

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In re:)
)
IDREES MUHAMMAD,) In Bankruptcy
)
) Case No. 98-31996
Debtor.)

OPINION

Before the Court is the Motion for Reconsideration, Rehearing, Amendment and Alteration of Judgment and Amendment of Findings of Fact filed by Idrees Muhammad ("Debtor") on October 13, 1998. In an Opinion and Order dated October 6, 1998, the Court granted the Motion to Dismiss filed by Bi-Rite Petroleum, Ltd. ("Bi-Rite"). Debtor now seeks to have the dismissal set aside.

On June 26, 1998, Debtor filed his petition under Chapter 13 of the Bankruptcy Code. On or about July 14, 1998, Bi-Rite filed its Motion to Dismiss Debtor's Chapter 13 petition. In December, 1995, Bi-Rite filed a civil action against Debtor, two other individuals, and a corporation in Missouri state court for damages allegedly inflicted by the defendants on Bi-Rite's real estate. Bi-Rite alleged that Debtor used a faulty gasoline pump on the property, knowing that it was broken and knowing that damage to Bi-Rite's property would result. Bi-Rite also asserted that Debtor concealed the damage and failed to cooperate in the restoration of the-property.

The state court civil trial was scheduled to begin on Monday, June 29, 1998. On Friday, June 26, 1998, three days before the scheduled start of the state court trial, Debtor filed his Chapter 13 petition. When the case was called for trial, none of the defendants appeared, and the state court entered a default judgment against two of the four defendants and in favor of Bi-Rite in the amount of \$2,019,989.60 in compensatory damages, \$500,000.00 in punitive damages, or a total of \$2,519,989.60 plus costs. Because the Debtor and one other defendant had filed bankruptcy, the state court judgment was entered only against the two non-bankrupt defendants.

Bi-Rite's Motion to Dismiss was called for hearing on September 8, 1998. After hearing arguments

of the parties and after reviewing the parties' memoranda, the Court entered its order granting Bi-Rite's Motion to Dismiss on October 6, 1998. In its Opinion, the Court found that debtor was not eligible for relief under Chapter 13 because his noncontingent, liquidated, unsecured debts exceeded \$250,000 in violation of Section 109(e) of the Bankruptcy Code which provides, *inter alia*, that only an individual with noncontingent, liquidated, unsecured debts of less than \$250,000 may be a debtor under Chapter 13 of the Bankruptcy Code. The Court explained that at least certain elements of Bi-Rite's state court claim against Debtor were liquidated at the time the case was filed. Specifically, the Court found that Bi-Rite's claim against Debtor for unpaid lease payments of \$122,500.00, simple interest of \$11,911.17, late charges of \$3,500.00, property taxes of \$971.84, and real estate taxes of \$12,648.14 were liquidated.

In his Motion for Reconsideration, Debtor states that the Court's Opinion was in error in that Bi-Rite has not asserted claims against Debtor for unpaid lease payments, simple interest, late charges, property taxes or real estate taxes.

In preparing its October 6, 1998 Opinion, the Court relied upon the accuracy of certain statements contained in Bi-Rite's memorandum in Support of Motion to Dismiss. Specifically, Bi-Rite argued that certain elements of Bi-Rite's state court claim, including unpaid lease payments of \$122,500, "take the Debtor well over the statutory maximum set forth in § 109 (e)" Memorandum at p. 4. Bi-Rite further argued that these sums were "fixed and readily ascertainable requiring no further computation or analysis" *Id.* The Court, apparently incorrectly, concluded from this statement that the Debtor was, in fact, obligated to Bi-Rite for unpaid lease payments. Debtor's Motion for Reconsideration states that Debtor was not liable for unpaid lease payments, simple interest, late charges, property taxes or real estate taxes, and that Bi-Rite did not seek to collect these sums from Debtor in the state court civil action. Bi-Rite has not filed a response to Debtor's Motion for Reconsideration; thus, the Court accepts Debtor's statements regarding Bi-Rite's state court claim against Debtor as true, and the Court acknowledges that its finding that Bi-Rite's claim against Debtor included unpaid lease payments, simple interest, late charges, property taxes, and real estate taxes was in error.

However, as an alternative basis for dismissing Debtor's Chapter 13 case, the Court found that

even if Debtor had been eligible under Section 109 (e) for relief under Chapter 13, Debtor had filed his Chapter 13 petition in bad faith. In its opinion entered October 6, 1998, the Court stated that "Debtor has also unfairly manipulated the Bankruptcy Code by timing the filing of his petition to obtain jurisdiction under Chapter 13. Debtor's Chapter 13 Plan is not a good faith attempt to pay his creditors; rather it is an attempt to take advantage of the "super-discharge" provisions of Section 1328 (a) to wipe out Bi-Rite's debt which might very well be nondischargeable in a Chapter 7 case." Opinion at p. 6.

Debtor asserts that these conclusions are also erroneous, and that his Chapter 13 plan is a good faith attempt to pay creditors. The facts in this case belie that argument and the Court rejects it. The state court trial was scheduled to commence one business day after Debtor filed his Chapter 13 petition. Debtor apparently decided that filing a Chapter 13 bankruptcy was preferable to defending the state court civil suit. As the Court has previously stated, the timing of the filing strongly suggests that Debtor has manipulated the Bankruptcy Code to his own benefit and to the detriment of his creditors. Debtor knew at the time he filed his Chapter 13 petition that he owed other noncontingent, liquidated, unsecured debts of \$178,708.70. Debtor further knew that any judgment against him in excess of \$71,291.30 ($\$178,708.70 + \$71,291.30 = \$250,000.00$) would make him ineligible for relief under Chapter 13 under Section 109 (e). As the alleged amount of actual damages exceeded \$2,000,000, Debtor knew that there was a strong possibility that the entry of a judgment against him by the state court would make him ineligible for Chapter 13 relief.

Debtor's solution, rather than to face Bi-Rite and defend the claim brought against him, was to file his Chapter 13 petition on the eve of trial. In addition, the charges, though as of now unproven, include the making of false representations and breach of fiduciary duty, which suggest that any such judgment against Debtor might ultimately be nondischargeable pursuant to 11 U.S.C. § 523 (a) in a Chapter 7. For this reason as well, the timing and the Debtor's motivation behind filing the Chapter 13 petition are suspect. Finally, irrespective of the eligibility requirements of Section 109 (e), the amount of damages alleged in the state court action against Debtor is substantial. If damages were proven and assessed against Debtor in amounts alleged, Debtor's Chapter 13 plan payments of \$1,000 per month for 36 months would constitute nothing more than token payments to his unsecured creditors. In any case, Debtor's Chapter 13 plan made

no provision for the adjudication or satisfaction of Bi-Rite's claim, which is further evidence of Debtor's lack of good faith. See In re Love, 957 F. 2d 1350, 1357 (7th Cir. 1992) (factors determining whether a Chapter 13 petition was filed in good faith include nature of the debt, including whether it would be nondischargeable in a Chapter 7; timing of the petition; how the debt arose; debtor's motive in filing; how debtor's actions affected creditors, and debtor's treatment of creditors before and after filing) (citations omitted).

This Chapter 13 case is not a good-faith attempt to pay creditors; it is an attempt to avoid paying a large and possibly nondischargeable state court claim. For all of these reasons, the Court finds that Debtor's Chapter 13 petition was not filed in good faith, and Debtor's Motion for Reconsideration is denied.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: November 4, 1998

/s/ BASIL H. COUTRAKON
UNITED STATES BANKRUPTCY JUDGE