

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.



UNITED STATES BANKRUPTCY COURT
FOR THE NORTH
WESTERN DISTRICT OF OHIO

In

Dated: **March 15 2010**
Dorothy Marie Rager

Debtor

Mary Ann Whipple
United States Bankruptcy Judge

)
) **Chapter 7**
) Case # 09-36619
)
) **JUDGE MARY ANN WHIPPLE**

ORDER

The court held on March 9, 2010, a hearing on Debtor’s Motion to Dismiss (“Motion”) this pending Chapter 7 bankruptcy case [Doc. # 12], which the court construes as a motion under Fed. R. Bank.P. 1017(f) and 9014, and the Trustee’s Objection to the Motion (“Objection”) [Doc. #19]. The Trustee and Debtor’s Counsel appeared in person at the hearing. For the reasons set forth below, and as explained on the record at the hearing, the court finds the Trustee’s Objection is well-taken and denies the Motion.

The reason given by Debtor for wanting to dismiss her case is that she may be able to address her debts outside of Chapter 7, either through Chapter 13 or through her son’s refinance and repayment to her of the promissory note from him to her that is property of the estate. The note and loan were not disclosed as an asset in the petition. At the hearing, counsel indicated that Debtor is elderly and did not fully understand the scope or duration of her son’s obligation to her. The Trustee objects on the grounds that the note is property of the estate that he should administer to ensure that any proceeds thereof are in fact paid to creditors.

Debtor commenced her voluntary Chapter 7 case on September 24, 2009. The debt and note from her son were not disclosed on her Schedule B of Personal Property, although there was a

reference on her Schedule I to monthly income of \$416 from a promissory note. Debtor has scheduled consumer debt owed to three credit card companies in the total amount of \$26,496.65. She owns no real property and is otherwise on a fixed income from a pension and social security. The promissory note would appear to be the only source of assets with which to repay her creditors. After the meeting of creditors, the Trustee sought and obtained an order of turnover of the note and of the monthly installment payments. [Doc. ## 10, 17].

At this point, the court agrees with the Trustee that voluntary dismissal would prejudice Debtor's creditors. Section 707(a) provides that the court may dismiss a Chapter 7 case "only for cause." In the view of most courts, a Chapter 7 Debtor may not automatically dismiss her case. *In re MacDonald*, 73 B.R. 254, 256 (Bankr. N.D. Ohio 1987); *see In re Asbury*, 2010 WL 43716, 2010 Bankr. LEXIS 301, *7 (8th Cir. B.A.P., Feb. 9, 2010). The 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, such as here. *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, as here, property has been or will be obtained by the Trustee that may or 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 [herself] in bankruptcy may not always choose to terminate the proceedings, even if unforeseen or perhaps misunderstood

consequences arise. *Id.* at 169. And so it is here. Debtor having availed herself of the benefits of this case to her through the automatic stay, the potential prejudice to her creditors can only be ameliorated and prevented by seeing this case through to its proper conclusion from their standpoint, and that includes Trustee administration of the promissory note if he determines that he can secure value for the estate from it and that it should not be abandoned. To the extent that Debtor believes that Chapter 13 will assist her, she may seek to convert this case.

IT IS THEREFORE ORDERED that Debtor's Motion to Dismiss [Doc. # 12] shall be, and it hereby is, **DENIED**.