

**UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OHIO**

In Re:	)	
	)	<b>CHIEF JUDGE RICHARD L. SPEER</b>
Robert John Ziarno	)	
	)	Case No. 00-32537
Debtor(s)	)	
	)	

**DECISION AND ORDER**

This cause comes before the Court after a Hearing on two matters: the Court's Order to Show Cause on Dismissal for Failure to Follow Orders of the Court and Lack of Good Faith Filing in a Chapter 13 Case; and the Debtor's Motion to Continue his Chapter 13 Plan and Continue Appeal of Unjust Judgment obtained by only creditor in the Debtor's Chapter 13 case. Present at the Hearing were John Korn, Attorney for the Debtor in bankruptcy, John Rust, Attorney for the Debtor in the Debtor's pending state court action, Anthony B. DiSalle, Standing Chapter 13 Trustee, and Rollind W. Romanoff, attorney for Mainwold Brothers, Inc. After hearing the arguments presented by all the parties with an interest in this proceeding, and after considering all of the evidence presented in this case, the Court, in accordance with Bankruptcy Rules 7052 and 9014, makes the following findings of fact and conclusions of law:

-The Debtor has approximately Two Hundred Twenty Thousand dollars (\$220,000.00) in assets;

-The Debtor has no unsecured debts;

-The Debtor has only two secured debts totaling approximately Nineteen Thousand dollars (\$19,000.00);

-One of the Debtor's secured debts is a judgment-lien held by a Mr. Mainwold. The original value of this judgment-lien was Four Thousand dollars (\$4,000.00). This is the only debt the Debtor seeks to pay inside his proposed Chapter 13 plan of reorganization;

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-The Debtor has vehemently contested the propriety of Mr. Mainwold's judgment lien, and has thus appealed, to the state court of appeals, an unfavorable ruling to have this judgment set aside under Rule 60(b) of Ohio's Rules of Civil Procedure;

-The Debtor wishes to prosecute his appeal against Mr. Mainwold while his Chapter 13 case is pending.

Under 11 U.S.C. § 1125(a)(3), a court is prohibited from confirming a debtor's plan of reorganization unless the debtor's plan has been proposed in good faith. The party who seeks a discharge under Chapter 13 bears the burden of proving good faith. *Hardin v. Caldwell (In re Caldwell)*, 895 F.2d 1123, 1126 (6<sup>th</sup> Cir.1990). Although no single factor or test determines the existence of good faith, the Sixth Circuit Court of Appeals has held that all the circumstances of a case must be considered when determining whether a debtor's plan was proposed in good faith. *Id.* In this respect, the Sixth Circuit Court of Appeals has set forth a list of criteria for determining whether a debtor's Chapter 13 plan was proposed in good faith. Included within this list of criteria are the following considerations:

- (1) the motivation and sincerity of the debtor in seeking Chapter 13 relief;
- (2) the burden which the plan's administration would place upon the trustee;  
and
- (3) whether the debtor is attempting to abuse the spirit of the Bankruptcy Code.

*Id.* at 1126-27. When considering these factors, in light of all the facts and circumstances of this case, the Court cannot come to the conclusion that the Debtor has met his burden of showing that his Chapter 13 Plan was proposed in good faith. In particular, it would seem a burden to the trustee, as well as a clear abuse of the spirit of the Bankruptcy Code, for a person with Two Hundred Twenty Thousand dollars (\$220,000.00) in assets to attempt to handle a secured debt of approximately Four Thousand dollars (\$4,000.00) through a Chapter 13 plan. Once more, given the Debtor's strong resolve to actually avoid in any way paying the judgment-lien held by Mr. Mainwold, the Court

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seriously questions the Debtor's motivation and sincerity in seeking relief from his creditors in this Court. Stated succinctly, the Court, based upon its numerous observations of the Debtor's Chapter case, views the Debtor's Chapter 13 filing as simply a procedural device to avoid paying the judgment-lien held by Mr. Mainwold against the Debtor's assets. Accordingly, for these reasons, the Court must deny confirmation of the Debtor's Chapter 13 Plan of Reorganization.

In addition, for the reasons just set forth, and considering the impropriety, in this case, of the Debtor attempting to both prosecute his appeal of Mr. Mainwold's judgment, while at the same time seeking to contemporaneously pay this judgment through his proposed Chapter 13 Plan of reorganization, the Court finds that "cause" exists under 11 U.S.C. § 1307(c), as well as 11 U.S.C. § 105(a), to Dismiss the Debtor's case, and that such an action is in the best interest of the creditors.

Therefore, for the foregoing reasons, the Court finds that the Debtor's Chapter 13 Plan should not be confirmed, and that the Debtor's Chapter 13 case should be dismissed. In addition, based upon this decision, the Debtor's Motion to Continue his Chapter 13 Plan, and Continue Appeal of Unjust Judgment obtained by only Creditor in the Debtor's Chapter 13 case will be Denied. In reaching the conclusions found herein, the Court has considered all of the evidence, exhibits and arguments of counsel, regardless of whether or not they are specifically referred to in this Decision.

Accordingly, it is

**ORDERED** that confirmation of the Chapter 13 Plan submitted by the Debtor, Robert John Ziarno, be, and is DENIED on the basis that it was not proposed in good faith in accordance with 11 U.S.C. § 1325(a)(3).

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It is **FURTHER ORDERED** that the Chapter 13 case filed by the Debtor, Robert John Ziarno, be, and is hereby, DISMISSED for cause in accordance with 11 U.S.C. § 1307(c) and 11 U.S.C. § 105(a).

It is **FURTHER ORDERED** that the Motion submitted by the Debtor, Robert John Ziarno, to Continue his Chapter 13 Plan and Continue Appeal of Unjust Judgment obtained by only Chapter 13 creditor be, and is hereby, DENIED.

Dated:

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Richard L. Speer  
Chief Bankruptcy Judge