

DISCUSSION

While a person, as that term is defined in 11 U.S.C. section 101(41), may voluntarily commence a Chapter 7 case, no person that has become a Chapter 7 debtor has a statutory right to dismiss the case. In re Klein, 39 B.R. 530 (Bankr. E.D. N.Y. 1984). Unlike a debtor in a Chapter 12 case or in a Chapter 13 case, the Chapter 7 debtor must establish cause for the dismissal "after notice and a hearing," as described in 11 U.S.C. section 102(1). Compare 11 U.S.C. 1208(b) and 1307(b) with 11 U.S.C. 707(a).

In this district, a bar date notice procedure is utilized to satisfy most notice and hearing requirements found in the Bankruptcy Code and in the Federal Rules of Bankruptcy Procedure. Local Rule 14 (b) (2) (C) required the debtors in this case to give 20 days notice to parties in interest in accordance with section 707(a) and Federal Rules 1017(a) and 2002(a)(5) of Bankruptcy Procedure. The debtors gave 20 days notice only to parties in interest as of the petition date.

Procedural due process mandates that all creditors, including actual and potential postpetition creditors as of the motion date, be given an opportunity to object to the motion to dismiss the Chapter 7 case. In re Compston, 161 B.R. 636 (Bankr. N.D. Ohio 1993); In re Crenshaw, 65 B.R. 90 (Bankr. W.D. Ky. 1986); In re Banks, 35 B.R. 59 (Bankr. D. Md. 1983). That is, prospective creditors are parties in interest when debtors seek to dismiss a case in order to include those creditors in a subsequent filing. Compston, 161 at 638.

Assuming for the sake of analysis that debtors' prospective creditors had been given notice of the motion and at least one of them had objected timely, the court would have found the debtors did not establish cause for dismissal. Since 11 U.S.C. section 727(a)(8) prevents an individual from commencing a Chapter 7 case (with the intent of receiving a general discharge of debt) more often than every six years, permitting the debtors to dismiss the pending Chapter 7 case in order to add the postpetition creditors in a refiled Chapter 7 case would sanction an abuse of the statutory scheme established by Congress. See In re Underwood, 7 B.R. 936, 938 (Bankr. S.D. W.Va. 1981), aff'd, 24 B.R. 570 (S.D. W.Va. 1982) ; Matter of Poirier, 16 B.R. 691 (Bankr. D. Conn. 1982). "Absent affirmative consent of all creditors, a debtor is not entitled to dismissal of his case where dismissal will cause legal prejudice to creditors." In re Astin, 77 B.R. 537, 538 (Bankr. W.D. Va. 1987) (footnote omitted).

CONCLUSION

WHEREFORE, the court finds that the debtors have not established cause to dismiss the pending Chapter 7 case and otherwise have not obtained consent to the dismissal by all the parties in interest.

ORDER

THEREFORE, IT IS ORDERED that the debtors' motion to dismiss this Chapter 7 case is denied.

Dated this 26th day of May, 1994.

LEE M. JACKWIG
CHIEF U.S. BANKRUPTCY JUDGE