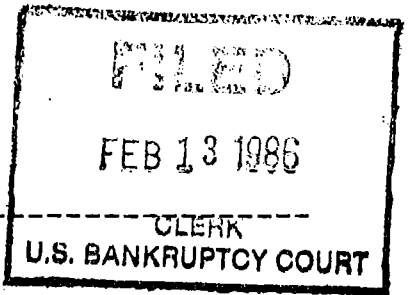


UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WISCONSIN



In re:

Case Number:

JACK H. McFARLANE

EF11-85-01331

Debtor.

OPINION AND ORDER

Chetek Cooperative (Chetek), by Gregory Jennings, has by motion requested this court to either convert or dismiss this case pursuant to 11 U.S.C. § 1112(b). The debtor, by Bruce Zito, objects to the motion. A hearing was held on this matter on February 10, 1986. It is the conclusion of this court that Chetek has established "cause" for this case to be dismissed.

Facts

The debtor filed for relief under this chapter on July 1, 1985. The debtor still has not filed a plan of reorganization. At the time of filing his bankruptcy petition the debtor's property was held in a state court receivership due to delinquent taxes. The debtor's schedules indicate that he owns real property valued at \$321,000.00. Debtor's other assets were listed as having a value of \$73,430.60. Therefore, at the time of filing, the debtor was alleging assets totaling \$394,430.60. The debtor's schedules list the liabilities as: priorities of \$78,251.89, secured creditors of \$37,849.66, and for unsecured without priority of \$52,986.28. This amounts to \$169,087.83 in

liabilities. Hence, the debtor had assets in excess of liabilities to the extent of \$225,342.77.

The debtor's testimony stated an intention of selling parcels of his land in order to gain money to pay off his creditors. The debtor has sold one small piece of property to the DNR for \$6,000.00. As for the rest of the property, it has neither been listed with a realtor nor advertised for sale. The debtor stated that he had talked with at least three people about the sale of the land, but at this point in time he is unable to point to one specific person who is earnestly negotiating to purchase the land.

The debtor stated that he was attempting to obtain financing from The Federal Land Bank; however, no financing commitment has been given. Even though there seems to be substantial equity in the property of the debtor that could be used as collateral, he has not negotiated financing with any of the local financial institutions.

Discussion

§ 1112(b) of the Bankruptcy Code provides the controlling legal standard on whether to dismiss or convert a case in Chapter 11.

(b) Except as provided in subsection (c) of this section, on request of a party in interest, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including--

- 1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
- 2) inability to effectuate a plan;
- 3) unreasonable delay by the debtor that is prejudicial to creditors;
- 4) failure to propose a plan under section 1121 of this title within any time fixed by the court;
- 5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan;
- 6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or a modified plan under section 1129 of this title;
- 7) inability to effectuate substantial consummation of a confirmed plan;
- 8) material default by the debtor with respect to a confirmed plan; or
- 9) termination of a plan by reason of the occurrence of a condition specified in the plan.

11 U.S.C. 1112(b). The clear language of this section provides a list of nine examples of "cause" that might induce a court to dismiss a case. This list is not exhaustive and the court should use its equitable powers on an individual case basis using other factors as they arise in making such a determination. H. Rep. No. 95-595, p. 406.

A "cause" that has often been found to warrant such a dismissal is lack of good faith. Matter of Madison Hotel Associates, 749 F.2d 410 (7th Cir. 1984). "Lack of such good faith constitutes 'cause' sufficient for dismissal under 11 U.S.C. § 1112(b). Id. at 426. "A determination as to 'good faith' requires an examination of all the facts and circumstances

in the case." In re Del Rio Development, 35 B.R. 127, 129 (Bankr. 9th Cir. A.P. 1983). Good faith is not only a necessary prerequisite of filing, but is required for the continuation of the proceeding. In re Victory Construction, 9 B.R. 549, 558 (Bankr. C.D. Cal. 1981). The intentions of the debtor must be consistent with the underlying purposes of the Code. Id. at 558. Consistent with this notion, a bankruptcy petition may not be used solely for purposes of delay. In re BBT, 11 B.R. 224 (Bankr. D. Nev. 1981).

In the case sub judice it is apparent that the debtor is not acting in good faith. The debtor is simply not prosecuting his case. Instead, the actions of the debtor manifest that his intentions are solely dilatory. After observing the testimony of the debtor and the facts of this case, it is the conclusion of this court that "cause" exists for this case to be dismissed. 11 U.S.C. § 1112(b). The debtor has not in good faith attempted to refinance even though there is substantial equity in his property. The debtor was in a state court receivership prior to filing this petition. The debtor has not listed or advertised his land for sale even though he testified that this was his intention when filing the petition. Basically the debtor has not in good faith done anything to effectively prosecute this proceeding in the seven months since filing. For these reasons the court finds that it is in the best interests of creditors that this case be dismissed.

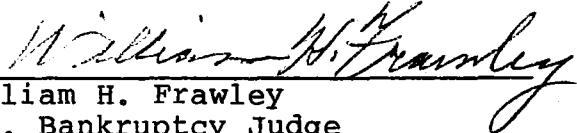
This opinion shall constitute findings of fact and conclusions of law in accordance with Rule 7052 of the Bankruptcy Rules.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT this bankruptcy case is hereby dismissed.

Dated: February 13, 1986.

BY THE COURT:



William H. Frawley
U.S. Bankruptcy Judge

cc; Attorney Gregory A. Jennings
Attorney Bruce Evan Zito