

IT IS SO ORDERED.

Dated: 11:28 AM September 29 2005


MARILYN SHEA-STONUM *JS*
U.S. Bankruptcy Judge


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

IN RE:)	CASE NO. 03-50497
)	
NETTIE BAYLESS,)	CHAPTER 13
)	
DEBTOR(S))	JUDGE MARILYN SHEA-STONUM
)	
)	MEMORANDUM OPINION RE:
)	CONVERSION AND JUDGMENT
)	ENTRY

This matter is before the Court on the Motion of Harold Corzin, the prior Chapter 7 Trustee (the "Trustee"), to Reconvert the bankruptcy case of Nettie Bayless (the "Debtor") to a case under chapter 7 (the "Conversion Motion") [docket # 64] and the Trustee's Objection to Confirmation (the "Confirmation Objection") [docket #65]. The Debtor filed a response to the Conversion Motion [docket # 72] and to the Confirmation Objection [docket # 75].

JURISDICTION

This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A),(L) and (O). This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b), 157(a) and (b)(1) and

by the Standing Order of Reference entered in this District on July 16, 1984.

FINDINGS OF FACT

The parties entered into detailed stipulations [docket #91]. Based upon such stipulations, the testimony of Nettie Bayless and Earnest Bayless,¹ the evidence presented at the evidentiary hearing, the arguments of counsel, and the pleadings in this bankruptcy case and pursuant to Fed. R. Bankr. P. 7052, the Court makes the following findings of fact and conclusions of law.

1. The Debtor worked in the fiscal division of the Veterans' Administration for 37 ½ years. In 1986, she retired from that position and worked for a local school system. The Debtor testified that she has in the past and currently continues to balance the books and do the accounting for Appliance Mart, a business owned and/or operated by her husband, Earnest Bayless. Although the Debtor never obtained a college degree, she took evening and weekend classes for many years at the University of Akron.

2. The Debtor filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code on the 3rd day of February 2003 (the "Petition Date"). Thomas R. Fields is listed as a non-attorney bankruptcy petition preparer on the Debtor's petition and schedules. The Trustee was appointed as interim trustee in the Debtor's chapter 7 case.

3. The Debtor's schedules and statement of financial affairs did not disclose any transfers of interests in property, or any income other than the Debtor's federal employee retirement systems' pension payment of \$1,500 per month. The Debtor listed over \$90,000 in consumer debt on her schedules. On May 2, 2003 the Trustee filed a no asset report with the

¹ In reaching its determination and whether or not specifically referenced in this Memorandum Opinion, the Court considered the demeanor and credibility of the testifying witnesses.

Court. The Court granted the Debtor a discharge under Chapter 7 of the Bankruptcy Code on July 16, 2003. The Debtor's bankruptcy case was closed on September 8, 2003.

4. On February 9, 2004 a motion to reopen the Chapter 7 case was filed by Edward Hopson. In a brief filed on April 21, 2004, Hobson revealed the apparent existence of certain pre-petition conveyances of the Debtors interest in various parcels of real estate located in Summit County, Ohio.

5. Prior to the Petition Date, on or about October 3, 2002, the Debtor conveyed by Quitclaim Deed property known for mailing purposes as 1330 South Hawkins Avenue, Akron, Ohio and 1334 South Hawkins Avenue, Akron, Ohio to her daughter, Brenda R. McClendon. Thomas R. Fields signed the Quitclaim Deed as a witness.

6. In addition, the Debtor conveyed her interest in a property known as parcel 1 of property described as 1140 Olde Main Street, Akron, Ohio and her dower interest in parcel 2 of property described as 1149 Olde Main Street, Akron, Ohio for a price of \$30,000 by deed executed on or about the 21st day of October 2002. The Debtor gave all but \$100 of the proceeds from the sale of the Olde Main property to her husband Earnest Bayless.

7. The Debtor's initial schedules and statement of financial affairs, which were prepared with the assistance of Thomas R. Fields, who himself had been a witness on the Quitclaim Deed, did not disclose any of the above-mentioned transfers.

8. On April 21, 2004 the Court held a hearing on Mr. Hobson's motion to reopen. During that hearing, the Trustee stated that he planned to file his own motion to reopen the Debtor's case. Based on this statement, Mr. Hobson withdrew his motion to reopen. On April 30, 2004, the Court entered an order reopening the Debtor's bankruptcy case.

9. On July 19, 2004, only after the existence of the various pre-petition transfers had already become known to the Trustee, the Debtor filed amended schedules which referenced the transactions described above.

10. In addition, the amended schedules list Larry Stewart as a creditor holding an unsecured nonpriority claim on Schedule F and as the vendee in a land contract on Schedule G. With respect to the two properties located on South Hawkins Avenue, the Debtor had previously sold her interest to Larry Stewart (a long time friend and business associate of the Debtor and her husband, Earnest Bayless) under a certain land installment contract. Pursuant to the land installment contracts with Larry Stewart the Debtor was to receive monthly payments from Mr. Stewart. The Debtor received said payments, as a land contract vendee, both after the purported transfer of the Debtor's one-half interest in 1330 South Hawkins Avenue and 1334 South Hawkins Avenue to Brenda McClendon and after the Petition Date. As of the Petition Date, a balance of \$6,961.00 was owed to Mr. and Mrs. Bayless for 1334 S. Hawkins Avenue, Akron, Ohio and a balance was owed to Mr. and Mrs. Earnest Bayless of \$15,344.40 for 1330 S. Hawkins Avenue, Akron, Ohio. Exhibit C. These payments to the Debtor are not listed as income on the Debtor's initial or amended schedule I.

