

182

UNPUBLISHED OPINION

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

* * * * *

IN RE:) Bankruptcy No. 85A-00372
)
 RONALD ALBERT ALLEN,)
 CATHERINE S. ALLEN,)
)
 Debtors.)

* * * * *

MEMORANDUM OPINION AND ORDER

* * * * *

INTRODUCTION AND BACKGROUND

This matter came before the Court on July 25, 1985, on Motion to Dismiss by the debtors. Only the debtors and debtors' counsel appeared at the hearing. After hearing the arguments and statements of counsel and reviewing the motion and notice on file, the Court denied the relief sought but allowed counsel to file a memorandum within fifteen (15) days to convince the Court otherwise. If the position of the Court remained unchanged, denial of the motion would stand without further notice. However, some question exists as to whether the Court clearly communicated its message. Therefore, to resolve any possible confusion, the Court will now articulate its position.

The facts germane to the resolution of this matter are as follows:

On February 6, 1985, Ronald and Catherine Allen ("debtors"), filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. On June 11, 1985, the debtors were granted a discharge. However, four (4) days prior to discharge, the debtors filed a motion to dismiss their Chapter 7 case and noticed a hearing on the motion for July 25, 1985. Debtors requested dismissal so that they could refile and obtain a discharge of medical expenses incurred after they filed their first petition and a student loan. Therefore, the issue is whether the debtors are entitled to a dismissal of their Chapter 7 case on these grounds.

DISCUSSION

Counsel for the debtors argues in his memorandum that, notwithstanding the fact that no statutory provision governing voluntary dismissals exists, a debtor may seek a dismissal as a common law right, and where no party objects, "equitable principles" control whether a dismissal should be granted.

This Court in In re Weyerman, unpublished opinion (Bkrtcy. D. Utah Aug. 1985) held that Section 707 of the Bankruptcy Code does apply to voluntary dismissals. Id. 3.

Section 707 provides in part:

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; or
- (2) nonpayment of any fees or charges required under chapter 123 of title 28. [11 U.S.C. § 707]

Under the former Bankruptcy Act, notice and a hearing was required for dismissal. Under the Bankruptcy Code, two additional factors are added to dismissal of a Chapter 7 case. First, dismissal is left to the discretion of the Court. Second, "cause" must be found to exist. See Matter of Bryant, 28 B.R. 362, 365 (Bkrtcy. N.D. Ind. 1983). These additions demonstrate that the Court is not required to dismiss simply because no objections are made. Id.

The term "cause" as used in Section 707 is not defined by the Bankruptcy Code. The legislative history indicates that the grounds enumerated in this section are merely illustrative and that the Court may dismiss on other grounds where "cause" is found to exist. Dismissal cannot be prejudicial to creditors. In re Banks, 35 B.R. 59 (Bkrtcy. D. Me. 1983); Hammer v. Internal Revenue Service, 18 B.R. 524 (Bkrtcy. E.D. Wis. 1982); Gill v. Hall, 15 B.R. 913, 8 B.C.D. 566, 5 C.B.C. 2d 1028 (9th Cir. 1981); In re Williams, 15 B.R. 655, 8 B.C.D. 539 (Bkrtcy. E.D. Mo. 1981); In re Underwood, 7 B.R. 936 (Bkrtcy. S.D. W. Va. 1981).


In this case, debtors want to dismiss their first Chapter 7 case in order to file a second Chapter 7 case immediately thereafter for two reasons. First, to obtain a discharge for medical expenses incurred after their first case was filed. In the opinion of this

Court, the debtors' first reason does not establish "cause" for dismissal. To dismiss this case and allow the debtors to file another Chapter 7 case and obtain a discharge of debts incurred since filing, would circumvent the purpose of the Bankruptcy Code and establish a dangerous precedent which would lead to abuses. See In re Reynolds, 4 B.R. 703, 704 (Bkrtcy. D. Me. 1980).

The second reason given by debtors for seeking dismissal is to obtain a discharge of a student loan. The Court has not been provided with any specific information relating to the student loan. According to the debtors' Schedule A-3, two student loans were incurred in February, 1980. One loan became payable the same month in which it was incurred, while no additional information is given as to status of the second loan. Regardless of when the student loans became payable, the Court finds that an attempt to dismiss a Chapter 7 case so that a subsequent filing can fall outside the five year nondischargeability period for a student loan does not constitute "cause" for dismissal. A debtor is free to choose if and when to file a voluntary Chapter 7 case. If the date of filing a petition for relief under Chapter 7 is critical as to whether a discharge will be granted for a student loan, the debtor must bear the responsibility for monitoring that date.

THEREFORE, IT IS ORDERED that debtors' Motion to Dismiss is denied. The debtors' discharge will stand and the case will remain closed.

DATED this 1 day of April, 1986.



JOHN H. ALLEN
UNITED STATES BANKRUPTCY JUDGE