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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE)	CASE NO. 98-52411
)	
KALBAUGH BUILDERS, INC,)	CHAPTER 11
)	
Debtor.)	JUDGE MARILYN SHEA-STONUM
)	
)	ORDER GRANTING MOTION TO
)	DISMISS

This matter came before the Court on the Motion to Dismiss filed by the United States Trustee for Region 9. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 157(a) and (b)(1) and by the Standing Order of Reference entered in this District on July 16, 1984.

I. FACTS

On August 4, 1998, Kalbaugh Builders, Inc. ("Debtor") filed a petition under chapter 11 of the Bankruptcy Code. Debtor's Schedules list no secured debt. [Exhibit 4]. Debtor's Schedules list unsecured claims with an aggregate value of \$96,545.89. However, on October 14, 1998, Debtor filed a Motion for Authority to Pay Prepetition Debt (the "Payment Motion") which revealed that, without authority from the Court and after the filing of the petition, Debtor paid unsecured claims with an aggregate value of \$67,294.94. [Exhibit 3].

In the Payment Motion, Debtor stated that "[t]he debtor in possession filed as a result of a scheduled jury trial on a home construction claim of Daniel and Cynthia

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Begley." In a Motion to Dismiss which the Debtor later withdrew, Debtor similarly stated that "the petition was filed as a result of litigation in state court, set for trial at or near the bankruptcy filing date" [Exhibit 2]. Debtor has not sought to remove the state court litigation to this Court. At the November 18 hearing on the Motion to Dismiss, Debtor's counsel stated that Debtor would not consent to relief from the automatic stay for the purpose of liquidating the Begleys' claim in state court.

II LAW

On request of a party in interest and after notice and a hearing, the Court may dismiss this case for cause. 11 U.S.C. § 1112(b). Section 1112(b) provides a list of circumstances which may constitute cause for dismissal. The Court is not restricted to the grounds enumerated in section 1112(b) to dismiss a case. In re Gonic Realty Trust, 909 F.2d 624, 626 (1st Cir. 1990).

When a debtor has filed a bankruptcy petition as a litigation tactic, forum shopping device and/or to resolve what is essentially a two-party dispute, courts have found cause for dismissal of the case. See, e.g., In re C-TC 9th Avenue Partnership, 193 B.R. 650, 654 (Bankr. N.D.N.Y. 1995)(case dismissed where "it [was] clear that the primary motivation for, and characteristic of, the Debtor's Chapter 11 case [was] its dispute" with one creditor); In re SB Properties, Inc., 185 B.R. 198, 203 (E.D. Pa. 1992)(case dismissed where debtor had no significant creditors, case was essentially a two-party dispute and debtor filed bankruptcy case to remove litigation to bankruptcy court); Monsour Medical Center, Inc. v. Stein (In re Monsour Medical Center, Inc.), 154 B.R. 201, 209 (where filing of bankruptcy case was blatant forum shopping intended to reverse setbacks suffered in another forum, court dismissed bankruptcy case as having been filed in bad faith).

Debtor has acknowledged that Debtor filed this case because of the unfavorable

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direction of its state court litigation with the Begleys. Although Debtor filed this case on August 4, 1998, Debtor has done nothing to further the resolution of its dispute with the Begleys in this forum, i.e., the Debtor has not removed that litigation to this Court. Similarly, Debtor will not consent to relief from the automatic stay for the purpose of liquidating the Begleys claim in state court. Finally, Debtor's post-petition payment of nearly two-thirds in value of its unsecured debt also indicates that Debtor has not filed this case in a good faith attempt to reorganize its affairs. In light of Debtor's inaction with respect to resolving its dispute with the Begleys, and Debtor's simultaneous, unauthorized payment of the claims of a substantial portion of its unsecured creditors, the Court concludes that Debtor has not filed this case in good faith. Therefore, pursuant to 11 U.S.C. § 1112(b), the Court will grant the Motion to Dismiss.

IT IS SO ORDERED.

MARILYN SHEA-STONUM
Bankruptcy Judge

DATED: 11/23/98