UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

JOHN W. HODGE,

Debtor.
_____/

Case No. SG 03-06393
Chapter 7

NOTICE: It is the policy of the United States Bankruptcy Court for the Western District of Michigan that its unpublished bankruptcy opinions and/or orders shall not be cited or used as precedent except to support a claim of *res judicata*, collateral estoppel or law of the case in any federal court within this Circuit.

NOT FOR PUBLICATION

OPINION

The principal issue before this Court is whether the Debtor's bankruptcy should be dismissed pursuant to 11 U.S.C. §707(a) on the ground that the petition was filed in bad faith. The following constitutes the Court's findings of fact and conclusions of law in accordance with Fed. R. Bankr. P. 7052. In reaching its determinations, the Court has considered the demeanor and credibility of all witnesses, the exhibits admitted into evidence and the parties' trial briefs and closing arguments.

The claims presented in this adversary proceeding arise in a case referred to this Court by the Standing Order of Reference entered by the United States District Court for the Western District of Michigan on July 24, 1984. This Court has jurisdiction over this case pursuant to 28 U.S.C. §1334(b). This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). Accordingly, the Bankruptcy Court is authorized to enter a final judgment subject to the appeal rights afforded by 28 U.S.C. §158 and Fed. R. Bankr. P. 8001 et. seq.

John W. Hodge has been a college professor at Grand Valley State University (the University) since 1986. For the previous 10 years he was an instructor at the same college. He is currently 60 years old.

On December 5, 1994, Professor Hodge filed a two count complaint in Kent County Circuit Court against the University alleging breach of contract and race discrimination. The breach of contract claim was dismissed upon the University's Motion for Summary Judgment.

The race discrimination count was first mediated in Professor Hodge's favor and tried in the Spring of 1997. Professor Hodge prevailed in a jury verdict and the Circuit Court entered a judgment against the University on August 6, 1997 for $288,529.38, including interest, costs, mediation sanctions[1] and attorney fees. The University appealed.

On May 4, 1999, the appeals court issued an opinion reversing and remanding the case to the Kent County Circuit Court. The remand and reversal were based in large part upon a jury instruction ruling made by the trial judge in favor of the University, which the University appealed.

The parties attempted facilitative mediation but a resolution was not forthcoming. A second jury trial commenced in November of 2001. This time the jury returned a verdict of no cause of action and on April 5, 2002, a judgment was entered against Professor Hodge in the amount of $373,861.00 which

---

[1]Mediation is a process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement. M.C.R. 2.411. If a party rejects a mediation award and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation award. If however, the opposing party also rejected the award, a party is entitled to costs only if the verdict is more favorable to that party than the award. M.C.R. 2.403 (O)(1). This is what is referred to as mediation sanctions. The sanctions are required by Michigan statute and do not have the same connotation or purpose as sanctions under Fed. R. Bankr. P. 9011.

included attorney fees and mediation sanctions.

Given Professor Hodge's disposable income and his remaining work years, it was apparent to both the University and the Professor that he would never be able to satisfy the judgment in full. Consequently, through his attorney and by his own efforts, Professor Hodge commenced negotiations with the University regarding the settlement of the debt. Based on his discussions with the dean and the acting provost of the University, and on the advice of his attorney, Professor Hodge made a written settlement offer of a lump sum payment of $15,000 or $20,000 to be paid over four years. The University never responded directly to this settlement offer.

Throughout the next several months, in all settlement discussions, the University's only offers included the requirement that the Professor leave his job and find other employment. No collection actions were taken by the University nor were any monies forthcoming, as he was still awaiting a response to his settlement offer.

On April 22, 2003, to Professor Hodge's surprise, he received a letter from the University threatening to garnishee his wages; file a lien against his house; and garnishee his bank accounts unless he agreed to retire. Accordingly, Professor Hodge filed Chapter 7 on May 16, 2003.

The University filed a Motion to Dismiss for Cause pursuant to 11 U.S.C. §707(a) alleging that the petition was filed in bad faith. The factors cited by the University are: the Debtor filed a one creditor petition; the Debtor's lawsuit against the University was utterly without merit and therefore rises to pre-petition behavior that is egregious, akin to fraud, misconduct or gross negligence; the Debtor made no attempt to pay the judgment; the Debtor's one and only settlement offer was disingenuous because it was for a minor percentage of the total debt; the Debtor purchased a 2003 automobile fully knowing there was

an outstanding judgment against him that he could not pay; and the Debtor lives a lavish lifestyle.

