

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:)
)
BECKY BROWN,)
)
)
DEBTOR.)

CASE NO. 04-34805 (ASD)
CHAPTER 7
Re: DOC I.D. NOS. 8, 11 &14

**MEMORANDUM OF DECISION AND ORDER
ON MOTION TO DISMISS CASE**

I. INTRODUCTION

The instant matter raises the question of the propriety of the voluntary dismissal of a Chapter 7 case against the backdrop of unusual and disturbing facts. Because the record before the Court compels a conclusion that the potential for prejudice to unsecured creditors outside of bankruptcy outweighs the potential prejudice to the Debtor of remaining in bankruptcy, and for the additional reasons stated herein, the Debtor’s motion for case dismissal must be denied.

II. PROCEDURAL AND FACTUAL BACKGROUND

On February 1, 2005, the Debtor, Becky Brown, filed a Motion to Withdraw Chapter 7 Petition, Doc. I.D. No. 8 (hereafter the “Motion”), seeking to voluntarily dismiss her Chapter 7 case. The Motion asserts, *inter alia*, that the Debtor “unwittingly relied on legal advice from a non-lawyer holding herself out as a bankruptcy professional”, and that “[c]reditors will be in no worse position” should the case be dismissed. Motion, ¶ 7. On February 5, 2005, Barbara Katz, the duly-appointed Chapter 7 Trustee (hereafter, the “Trustee”), objected to the Motion, asserting, *inter alia*, that dismissal would put “creditors

in a far worse position than they will be if this case is not dismissed.” Objection to Debtor’s Motion to Dismiss, ¶ 10, (hereafter, the “Objection”), Doc. I.D. No. 11. The United States Trustee has also objected to the Motion. United States Trustee’s Objection to the Debtor’s Motion to Withdraw Chapter 7 Petition, Doc. I.D. No. 14 (hereafter, the “UST Objection”).

On March 2, 2005, a hearing (hereafter, the “Hearing”) was held on the Motion, at which the Debtor testified. The following facts are stipulated, undisputed, derived from the files and records of the case, or supported by the evidentiary record at the Hearing.

1. On October 14, 2004 (hereafter, the “Petition Date”), the Debtor commenced the instant bankruptcy case through the filing in this Court of a voluntary *pro se* Chapter 7 petition (hereafter, the “Petition”) pursuant to 11 U.S.C. § 301, together with a set of Statements and Schedules.¹

2. The Debtor received assistance in preparing her bankruptcy filings from “We the People”, a “bankruptcy petition preparer”, see Section 110(a)(1).

3. The Debtor’s Schedule B - “PERSONAL PROPERTY” – disclosed a stock interest in “Jon Roberto Salon & Spa, Inc.” (hereafter, the “Salon”), as well as a “Stock Payment” from the Salon. She ascribed a value of “\$0.00” to each of those assets. The Debtor’s Schedule I - “CURRENT INCOME OF INDIVIDUAL DEBTOR(S)” – revealed that in addition to wages, salary and/or commissions, the Debtor was receiving from the Salon “Other monthly income” of \$500.00.

¹On January 10, 2005, the Debtor received her discharge under Bankruptcy Code Section 727, Doc. I.D. No. 6. At the Hearing counsel for the Debtor suggested that incident the Debtor’s proposed dismissal the Discharge should be vacated. However, no statutory provision, including Section 727(d) (providing for discharge revocation on the request of the trustee, a creditor, or the United States trustee), other than, *arguably*, Section 105(d), present a satisfactory basis for discharge revocation or vacation in this case. *See Matter of Calabretta*, 68 B.R. 861 (Bankr. D. Conn. 1987) (Krechevsky, J.).

4. At a November 4, 2004 meeting of creditors pursuant to Fed. R. Bankr. P. 2003(a) and Bankruptcy Code Section 341 (hereafter, the “341 Meeting”), the Debtor appeared, testified and provided documentation, reflecting, *inter alia*, that in connection with the sale of her interest in the Salon, she received a promissory note in the amount of \$35,645.84 (hereafter, the “Note”), upon which she was receiving monthly payments (hereafter, the “Note Payments”).

5. Prior to the 341 Meeting, based upon advice she had received from “We the People”, the Debtor formed a belief that the Note and Note Payments were not exposed to administration by the Trustee,² see Section 704(1), and, therefore, were not available for distribution to her creditors.

6. While the record is unclear as to the extent to which the Debtor expressed that belief at the 341 Meeting, she was immediately advised by the Trustee that the Note and Note Payments were property of the bankruptcy estate, and were subject to collection by the Trustee and distribution to creditors.

7. The Trustee advised the Debtor to consult with an attorney. On December 2, 2004, the Debtor’s present counsel appeared on her behalf. The instant contested matter was initiated by the filing of the Motion shortly thereafter.

² The Petition bears the signature of “Karen L. LaBrosse” with the certification “. . . I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document”. At the Hearing the Debtor testified that in her conversations with representatives of We the People she focused on the Note and Note Payments, was advised that the Note and Note Payments would not be exposed to creditors through the filing of her Petition, and that but for that advice, she would not otherwise have filed the Petition.

III. DISCUSSION

Under Bankruptcy Code Section 707(a) (permitting dismissal “only for cause”) or Bankruptcy Code Section 305(a)(1) (permitting dismissal of a case if “the interests of creditors and the debtor would be better served by such dismissal . . .”), the task of the Court is to measure the prejudice to the Debtor flowing from a denial of the Motion against the prejudice to creditors if the case is dismissed.

