

Not intended for publication



Dated: January 22, 2004
The following is SO ORDERED.

A handwritten signature in cursive script that reads "G. Harvey Boswell".

G. Harvey Boswell
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

IN RE

Timothy J. Montana,

Case No. 03-13028

Debtor.

Chapter 7

MEMORANDUM OPINION AND ORDER RE
MOTION TO DISMISS

The Court conducted a hearing on the United States Trustee's Motion to Dismiss on December 17, 2003. 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.

I. FINDINGS OF FACT

The Debtor filed the instant case on June 24, 2003. The debtor had previously filed a chapter 7 petition on May 20, 2002, case no. 02-12227.¹ That case was dismissed on March 19, 2003; however, the debtor testified that he thought he had received a discharge and was unaware that the case had, in fact, been dismissed. After discovering that he had not received a discharge, the debtor filed the instant case.

¹Debtor filed case no. 02-12227 as "Timothy James Bowers." The instant case was filed under the name "Timothy James Montana." The debtor testified at the hearing in this matter that he changed his last name from "Bowers" to "Montana" when he married his current wife.

On April 18, 2003, the debtor and his current wife purchased a 2003 Dodge Durango for \$38,918.00. Upon the filing of the instant case, the debtor listed the Durango on Schedule D and the monthly payment for the truck on Schedule J.

The United States Trustee filed the pending Motion to Dismiss on October 9, 2003. In the motion and at the hearing, the United States Trustee alleged that the debtor lacked good faith in purchasing the Durango. The United States Trustee also alleged that this lack of good faith constitutes grounds for dismissal under 11 U.S.C. § 707(a).

II. CONCLUSIONS OF LAW

Section 707(a) of the Bankruptcy Code provides that a “court may dismiss a case under this chapter only after notice and a hearing and only for cause including . . .” 11 U.S.C. § 707(a). “Over the years courts have used this ‘for cause’ provision to dismiss chapter 7 filings that are deemed to be in bad faith.” *In re Stump*, 280 B.R. 208, 213-14 (Bankr. S.D. Ohio 2002). Decisions to dismiss are not to be made lightly and should only be made in the most egregious cases. *Id.* The decision to dismiss should be made on a case-by-case basis only after examining the facts and circumstances. *Id.* The Sixth Circuit has developed a list of fourteen factors to consider when deciding whether a filing was made in bad faith:

1. The debtor has reduced the creditor body to a single creditor immediately before filing;
2. The debtor has failed to make appropriate lifestyle adjustments;
3. There is an intent to avoid payment of a large single debt that has been reduced to judgment;
4. The debtor did not try to repay;
5. The use of chapter 7 is unfair;
6. The debtor has sufficient resources to pay debts;
7. The debtor is paying obligations to insiders;
8. The schedules inflate expenses;
9. The debtor transferred assets;
10. The debtor is abusing the protections of the Code;
11. The debtor showed a pattern to evade a single major creditor;
12. The debtor failed to make full disclosure;
13. The debts are modest in relation to assets and income;
14. There are multiple bankruptcy filings or other procedural "gymnastics."

Id. at 214, FN 2 (citing *In re Spagnolia*, 199 B.R. 362, 365 Bankr. W.D. Ky. 1995).

Looking at the factors in this case, the Court finds that the debtor’s purchase of the Durango in April 2003 does not demonstrate bad faith under § 707(a). The debtor testified that as a result of miscommunication with his attorney in his previous case he thought he had received a chapter 7 discharge in March 2003. Although he later learned that the case had been dismissed and not discharged, the debtor did not know the status of his previous case at the time he purchased the truck with his new wife. The debtor simply had no reason to believe at the time of purchasing the truck that he would soon be re-filing for chapter 7 relief. Additionally, the debtor was forthright in disclosing the purchase of the truck when

he filed the instant case. He did not attempt to hide the purchase or the payment. Although the debtor's decision to purchase the truck might seem to be rather un-wise in hindsight, the Court simply cannot find that the debtor acted in bad faith in either purchasing the truck or filing the instant case.

III. ORDER

It is therefore **ORDERED** that the United States Trustee's Motion to Dismiss is **DENIED**.

Mailing Information:

Ken Walker, Attorney for Debtor
United States Trustee's Office