

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

DENNIS F. ST. VINCENT,

Debtor.

Case No. DM 11-90684

Hon. Scott W. Dales

Chapter 13

SUPPLEMENTAL OPINION AND ORDER REGARDING DENIAL OF
CONFIRMATION AND DISMISSAL OF CASE

PRESENT: HONORABLE SCOTT W. DALES
United States Bankruptcy Judge

I. INTRODUCTION

On November 10, 2011, Dennis St. Vincent (the “Debtor”) filed a Chapter 13 bankruptcy petition, schedules, and a plan, shortly after a Chapter 7 bankruptcy trustee in Minnesota (the “Minnesota Trustee”) named him as a defendant in an adversary proceeding. The Debtor’s Chapter 13 Plan (the “Plan,” DN 2) drew objections from the Minnesota Trustee and the Debtor’s Chapter 13 Trustee. After several adjournments, the court held a confirmation hearing in Marquette, Michigan, on March 6, 2012, and announced its intention to deny confirmation and dismiss the Debtor’s case. This opinion supplements the court’s oral ruling.

II. JURISDICTION

The court has jurisdiction over this contested matter pursuant to 28 U.S.C. § 1334. The United States District Court for the Western District of Michigan has referred the Debtor’s case to this court pursuant to LCivR 83.2(a) (W.D. Mich.). The contested confirmation hearing is a core proceeding under 28 U.S.C. § 157(b)(2)(L).

III. ANALYSIS

The court heard arguments from counsel during the confirmation hearing and has reviewed the record, taking judicial notice of the Debtor's petition, schedules, statement of financial affairs, and Plan pursuant to Fed. R. Evid. 201.

The record contains numerous admissions that bear on the outcome of this proceeding, including the fact that the only creditor listed on Schedule F is the Minnesota Trustee (John R. Stoebner), and the only creditor listed on Schedule E is the Debtor's counsel, Allan J. Rittenhouse. Schedule E lists Mr. Rittenhouse as holding a claim for his fees incurred in connection with the Debtor's Chapter 13 case.

There is no dispute that this Chapter 13 proceeding principally involves not debt, but property, specifically the joint interests of the Debtor and two co-tenants in real estate commonly known as W-4112 Mary Lake Road, Vulcan, Michigan (the "Property"). The Debtor identified his interest in the Property on Schedule A as an "Interest in real property located at W-4112 Mary Lake Road JTWROS South, Route 1, Vulcan, Michigan 49892."¹ The same schedule recites, "Tanya Bacon (Debtor's spouse) [sic] owns the property with two other parties (Dennis St. Vincent and Lynn St. Vincent) as a joint tenant with full right of [s]urvivorship."² Schedule C contains an identical description of the Property. From the court's docket and statements of counsel, it appears that the Debtor, his sister (Ms. St. Vincent) and the Minnesota Trustee (as representative of the Chapter 7 bankruptcy estate of Ms. Bacon) share concurrent ownership interests in the Property.

¹ The Debtor also described his interest as a "life estate," but this likely referred to his survivorship rights as joint tenant. The exact nature of the ownership interest is not material to the court's decision.

² At the hearing on March 6, 2012, Mr. Rittenhouse stated that Ms. Bacon is not the Debtor's spouse, but likely his niece.

With respect to the Property and the Minnesota Trustee's supposed "claim," the Debtor's proposed Plan provides as follows:

The Debtor is [sic] a 1/3 interest in W4112 Lake Mary Road, Vulcan MI along with Lynn St. Vincent and Tanya Marie Bacon (hereinafter referred to as Bacon). Bacon filed bankruptcy in the District of Minnesota, case no 10-46860. Bacon was not able to fully exempt her interest in the property and the Chapter 7 Trustee is administrating the remaining non-exempt portion. The non-exempt portion of Bacon's bankruptcy estate shall be paid in full through Dennis F. St Vincent's plan.

See Plan (DN 2) at p. 7. The court interprets the Plan not as proposing to pay any claim of the Minnesota Trustee, but instead as compelling him to sell to the Debtor Ms. Bacon's share of the Property, presumably subject to her exemption rights. As the Debtor's counsel explained at the hearing, the Plan represents the Debtor's effort to "save his home" from being sold by the Minnesota Trustee in Ms. Bacon's bankruptcy proceeding pursuant to 11 U.S.C. § 363(h).

As the proponent of the Plan, the Debtor has the burden of proof on each element necessary for confirmation of a Chapter 13 plan. *In re Caldwell*, 895 F.2d 1123, 1126 (6th Cir. 1990) (hereinafter "*Caldwell II*"). This includes, if challenged, proving that he filed the Plan in good faith and that "filing the petition was in good faith." 11 U.S.C. § 1325(a)(3), (a)(7); Fed. R. Bankr. P. 3015(f) (court may find good faith in the absence of objection).

The determination of good faith under the statute "requires an inquiry into all the facts and circumstances of a debtor's proposed plan." *In re Caldwell*, 851 F.2d 852, 858 (6th Cir. 1988) (hereinafter "*Caldwell I*") (internal quotation marks and citation omitted). As the Sixth Circuit noted, "whether the debtor is attempting to abuse the spirit of the Bankruptcy Code is a legitimate factor to consider." *Caldwell II*, 895 F.2d at 1127 (internal quotation marks and citation omitted). More generally, the assessment of a debtor's good faith largely depends on the

bankruptcy court's "common sense and judgment." *Caldwell I*, 851 F.2d at 858-59; *see also In re Okoreeh-Baah*, 836 F.2d 1030 (6th Cir. 1988).