Through the filing of her bankruptcy petition, the Debtor sought to prejudice creditors’ rights through discharge of her obligations to them.³ Such prejudice, of course, is an intended consequence of Bankruptcy Code provisions affording relief to honest debtors through a financial “fresh start”. However, the filing of a petition also engages the responsibility of this Court to insure fair and equitable treatment of creditors⁴ - another fundamental goal of the bankruptcy law. In this regard a bankruptcy petition effectively removes debtor-creditor relationships from nonbankruptcy forums, where equitable treatment is at best uncertain, to the bankruptcy court, where equitable treatment is mandated.

In this case, the Debtor first charted, and upon filing the Petition, engaged upon a course toward a “fresh start”, seeking the discharge of almost \$30,000.00 in unsecured debt upon the belief that the Note and Note Payments would not be administered by the Trustee. Because her assumption concerning the vulnerability of the Note and Note

³ In Schedule F – CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS – the Debtor listed claims totaling \$29,297.31.

⁴ Equitable treatment of creditors in a Chapter 7 case contemplates distribution of a debtor’s assets, gathered and liquidated by a trustee, to all creditors in accordance with provisions of the Bankruptcy Code. Such distribution is, of course, *subject* to a debtor’s ability to retain certain “exempt” property pursuant to Bankruptcy Code Section 522.

Payments now appears mistaken, the Debtor seeks to reverse course. Unfortunately for the Debtor, to countenance her exit strategy the Court would need to be satisfied that her creditors would be treated outside of bankruptcy as fairly and equitably as they would be treated under the Bankruptcy Code and Rules.

The Debtor, however, has offered no persuasive evidence or argument to permit this Court to adopt her view that the creditor body as a whole “will be in no worse position” outside of bankruptcy. Indeed, with continued supervision by this Bankruptcy Court, equitable creditor treatment is mandated. With the Debtor’s proposed return of financial disputes with creditors to nonbankruptcy forums, equitable treatment is at best uncertain, and more likely wholly lacking. In the inevitable “race to the courthouse”, one or more creditors may fare better than they would with *pro rata* distribution inside bankruptcy; however, others would most certainly fare appreciably worse. Avoidance of this type of inequity is a primary purpose of the Bankruptcy Code.

On the other side of the fulcrum the Debtor urges this Court to view her as a victim – subjected to substantial prejudice by unsound advice from “We the People”. While the advice she received from We the People appears imperfect, the Court is not convinced that the Debtor would necessarily fare more poorly remaining inside of bankruptcy. If this case is dismissed, and the Debtor is exposed to the claims of her creditors in nonbankruptcy forums, she may suffer the loss of some of the value of the Note and Note Payments to the judgment execution of such creditor(s). In that event, her only available exemption appears

to be limited to \$1000,⁵ as provided under *state* law, C.G.S. § 52-352b(r) (2004). By contrast, if she were to remain in bankruptcy, she has access to the federal bankruptcy exemption scheme, and *may* be able to amend her Schedules to claim a significantly higher exemption in the Note and Note Payments under, *inter alia*, 11 U.S.C. § 522(d)(5) (2004).⁶

IV. SUMMARY, CONCLUSION AND ORDER

Dismissal of this case would deprive creditors of the Trustee's efforts, and result in uncertain, random and inequitable treatment of their claims in nonbankruptcy forums. In the case at bar, creditors' interests are best served by the "tried and true" claims resolution and distribution methodology of the Bankruptcy Code and Rules.⁷ The only guarantee of fair and equitable treatment of creditors is by administration of the bankruptcy estate in this Court, which provides the most efficient and effective forum for that purpose. In addition, the prejudice to the Debtor flowing from a denial of the Motion does not appear to be

⁵On March 7, 2005, by an *Order Directing Supplemental Briefing on Motion to Dismiss Case*, Doc. I.D. No. 18, the Court directed the parties to file supplemental briefs addressing the following questions:

1. Outside of bankruptcy, to what exemptions in the subject promissory note and/or payments would the Debtor be entitled as against the claims of her creditors?
2. Within the present bankruptcy case, to what extent, if any, is the Debtor entitled to claim the subject promissory note and/or payments exempt under the "unused amount of . . . paragraph (1)" component of Bankruptcy Code Section 522(d)(5)?
3. How should the exemption availability discussed in response to Questions 1 and 2 impact the Court's analysis of prejudice in connection with the instant matter?

In their responsive briefs, Doc. I.D. Nos. 24 & 25, the parties agreed that outside of bankruptcy the Debtor's exemption entitlement was \$1000.00.

⁶ See footnote 5, *supra*. In her responsive brief the Debtor noted that she had exempted \$500.00 under Section 522(d) leaving "the sum of \$8,425.00 to claim as an exemption against the subject promissory note". Debtor's *Supplemental Briefing on Motion to Dismiss*, Doc. I.D. No. 25, at p. 3. The Trustee and the United States Trustee responded with a slightly higher figure. *Joint Supplemental Brief of the United States Trustee and the Chapter 7 Trustee*, Doc. I.D. No. 24, at pp. 2-3.

⁷ *E.g.*, claim filing, liquidation, and distribution pursuant to Bankruptcy Code Sections 501, 502, and 726, respectively, *inter alia*.

substantial, and may not exist at all, since she appears to be able to lawfully insulate more of the value of the subject Note and Note Payments through exemptions available within bankruptcy than are available to her outside of bankruptcy.

In any event, even assuming, *arguendo*, the existence of substantial Debtor prejudice by denial of the Motion, that prejudice is significantly outweighed by the likely and prejudice to the creditor body as a whole which could occur outside of this case. For these reasons, the Debtor's request to "withdraw" the Petition, *i.e.* dismiss this case, must be denied. Accordingly,

IT IS HEREBY ORDERED that the Motion is **DENIED**.

BY THE COURT

DATED: April 8, 2005

Albert S. Dabrowski
Chief United States Bankruptcy Judge