11. On November 23, 2004, the Trustee initiated an adversary proceeding to avoid the multiple transfers made by the Debtor and to revoke her discharge.

12. Shortly thereafter, on December 6, 2004 the Debtor Nettie G. Bayless moved to convert her case from a case under Chapter 7 of the United States Bankruptcy Code to one under Chapter 13 of the United States Bankruptcy Code. An order converting the case was entered on December 9, 2004. On January 27, 2005 the Trustee filed the Motion to Reconvert

and an Objection to Confirmation.

13. On February 28, 2005 the Debtor filed with the Court an application to complete land contract with Larry Stewart relating to the properties known as 1330 South Hawkins Avenue, Akron, Ohio and 1334 South Hawkins Avenue, Akron, Ohio. According to the Debtor, Larry Stewart is a friend who operated a business known as Appliance Mart with Ernest Bayless, her husband. The Chapter 13 Trustee filed an objection to this application. At the evidentiary hearing, however, the Debtor testified that the property had been transferred by her daughter to Mr. Stewart in May 2004. The Debtor said that when she received the final payments under the land contracts from Mr. Stewart, she directed her daughter, Brenda McClendon, to transfer the property known as 1330 South Hawkins and 1334 South Hawkins to Mr. Stewart. This transfer to Mr. Stewart took place in May, 2004, after the Debtor's bankruptcy case was reopened and after she was represented by competent bankruptcy counsel.

14. At the evidentiary hearing, the Debtor testified about the existence of a FirstMerit checking account in the name of Nettie G. Bayless dba Appliance Mart which was opened in 2004. The existence of this account was previously undisclosed by the Debtor. The Debtor testified that she had not previously disclosed the existence of this account because no one asked her about it.

15. The Court finds that the Debtor's claim that she is an unsophisticated person victimized by an unscrupulous bankruptcy petition preparer is not credible. Similarly, the Court does not believe the Debtor's self serving testimony that she did not understand what information was required to be disclosed or what questions she needed to answer. Rather, the testimony of

the Debtor and her husband, which was littered with feigned ignorance, seems consistent with what the Court believes is an on-going scheme to game the bankruptcy system, hide assets from creditors and disclose as little information as possible.

DISCUSSION

Bankruptcy Code §1307(c) provides, “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 interests of creditors and the estate, for cause” Although §1307(c) does not specifically list lack of “good faith” as “cause” for dismissal or conversion, the Sixth Circuit concluded that a petitioner’s lack of good faith is “cause” for a bankruptcy court to dismiss or deny conversion of a Chapter 7 case. *Industrial Insurance Services, Inc. v. Zick (In re Zick)*, 931 F.2d 1124, 1127 (6th Cir.1991); *Copper v. Copper (In re Copper)*, 314 B.R. 628 (6th Cir. BAP 2004). A similar "good faith" test has been judicially inferred for Chapter 13 filings from the "for cause" language of section 1307(c). *In the Matter of Robert John Love*, 957 F.2d 1350, 1354 (7th Cir. 1992); *In re Brenner*, 189 B.R. 121, 129 (Bankr.N.D.Ohio 1995).

While the Sixth Circuit has never defined the elements of good faith in the context of Section 1307(c), it determined the meaning of good faith as it relates to the confirmation of a Chapter 13 plan under Section 1325(a). *Hardin v. Caldwell (In re Caldwell)*, 895 F.2d 1123, 1126 (6th Cir.1990). The policy of good faith is the same regardless of whether the issue is raised under section 1307(c) or 1325(a). *Love*, 957 F.2d at 1356-57.

Good faith is an amorphous notion, largely defined by factual inquiry. In a good faith analysis, the infinite variety of factors facing any particular debtor must be weighed carefully. We

cannot here promulgate any precise formulae or measurements to be deployed in a mechanical good faith equation. The bankruptcy court must ultimately determine whether the debtor's plan, given his or her individual circumstances, satisfies the purposes undergirding Chapter 13: a sincerely-intended repayment of pre-petition debt consistent with the debtor's available resources. The decision should be left simply to the bankruptcy court's common sense and judgment.

Okoreeh-Baah, 836 F.2d at 1033.

The purpose of good faith under § 1307 or 1325 is to ensure that the filing is fundamentally fair in a manner that complies with the spirit of the Bankruptcy Code's provisions. *Love*, 957 F.2d at 1357. Therefore, similar analysis can be used to determine good faith under both sections.

The ultimate charge to a bankruptcy court on the issue of good faith is to determine whether the debtor's plan, given his or her individual circumstances, satisfies the purposes undergirding Chapter 13: a sincerely-intended repayment of pre-petition debt consistent with the debtor's available resources. The Court finds that the Debtor has not been acting in good faith. Her chapter 13 plan is not a sincerely-intended repayment of pre-petition debt. The Debtor's conduct seems instead part and parcel of an attempt to manipulate and abuse the bankruptcy process.

CONCLUSION

The Court finds that the Trustee has met his burden of proving the Debtor's lack of good faith. Therefore, the Court finds the Trustee's Motion to be well taken. This case shall be, and hereby is, reconverted to a case under Chapter 7.

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cc: (via electronic mail) Morris Laatsch
Harold Corzin
Michael Moran
Jerome Holub