

UNITED STATES BANKRUPTCY COURT
For the Southern District of Iowa

In the Matter of

DONALD D. SPEARS,
PHYLLIS M. SPEARS,
Engaged in Farming,

Case No. 86-3019-C

Chapter 11

Debtors.

ORDER

On April 8, 1987 the debtors' motion for authority to dismiss their Chapter 11 case with permission to refile under Chapter 12 and objections or resistances thereto came on for hearing before this court in Des Moines, Iowa. Reta Noblett-Feld appeared on behalf of the debtors. Thomas H. Burke appeared on behalf of the Production Credit Association of the Midlands (PCA) and the Federal Land Bank of Omaha (FLB). The parties were directed to brief the issue by May 1, 1987 at which time the matter was considered under advisement.

This court in a prior order denied the debtors' motion to convert their Chapter 11 case, which was filed on November 7, 1986, to a case under Chapter 12 because of specific language in the relevant enabling provisions which made the Chapter 12 law inapplicable to cases commenced prior to November 26, 1986, the effective date of Chapter 12. Matter

of Spears, 69 B.R. 511 (Bankr. S.D. Iowa 1987). Thereafter, the debtors moved to dismiss for the express purpose of refiling a petition under Chapter 12. The FLB and the PCA assert that the debtors' motion is an attempt to circumvent this court's prior order as well as the express statutory language.

The undersigned anticipated that during the past legislative session Congress would address some of the concerns raised in the earlier Spears decision. Certain members of Congress did introduce legislation to allow existing Chapter 11 and Chapter 13 cases to convert to Chapter 12 but the proposed law was not enacted as of the end of last year. (To the undersigned's knowledge, no bills permitted conversion from Chapter 7.) Thus, the enabling provisions reviewed in the prior decision continue to apply to this matter.

Dismissal of a Chapter 11 case is governed by 11 U.S.C. section 1112(b) which provides that on request of a party in interest the court may dismiss a case for cause. The cause requirement for dismissal of a case applies to a debtor-in-possession seeking voluntary dismissal of the petition. See In re Schwartz, 58 B.R. 923, 925 (Bankr. S.D. N.Y. 1986). Whether the desire to refile under another chapter is sufficient cause for dismissal was addressed by the United States Supreme Court in Central Trust Co. v. Official Creditors Committee of Geiger Enterprises, Inc.,

454 U.S. 354, 102 S.Ct. 695, 70 L.Ed.2d 542 (1982). The debtor in Central Trust moved to dismiss its Chapter XI petition under the Act on the representation that if dismissal were granted it would immediately file a petition under Chapter 11 of the New Code. The Supreme Court found that a dismissal for that purpose would impermissibly circumvent the prohibition of section 403(a) which provided that a case commenced under the Act shall continue to be governed by that law as if the new Code had not been enacted. The court also looked to Rule 11-42(a) which permitted voluntary dismissal if in the best interest of the estate and found that the rule did not contemplate a dismissal for the purpose of filing a petition under a new law. 454 U.S. at 358.

Some courts have distinguished the ruling in Central Trust and have permitted dismissal of a case in existence on November 26, 1986 for the purpose of refileing under Chapter 12 on the ground that there is no similar enabling language with respect to Chapter 12. See In re Henderson, 69 B.R. 982, 987, n. 14 (Bankr. N.D. Ala. 1987); In re Gamble, 72 B.R. 75, 77-78 (Bankr. D. Idaho 1987). In two other cases, bankruptcy courts refused to dismiss a pending Chapter 12 petition filed while a Chapter 11 petition was pending and after an involuntary dismissal of a Chapter 11 case. Matter of Woloschak Farms, 70 B.R. 498 (Bankr. N.D. Ohio 1987); In re Ryder, 75 B.R. 890 (Bankr. W.D. La. 1987).

In dicta in Ryder, Bankruptcy Judge Boe distinguished between a voluntary and an involuntary dismissal. Although the court did not dismiss a Chapter 12 case filed after an involuntary dismissal, the court indicated that the result would have been different had the debtors sought dismissal for the sole purpose of refiling under Chapter 12. According to Judge Boe, "Central Trust as applied to Chapter 12 cases means, at most, that a debtor cannot have his petition dismissed in order to take advantage of a change in law." In re Ryder, 75 B.R. at 893. This court agrees. To hold otherwise would allow debtors to accomplish indirectly what they are not permitted to do directly.

WHEREFORE, based on the foregoing analysis, the court finds that the debtors have failed to establish sufficient cause for dismissal.

THEREFORE, the debtors' motion to dismiss the Chapter 11 case with permission to refile under Chapter 12 is denied.

Signed and filed this 19th day of January, 1987.

LEE M. JACKWIG

CHIEF U.S. BANKRUPTCY JUDGE