankr. W.D. Tenn. 1993); In re Fitzgerald, 155 B.R. 711, 713 n.1 (Bankr. W.D. Tex. 1993); In re Natale, 136 B.R. 344, 352 (Bankr. E.D.

N.Y. 1992). Moreover, section 707(b) clearly states that neither the Court nor the United States Trustee may dismiss a case for substantial abuse at the request or suggestion of any party in interest. To consider the third set of allegations would amount to acting at the request or suggestion of a party in interest.

CONCLUSION

WHEREFORE, the Court finds:

(1) Cause does not exist to dismiss this case under 11 U.S.C. section 707(a), and further hearing is not warranted under the circumstances; and

(2) Betts lacks standing to bring a motion to dismiss under 11 U.S.C. section 707(b), and neither the Court nor the United States Trustee may act upon his request or suggestion.

A separate Order shall be entered accordingly.

Dated this 29th day of March, 2000.

LEE M. JACKWIG
U.S. BANKRUPTCY JUDGE