

**UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa**

**In the Matter of
RON LOURIE,**

Case No. 97—46—CH
Chapter 7

Debtor.

ORDER - MOTION TO COMPROMISE

On January 6, 1997, Debtor, Ron Lourie, filed a Voluntary Petition for Chapter 7 relief under the U.S. Bankruptcy Code. On November 10, 1997 hearing was held on the Chapter 7 Trustee's Motion to Compromise and Objection thereto. Debtor, Ron Lourie, was represented by attorney David A. Morse; Thomas L. Flynn appeared as the Chapter 7 Trustee; James L. Snyder appeared as the Assistant United States Trustee. At the conclusion of the hearing, the Court took the matter under advisement. The Court now considers the matter fully submitted.

The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 157(b)(1) and § 1334. This is a core proceeding. 28 U.S.C. § 157(b)(2)(A), (E), (J), (N). The Court, upon review of the pleadings, evidence, and arguments of counsel, now enters its findings and conclusions pursuant to Fed.R.Bankr.P. 7052.

FINDINGS OF FACT

1. On January 6, 1997, Ron Lourie filed for bankruptcy protection under Chapter 7 of the Bankruptcy Code. His summary of schedules show \$33,938 in personal property, no unsecured priority claims, \$49,831.25 in secured claims, and \$90,337 in unsecured non-priority claims.

2. At the § 341 meeting, Debtor was questioned about additional assets and income by the Assistant U.S. Trustee, James Snyder, and the panel Trustee assigned to this case, Thomas L. Flynn.

3. On March 7, 1997, a search warrant was executed on Debtor's residence. Assets identified during the search include compact discs, men's clothing, watches, televisions, stereo and office equipment. A home inventory listing dated 7/96 valued Debtor's personal and business property in excess of \$200,000.

4. On April 16, this Court issued a Temporary Restraining Order. On that same date, Trustee filed a Motion for Turnover of Estate Property.

5. On May 2, the Court issued an order enjoining Debtor from gifting, conveying, assigning, pledging or otherwise disposing of any of his property pending a ruling on the Trustee's Motion for Turnover of Estate Property.

6. Hearing on Trustee's Motion for Turnover was scheduled for October 1. On September 24, Trustee filed a Motion for Compromise Settlement of Controversy, which was amended on October 6. The U.S. Trustee objects to Trustee's Motion for Compromise.

DISCUSSION

Trustee has two matters pending in this case, a Motion for Turnover of Estate Property and a Complaint Objecting to Debtor's Discharge. He proposes to settle both matters in exchange for \$20,000 cash from Debtor. The U.S. Trustee objects to a settlement in which the Debtor effectively purchases a discharge for less than the full value of non-exempt assets discovered post-petition and because Debtor has not explained or otherwise resolved issues of diminution of assets.

The pertinent portion of Rule 9019 reads:

Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct. Fed.R.Bankr.P. 9019 (a).

The legal standard applied in the Eighth Circuit requires the court to weigh four factors in exercising its discretion:

- 1) likelihood of success in litigation;
- 2) the difficulties in the matter of the collection;
- 3) the litigation complexity and its expense, inconvenience, and delay;
- 4) the paramount views of the creditors and proper deference to their views. In re Martin, No. 97-6039 at 8 (8th Cir. BAP Sept. 23, 1997); In re Erickson, 82 BR 97, 99 (D.Minn. 1987).

Assets that were not disclosed on Debtor's bankruptcy petition were discovered by the U.S. Trustee. The majority of the assets in issue consist of large quantities of compact discs, computer and stereo equipment, and men's clothing.

Debtor has offered to turnover the assets; that matter has a high likelihood of success. The total value of the non-exempt assets is estimated at between \$28,400 and \$32,000. Evidence shows there are various options for liquidation of these particular assets. If the 4,275 compact discs were sold to a dealer, estimates show the collection would realize between \$8,400 and \$12,500. If they were included in a sale by an auctioneer, it is estimated that all the non-exempt assets would sell for a total of about \$15,000. No creditors have filed an objection to the proposed compromise. It is apparent that the \$20,000 offered by Debtor could be a reasonable tradeoff for assets valued at between \$15,000 and \$32,000 under normal circumstances. But, these are not normal circumstances; Trustee proposes to settle his Objection to Discharge in addition to the Motion for Turnover of Estate Property.

The U.S. Trustee raises a genuine concern with the inclusion of the Objection to Discharge of Debtor in the proposed compromise. Whether Debtor is a “bad debtor” to the extent that he should be denied a fresh start has not been fully developed. The facts developed thus far establish that Debtor failed to disclose a substantial amount of non-exempt assets, leading one to believe he may not be an honest but unfortunate debtor. The likelihood of success in prosecution of an Objection to Discharge is fact specific and generally does not lend itself well to conjecture.

Based on the specific circumstances of this case, it is not in the best interests of the bankruptcy estate and the creditors for the Trustee to settle both controversies with Debtor for \$20,000, an amount far less than the value of non-exempt assets not disclosed.

ORDER

IT IS THEREFORE ORDERED that Trustee’s Amended Motion to Compromise is DENIED.

Dated this 25th day of March 1998.

RUSSELL J.HILL, CHIEF JUDGE
U.S. BANKRUPTCY COURT