

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE: ) In Proceedings  
) Under Chapter 7  
AUGUSTA LEE COX, )  
) No. BK 86-50574  
Debtor. )  
  
BARBARA CASS, )  
)  
Plaintiff, )  
)  
v. )  
)  
AUGUSTA LEE COX, )  
)  
Defendant. )

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff's Petition for Attorney's Fees and Court Costs. Plaintiff previously filed a complaint to determine dischargeability of debt. The debt in question was a \$15,000.00 state court judgment plaintiff obtained against defendant in a cause of action based on alienation of affections. On May 22, 1987, this Court held that the debt was nondischargeable under 11 U.S.C. §523(a)(6) and entered judgment in favor of plaintiff. Plaintiff now requests attorney's fees on the basis that she is the prevailing party, and on the further basis that the instant bankruptcy case was not filed in good faith.

On August 10, 1987, the Court ordered Attorney James E. Heil (who initially represented the debtor) to show cause why plaintiffs attorney's fees should not be assessed against him personally for filing the Chapter 7 case on behalf of the debtor. Mr. Heil then filed a "Special and Limited Appearance," in which he contended

that this Court had no jurisdiction to issue the show cause order. Although the Court finds Mr. Heil's position to be without merit, the Court believes, for the reasons stated below, that the instant bankruptcy case was not filed in bad faith, and that plaintiff's request for attorney's fees should therefore be denied.

Although Chapter 7 does not expressly require that bankruptcy cases be commenced in good faith, "there is an implied requirement of good faith in every bankruptcy proceeding." In re Kragness, 63 B.R. 459, 465 (Bankr. D. Or. 1986). See also In Re Kahn, 35 B.R. 718, 719 (Bankr. W.D. Ky. 1984), remanded on other grounds, 751 F.2d 162 (6th Cir. 1984). Good faith, however, has not been defined by the Bankruptcy Code. "The facts required to mandate dismissal based upon a lack of good faith are as varied as the number of cases." In re Bingham, 68 B.R. 933, 935 (Bankr. M.D. Pa. 1987). Some of the factors that courts have considered in determining whether bad faith exists include the following:

- (a) [F]rivolous purpose, absent any economic reality;
- (b) lack of an honest and genuine desire to use the statutory process to effect a plan of reorganization;
- (a) use of a bankruptcy as a device to further some sinister or unworthy purpose;
- (d) abuse of the judicial process to delay creditors or escape the day of reckoning in another court;
- e) lack of real debt, creditors, assets in an ongoing business;
- (f) lack of reasonable probability of successful reorganization.

Id. Some of these factors, however, have been considered in the context of Chapter 11 and Chapter 13 cases. As noted by one court, "[a] different level of conduct may be required for debtors in a Chapter 7 liquidation where all non-exempt assets are surrendered to a trustee for liquidation as opposed to Chapter 11 and Chapter 13 cases where the debtor normally remains in possession of non-exempt assets." In re Kragness, 63 B.R. at 465.

In the present case, plaintiff contends that debtor's bad faith is demonstrated by the following: 1) Debtor filed a Chapter 7 petition within thirty days after the judgment in state court became final; 2) debtor purchased a new automobile for \$9,600.00 one month after the state court judgment was entered; 3) debtor and her husband together earn approximately \$56,000.00 per year; 3) debtor attempted to obtain exemptions for property she did not own; and 4) debtor has since filed a Chapter 13 case, in which she proposes to pay 10% of her debt to plaintiff. The Court does not believe that these facts establish bad faith. See In re Bingham, 68 B.R. at 936; In re Kragness, 63 B.R. at 465-66. As indicated by the summary of debts and property, debtor had approximately \$38,050.46 in debts and \$12,395.00 in property assets as of the date that she filed bankruptcy. The Court cannot conclude, therefore, that the Chapter 7 case was filed for the sole purpose of liquidating the debt owed to plaintiff.<sup>1</sup>

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<sup>1</sup>Even if this were debtor's motive, the Court is not convinced, after reviewing the applicable case law, that such motive would constitute bad faith. While In re Kahn, 35 B.R. 718 (Bankr. W.D. Ky. 1984) appears to support plaintiff's position in this regard, the holding that case is of limited value in light of the Sixth Circuit's remand.

Accordingly, plaintiff's Petition for Attorney's Fees and Court Costs is DENIED.

\_\_\_\_\_/s/ Kenneth J. Meyers  
U.S. BANKRUPTCY JUDGE

ENTERED: October 1, 1987