

Dated: December 11, 2007
The following is ORDERED:



Jennie D. Latta

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UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re

PEGGY K. ACREE,

Debtor.

Case No. 07-26124-L
Chapter 7

MEMORANDUM OF OPINION

BEFORE THE COURT is the motion of the debtor, Peggy K. Acree, to convert her case to Chapter 13 or, in the alternative, to dismiss her case. At the hearing on October 29, 2007, counsel for the Debtor indicated that his client's present intention is to dismiss her case. The Chapter 7 trustee, Bettye S. Bedwell, filed a timely objection. In essence, the Debtor urges the court to dismiss her case because she overreacted when one of her credit card lenders raised the rate on her credit card causing her monthly payment to triple. The trustee responds that the real reason the Debtor wants to dismiss this case is that the trustee has discovered an asset that could be used to pay

creditors. In order for the Debtor to prevail, she must show that cause exists for dismissing her case. *See* 11 U.S.C. § 707(a). This is a core proceeding. 28 U.S.C. § 157(b)(2)(A).

FACTS

The Debtor filed her petition for relief under Chapter 7 of the Bankruptcy Code on July 3, 2007. Bettye S. Bedwell was appointed trustee by order entered the same day. The Debtor filed schedules and a statement of financial affairs, which indicate that at the time of filing she owned three parcels of real property. Her statement of financial affairs failed to describe any real property that had been transferred by the Debtor in the two years immediately preceding the filing of her bankruptcy case. In fact, the Debtor had given a quit claim deed to her son, Jeffery M. Acree, conveying her interest in property used by the Debtor and her son in their business less than seventeen months prior to the filing of her petition. The deed was not recorded until January 18, 2007, and appears to have a defective acknowledgment. The trustee has filed a complaint to recover this property for the estate on the basis that the transfer was fraudulent.

The Debtor claims that her failure to list the transfer was a mere oversight, and that if allowed to dismiss her case, she would repay her creditors with help from her son. In addition to three mortgages associated with her real property, the Debtor owes approximately \$165,000 to her unsecured creditors, which are primarily credit card lenders. The Debtor lists income of \$1,000 per month and expenses of \$1,253. The Debtor is 58 years old. She indicated that she is willing to find a second job and that her son would help her. Her son testified that he is willing to provide assistance to his mother in an amount up to \$1,400 to \$1,500 per month. Mr. Acree admits, however, that his income is derived from his real estate business, which has fallen off in recent

months. He also indicated that without the real property transferred to him by his mother, he would be unable to stay in business because of the added expense of rent.

The trustee indicated that the county tax assessor values the property transferred to the Debtor's son at \$87,000. The property is encumbered by taxes. If the property were sold, the trustee indicates that a substantial distribution could be made to creditors.

ANALYSIS

As stated previously, the Debtor carries the burden to establish that cause exists for the voluntary dismissal of her case. *See Sicherman v. Cohara (In re Cohara)*, 324 B.R. 24, 28 (B.A. P. 6th Cir. 2005). Cause in this context requires proof that dismissal of the case will not prejudice creditors. There seems little doubt that creditors will be prejudiced if the case is dismissed. Just as in *Cohara*, the Debtor lacks funds with which to pay her creditors and has no concrete plan for doing so. The Debtor has failed to consider that the mere filing of her bankruptcy case, if not the prior upward adjustment in the interest rate charged by one of her creditors, will likely result in all of her creditors electing to apply the default interest rate to her credit card obligations. Further, if the case is dismissed, the creditors will be put to the additional burden of recovering the real property transferred by the Debtor. In connection with this bankruptcy case, steps to accomplish this result have already been undertaken by the trustee. Finally, the Debtor comes to the table with unclean hands. Given the opportunity to do so, she failed to disclose the transfer of her real property in her statement of financial affairs. This fact by itself counters the Debtor's assertion that cause exists to dismiss her case. But for the trustee's efforts, the creditors potentially would have lost the benefit of the Debtor's equity in her real property. The Debtor has simply failed to meet her burden to

establish that dismissal of her case is in the best interest of her creditors and thus, that cause exists to support her motion. There is no absolute right to voluntarily dismiss a Chapter 7 case. *See Cohara*, 324 B.R. at 27.

CONCLUSION

For the reasons stated, the motion of the Debtor to dismiss her Chapter 7 case will be denied.

The court will enter an order consistent with this opinion.

cc: Debtor
Attorney for Debtor
Chapter 7 Trustee
Attorney for Chapter 7 Trustee
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