

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: October 09 2009

A blue ink signature of Mary Ann Whipple, written in a cursive style.

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 09-33164
)	
Sue Tracy Slaughterbeck,)	Chapter 7
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

ORDER

This case came before the court for hearing on October 6, 2009, on Debtor's Motion to Dismiss Bankruptcy ("Motion"). [Doc. # 19]. The Chapter 7 Trustee objects to the Motion and the requested voluntary dismissal.

The basis for the Motion is that Debtor asserts that she discovered only after she commenced her bankruptcy case that she owns an undivided one half interest in real property left to her by her mother, with the other half interest owned by her sister. She asserts that she did not know about this property interest when she filed her Chapter 7 case on May 12, 2009, and it is not listed anywhere on her schedules. After the commencement of the Chapter 7 case, and without authority of this court, she executed a quit-claim deed of her interest in the real property to her sister. The Chapter 7 trustee has also separately commenced an adversary proceeding against Debtor's sister [Adv. Pro No. 09-3198] to obtain authority under 11 U.S.C. § 363(h) to sell both Debtor's interest and her sister's interest in the property. Debtor wants to dismiss her case so that the Trustee will not sell the property, thereby depriving her sister of a place to live and of the family home. The Trustee objects because there is no mortgage debt on the real property and if he obtains

the requested authority through his pending adversary proceeding there will be assets available for distribution to Debtor's creditors, with her Schedule F showing \$55,780 in unsecured debt.

Section 707(a) provides that the court may dismiss a Chapter 7 case "only for cause." 11 U.S.C. § 707(a). This provision stands in meaningful and marked contrast to the liberal voluntary dismissal provision applicable to Chapter 13 cases, which states that "[o]n request of the debtor at any time...the court shall dismiss a case under this chapter." 11 U.S.C. § 1307(b). In the view of most courts, including this one, a Chapter 7 debtor may not "automatically" dismiss a case on request under § 707(a). *In re MacDonald*, 73 B.R. 254, 256 (Bankr. N.D. Ohio 1987). The Chapter 7 Trustee has standing to object to a voluntary dismissal, as he has here. *In re Carroll*, 24 B.R. 83, 85 (Bankr. N.D. Ohio 1982); *In re Hall*, 15 B.R. 913, 915-16 (B.A.P. 9th Cir. 1981) (also applies prejudice to creditors as the test for measuring the propriety of a Debtor's voluntary dismissal). Courts have denied a debtor's request to voluntarily dismiss a Chapter 7 case where creditors have been or will be prejudiced by the dismissal. *See, e.g., MacDonald*, 73 B.R. at 256; *In re Banks*, 35 B.R. 59, 60-61 (Bankr. D. Md. 1983). Courts have also denied a debtor's request to voluntarily dismiss a case when property has been or will be obtained by the Trustee that will satisfy at least part of the debtor's obligations. *See e.g., In re Klein*, 39 B.R. 530 (Bankr. E.D. N.Y. 1984) (debtor's reason for dismissal was settlement of pending lawsuit, which court rejected); *In re Blackmon*, 3 B.R. 167 (Bankr. S.D. Ohio 1980). As the court noted in *Blackmon*, a debtor who chooses to place oneself in bankruptcy may not always choose to terminate the proceedings, even if unforeseen consequences arise. *Id.* at 169. And so it is here, with the court assuming only for purposes of Debtor's Motion, but not so finding, that everything Debtor states about her knowledge of her interest in the property and about her sister's interest in the property is true.

The court finds that the Trustee has shown a significant likelihood of recovery of material assets to distribute to Debtor's creditors through the real property that is the subject of his adversary proceeding. This alone is grounds for denial of the Motion under persuasive precedents interpreting § 707(a).

While the Trustee presents a likelihood that at least some assets will be available through his administration of the undisclosed property to distribute to creditors, Debtor makes no showing of how she proposes to satisfy the claims of her creditors outside of bankruptcy. Debtor's schedules show no other assets for creditors, and further that she is unemployed and has no current income with which to repay the \$55,780 in unsecured debts scheduled in her petition. Moreover, her unauthorized post-bankruptcy attempt to dispose of her interest in the real property portends that if this case is dismissed she will take other steps

to try and make sure this property is put out of reach of her creditors outside of bankruptcy. The Trustee, on the other hand, has the ready statutory means to attack the unauthorized post-petition transfer and to sell the property for the benefit of Debtor's creditors if he can meet the elements of § 363(h), which has not yet been determined. Lacking a showing for how creditors will be repaid absent the Trustee's administration of the estate, the court has no reasonable assurance, and indeed reason to believe to the contrary, that Debtor's interest in the inherited real property will voluntarily be used to repay creditors. In light of these circumstances, the court also finds that creditors would be prejudiced by the requested voluntary dismissal.

Debtor having availed herself of the benefits of this case through the automatic stay, the potential prejudice to creditors can only be prevented by seeing this case through to its proper conclusion from their standpoint, and that includes pursuit of the Trustee's pending adversary proceeding and his administration of the real property should he be determined to be so entitled under § 363(h). Debtor has not shown cause for dismissal of this case.

Based on the foregoing reasons and authorities,

IT IS ORDERED that Debtor's Motion to Dismiss Bankruptcy [Doc. # 19] is **DENIED**.