

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

IN RE: )  
)  
TIMOTHY ALAN HURST and ) Bankruptcy Case No. 00-41972  
KAREN J. HURST, )  
)  
Debtors. )

OPINION

This matter having come before the Court on a Motion to Dismiss filed by Creditor, Louis A. Ray, on June 29, 2001; the Court, having heard arguments of counsel and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

Findings of Fact

1. The instant Chapter 13 bankruptcy was filed by the Debtors on October 17, 2000.
2. Debtors filed their Chapter 13 Plan of Reorganization on October 31, 2000, proposing to pay their creditors the sum of \$775 per month for a period of 60 months.
3. The Chapter 13 Trustee initially filed an Objection to Confirmation. However, after amended schedules were filed by the Debtors, the Trustee withdrew his Objection to Confirmation, which was initially filed on December 18, 2000, and recommended confirmation of the Plan as filed on October 31, 2000.
4. On December 18, 2000, the Creditor, Louis A. Ray, filed an

Objection to the Debtors' Chapter 13 Plan, alleging as a basis for the Objection, among other things, that the Plan had not been proposed in good faith, as mandated by 11 U.S.C. § 1325(a)(3).

5. A hearing was held on the Debtors' Chapter 13 Plan and the Objection of Creditor, Louis A. Ray, on February 28, 2001. The Debtors' Chapter 13 Plan was confirmed over the Objection of Louis A. Ray, and the Debtors were ordered to submit an order of confirmation within 14 days.

6. On March 6, 2001, the Court entered an Order Confirming Chapter 13 Plan.

7. On March 14, 2001, the Creditor, Louis A. Ray, filed a Motion to Alter or Amend Judgment requesting that the Court reconsider its Order Confirming Chapter 13 Plan, again alleging, as a part of the basis for reconsideration, the Debtors' purported lack of good faith in the filing of their Chapter 13 Plan.

8. The Motion to Alter or Amend Judgment filed on March 14, 2001, was subsequently denied by the Court, and Creditor, Louis A. Ray, filed a Notice of Appeal in the United States District Court for the Southern District of Illinois based upon this Court's denial of the Motion to Alter or Amend Judgment. Said matter remains on appeal at this time awaiting judgment by the United States District Court.

9. On June 29, 2001, Creditor, Louis A. Ray, filed the instant Motion to Dismiss, once again alleging the lack of good faith in the filing of the Chapter 13 Petition and requesting that the Debtors'

Chapter 13 Petition be denied pursuant to 11 U.S.C. § 1307(c).

Conclusions of Law

In his Motion to Dismiss, Movant accurately asserts that lack of good faith in the filing of a Chapter 13 petition is cause for dismissal under 11 U.S.C. § 1307(c). See: In re Love, 957 F.2d 1350 (7th Cir. 1992). The Movant then goes on to assert seven bases of why the Debtors' Chapter 13 Petition lacks good faith in support of the Motion to Dismiss. In reviewing the Movant's original Objection to Confirmation of the Debtors' Chapter 13 Plan and the Motion to reconsider the denial of said Objection, the Court finds that, as in the instant Motion, lack of good faith was the main thrust of the Movant's argument in opposition to confirmation. In support of the Objection and the Motion for reconsideration, the Movant raised essentially the same arguments as set forth in the instant Motion to Dismiss. The only difference between the previous arguments and the instant arguments is that the previous arguments were raised under 11 U.S.C. § 1325 and the instant arguments are raised under 11 U.S.C. § 1307(c). Previously, Movant argued that the Plan should not be confirmed, whereas now, the Movant is arguing that the Petition should be dismissed. Although the Movant seeks relief under an entirely different section, the outcome that is sought is essentially the same as before.

As noted above, this Court's denial of Movant's Motion for reconsideration is presently on appeal, and the issues raised in that

appeal are substantially the same as those raised in the instant Motion to Dismiss. As such, the Court finds that the Motion to Dismiss filed on June 29, 2001, is duplicitous of prior arguments raised in the Objection to Confirmation and in the Motion for reconsideration and should be denied for that reason.

ENTERED: August 15, 2001.

/s/ GERALD D. FINES  
United States Bankruptcy Judge