

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

Teri Uhan

CASE NUMBER 99-10990

Chapter 7

**MEMORANDUM OPINION AND ORDER RE
MOTION FILED BY DEBTOR TO DISMISS CHAPTER 7 CASE, OBJECTION TO MOTION FILED BY DEBTOR
TO DISMISS CASE FILED BY TEXTRON FINANCIAL CORPORATION, AND OBJECTION TO MOTION FILED
BY DEBTOR TO DISMISS CHAPTER 7 CASE FILED BY LEASING INNOVATIONS, INC., ASSOCIATES
COMMERCIAL CORPORATION, THE CIT GROUP/EQUIPMENT FINANCING GROUP, INC., BOMBARDIER
CAPITAL, INC., AND CONSECO FINANCIAL F/K/A GREEN TREE FINANCIAL SERVICES**

The Court conducted a hearing on the Debtor's Motion to Dismiss Chapter 7 Case, and the objections thereto on November 17, 1999. FED. R. BANKR. P. 9014. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the hearing and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

FINDINGS OF FACT

The debtor in this case, Teri Uhan, ("Uhan"), filed her chapter 7 petition in this Court on March 26, 1999. Uhan was one of the principals in Wright-Way Express, Inc., a Tennessee trucking corporation which filed a chapter 11 petition in this Court in 1998 (case number 98-14126). Uhan was a Tennessee resident until approximately one month prior to filing for bankruptcy relief at which time she moved to Longmont, Colorado.

According to her attorney, Uhan had hoped to be able to travel back and forth between Colorado and Tennessee throughout the pendency of this case; however, after coming back to Tennessee for her first meeting of creditors, Uhan has since concluded that she does not have the financial resources to continue traveling back and forth to Tennessee. As a result, Uhan has filed a motion to dismiss her chapter 7 case.

Several of Uhan's creditors have filed objections to this motion, alleging that they have expended a great amount of time and money in Uhan's Tennessee case and that by seeking to have her case dismissed at this time, Uhan is attempting to "avoid entry of an order barring dischargeability and/or discharge" of her debts. All of the creditors objecting to Uhan's motion are national companies with offices across the country.

In reply to the debtor’s motion to dismiss, the attorney for the chapter 7 trustee filed a response in which he stated:

The trustee has questioned the debtor at a meeting of creditors, reviewed documents, discussed values with real estate agents, and performed various other duties in this case. The trustee has also employed attorney, Toni Parker, who also attended the meeting of creditors and has done further discovery. The trustee and the attorney for the trustee, with their limited resources and without any funds in the estate, have found no disclosed assets with any value to the estate.

Based on the trustee’s knowledge of the assets disclosed in the bankruptcy petition schedules, and without knowledge of the debtor’s reasons for filing a motion to dismiss, the trustee has no opposition to the motion to dismiss.

CONCLUSIONS OF LAW

Section 707(a) of the Bankruptcy Code provides that a court may dismiss a Chapter 7 case “. . . only after notice and a hearing and only for cause. . .” 11 U.S.C. § 707(a).¹ “Cause” is not defined by the Code, but caselaw has concluded that as long as dismissal is in the best interest of both the debtor and creditors, cause will be found. *In re Eichelberger*, 225 B.R. 437, 439 (Bankr. E.D. Mo. 1998); *In re McCullough*, 229 B.R. 374, 376 (Bankr. E.D. Va. 1999). In deciding whether or not dismissal is in the best interest of the creditors, a court must decide whether or not the dismissal will cause “some plain legal prejudice to the debtor’s creditors.” *McCullough*, 229 B.R. at 376; *In re Carroll*, 24 B.R. 83, 86 (Bankr. N.D. Ohio 1982); *In re Hall*, 15 B.R. 913, 917 (Bankr. 9th Cir. 1981). “Legal prejudice is found to exist where assets which would otherwise be available to the creditors are not available because of the dismissal.” *McCullough*, 229 B.R. at 376.

In the present case, the trustee has reported that the debtor does not have any assets for distribution to the creditors. None of the objecting creditors offered any proof which contradicted this conclusion. All of the objecting creditors are national companies with offices across the country. As a result, pursuing Uhan in Colorado should be just as convenient for the creditors as it would be in Tennessee. Lastly, once Uhan’s case is dismissed, the creditors are free to pursue Uhan in state courts under state law. They simply will not suffer any “plain legal prejudice” if this case is dismissed. The

¹Section 707(a) applies to motions to dismiss filed by both creditors and debtors. *In re Schwartz*, 58 B.R. 923, 925 (Bankr. S.D.N.Y. 1986); *In re Mathis Insurance Agency, Inc.*, 50 B.R. 482, 486 (Bankr. E.D. Ark. 1985).

Court can sympathize with the creditors in regards to the money they have expended in Uhan’s chapter 7 case; however, the test is one of legal prejudice, and not financial.

III. ORDER

It is therefore **ORDERED** that the Motion filed by Debtor to Dismiss Chapter 7 Case is **GRANTED**.

It is so ordered.

By the Court,

**G. Harvey Boswell
United States Bankruptcy Judge**

Date: December 8, 1999