11 U.S.C. §707(a) states:

> The court may dismiss a case under this chapter only after notice and a hearing and only for cause including –
>
> (1) unreasonable delay by the debtor that is prejudicial to creditors;
>
> (2) nonpayment of any fees or charges required under chapter 123 of title 28, and;
>
> (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

A lack of good faith has been recognized in a number of bankruptcy cases as a valid cause for dismissal under 11 U.S.C. §707(a). See In re Sky Group International, Inc., 108 B.R. 86 (Bankr. W.D. Pa. 1989); In re Maide, 103 B.R. 696 (Bankr. W.D. Pa. 1989); In re Brown, 88 B.R. 280 (Bankr. D. Hawaii 1988); In re Kragness, 63 B.R. 459 (Bankr. D. Or. 1986); In re Kahn, 35 B.R. 718 (W.D. Ky. 1984). "Although the jurisdictional requirement of good faith is not explicitly stated in the statute, it is inherent in the purposes of bankruptcy relief." McLaughlin v. Jones (In re Jones), 114 B.R. 917 (Bankr. N.D. Ohio 1990). We are persuaded that there is good authority for the principle that the lack of good faith is a valid basis for a decision in a "for cause" dismissal.

Dismissal based on the lack of good faith must be undertaken on an ad hoc basis. Brown, 88 B.R.

at 284. "It should be confined carefully and is generally utilized only in those egregious cases that entail concealed or misrepresented assets and/or sources of income, and excessive and continued expenditures, lavish lifestyle, and intention to avoid a large single debt based on conduct akin to fraud, misconduct, or gross negligence." In re Zick, 931 F.2d 1124 (6th Cir. 1991).

"The facts required to mandate dismissal based upon a lack of good faith are as varied as the number of cases." Bingham, 68 B.R. at 935. In Zick, 931 F.2d at 1128, the court looked at the following factors: 1) the debtor's manipulations which reduced the creditors in the case to one; 2) the debtor's failure to make significant lifestyle adjustments or efforts to repay; 3) the fact that the petition was filed clearly in response to the creditor obtaining a judgment; and 4) the unfairness of the debtor's use of Chapter 7 under the facts in the case.

We find no improper pre-petition conduct in the incurrence or avoidance of a debt or concealed or misrepresented income or assets as found in other Sixth Circuit cases to which dismissal was appropriate. See In re Zick, Id. at 1124 (Prior to his petition, debtor maliciously breached a contract and continued acts which caused damage); In re Trident, 52 F.3d 127 (6th Cir. 1995) (A bad faith filing was found when through debtor's pre-petition maneuverings he became a one asset debtor with no ongoing business or employees on the eve of bankruptcy and conducted himself in ways that misled the state court); Merritt v. Franklin Bank, N.A. (In re Merritt), 2000 U.S. App. Lexis 6877 (6th Cir. Mich.) (Debtor failed to disclose substantial assets in his schedules); In re Charfoos, 979 F.2d 390 (6th Cir. 1992) (Debtor's pre-petition factual misrepresentations and omissions on financial statements and bankruptcy pleadings, violation of state court orders, combined with other factors were sufficient for dismissal for cause.)

Professor Hodge admits that he filed his bankruptcy petition after it became clear that the University

uninterested in a monetary settlement, only wanted to terminate his employment under pressure. Although the University portrays the lawsuit as"utterly without merit" one of the two juries found for Professor Hodge. In fact, the University was the subject of sanctions that later were charged against the Debtor.

In the Bankruptcy Court hearing, Professor Hodge and his state court attorney were the only witnesses. The University called no one to refute their testimony. Consequently, nothing presented supports a finding of intent on the part of Professor Hodge to avoid a large single debt based on conduct akin to fraud, misconduct or gross negligence.

As for the other allegations made by the University, the Court is satisfied with the Debtor's explanation that his purchase of a new car for an additional $10 monthly payment was cost effective considering the maintenance and repair bills of his older vehicle; that he does not lead a lavish lifestyle, living in a house that is within the average range of a residence found in Grand Rapids, Michigan; and that he was awaiting a monetary counter-offer from the University to settle the claim instead of the recurring demand for his resignation. This Debtor is not using the Chapter 7 proceeding to prolong the state court matter. Consequently, we find that to dismiss this case under 11 U.S.C. §707(a) for lack of good faith would expand the definition of cause to such an extent that it would contravene the Sixth Circuit's ruling in Zick. This we are neither authorized nor inclined to do.

Dated: October 9, 2003

Honorable Jo Ann C. Stevenson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

JOHN W. HODGE,

Debtor.
_____/

Case No. SG 03-06393
Chapter 7

ORDER

At a session of said Court, held in and for said District, at the United States Bankruptcy Court, Federal Building, Grand Rapids, Michigan this 09 day of October, 2003.

PRESENT: HONORABLE JO ANN C. STEVENSON
United States Bankruptcy Judge

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Grand Valley State University's Motion to Dismiss for Cause Pursuant to 11 U.S.C. §707(a) is DENIED.

2. A copy of this Opinion and Order shall be served by United States mail postage prepaid upon John W. Hodge, Steven J. Carpenter, Esq., Grand Valley State University and David L. Skidmore, Esq.

Dated: October 9, 2002

_____
Honorable Jo Ann C. Stevenson
United States Bankruptcy Judge

Served as ordered:

_____