As noted above, the Debtor commenced this Chapter 13 bankruptcy case shortly after, and in response to, being named as a defendant in an adversary proceeding that the Minnesota Trustee commenced pursuant to 11 U.S.C. § 363(h), under the caption *John R Stoebner, Trustee v. Dennis St Vincent*, Adv. No. 11-4345 (the "Adversary Proceeding"). Through the Adversary Proceeding, the Minnesota Trustee seeks authority from the bankruptcy court in Minnesota to sell Ms. Bacon's former interest in the Property together with the interests of her co-tenants, the Debtor and Ms. St. Vincent.

In their Objections and without meaningful contradiction from the Debtor at the hearing, the Chapter 13 Trustee and the Minnesota Trustee argued that the latter does not hold a "claim" against the Debtor and is not a "creditor." *See* Objection to Confirmation of Chapter 13 Plan at pp. 5-6 (DN 25); *see also* Trustee's Objection to Confirmation of Debtor's Chapter 13 Plan and in the Alternative Motion to Dismiss at p. 3 (DN 26). They also contend that the Debtor, by filing this case and his Plan, attempted to frustrate the Minnesota Trustee's rights as Ms. Bacon's bankruptcy trustee, without any legitimate bankruptcy purpose in mind.

Indeed, the only supposed creditor listed on the Debtor's Schedule F is the Minnesota Trustee. Moreover, the only other claim included on the Debtor's schedules is the priority claim in favor of his counsel, Allan J. Rittenhouse, listed on Schedule E as \$3,000.00.³

After considering the Objections and the relevant statute, the court finds that the Minnesota Trustee does not hold a "claim" against the Debtor and is not a "creditor." The Code defines "claim" as a "right to payment, whether or not such right is reduced to judgment,

³ Because the Debtor is paying the filing fee in installments, the United States also holds a modest priority claim under 28 U.S.C. § 1930.

liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, legal, equitable, secured, or unsecured.” 11 U.S.C. § 101(5)(A). Further, it defines “creditor” as an entity that has a claim against the debtor that arose (or that is treated as if it arose) at the time of or before the order for relief, or an entity that has a community property claim. *See* 11 U.S.C. § 101(10). The Minnesota Trustee does not have a right to payment, only a right to seek from the bankruptcy court in Minnesota authority to sell the Debtor’s (and Ms. St. Vincent’s) interest in the Property under 11 U.S.C. § 363(h). If he is successful in the Adversary Proceeding, he will not have a right to payment from the Debtor, but on the contrary, an obligation to pay the Debtor his share of the Property. *See* 11 U.S.C. § 363(j). Consequently, the Minnesota Trustee holds no “claim” and is therefore not a “creditor.”

At the hearing, counsel could not recall whether the Minnesota Trustee had commenced the Adversary Proceeding or not, but the Statement of Financial Affairs, the schedules, and the Minnesota Trustee’s Objection clearly identify the Adversary Proceeding as pending. There is no question that the Debtor filed this bankruptcy case in response to the Minnesota Trustee’s actions.

From the undisputed facts adduced at the hearing, the court concludes that the Debtor’s Plan cannot qualify as “a sincerely-intended repayment of pre-petition debt” because it does not involve any pre-petition debt whatsoever. *In re Okoreeh-Baah*, 836 F.2d at 1033. Rather, the Debtor filed the petition and Plan in an effort to thwart the Minnesota Trustee’s legitimate request, as Ms. Bacon’s bankruptcy trustee, for permission from the United States Bankruptcy Court in Minnesota to sell the Property under 11 U.S.C. § 363(h). The Debtor advanced this goal by filing the bankruptcy petition in this court, automatically staying the Adversary Proceeding under 11 U.S.C. § 362(a). In short, the Debtor put the brakes on the proceedings of a

sister court using a powerful bankruptcy remedy even though his case and Plan do not contemplate re-payment of any pre-petition debt, only the debts arising from the bankruptcy case itself. The Debtor's filings played one bankruptcy court against another in an effort to negotiate the Debtor's purchase of the Minnesota Trustee's interest in the Property, a heavy-handed tactic that this court regards as an abuse of process.

At the hearing, Mr. Rittenhouse defended the filing by describing the Debtor's undeniably unfortunate circumstances, and by underscoring two noteworthy facts: (1) the Debtor is trying to save his home; and (2) he could not afford to defend himself in Minnesota. By pursuing relief under Chapter 13, Mr. Rittenhouse explained, the Debtor was able to pay Mr. Rittenhouse \$3,000.00 over the life of the Plan rather than pay Minnesota counsel a retainer "up front" to defend him in the Adversary Proceeding. In this way, the Debtor financed his defense.

As to the Debtor's desire to preserve his home, the court again sympathizes but notes that 11 U.S.C. § 363(h), upon which the Minnesota Trustee's authority to sell the Debtor's interest depends, itself protects the Debtor in this respect. Indeed, the statute permits the bankruptcy court in Minnesota to authorize the Minnesota Trustee to sell the Debtor's home "only if" the benefit to Ms. Bacon's bankruptcy estate "outweighs the detriment" to the co-owners, here the Debtor and Ms. St. Vincent. *See* 11 U.S.C. § 363(h)(3). If the Debtor establishes in Minnesota the circumstances he described at the hearing in Marquette, the Minnesota court might very well conclude that the detriment to the Debtor outweighs the benefit to the Bacon estate. Moreover, the statute gives the Debtor additional protection by bestowing on him the right to purchase the Bacon estate's interest in the Property at the price to be established in the Adversary Proceeding. *See id.* § 363(i).

As for the need to finance his legal defense by paying Mr. Rittenhouse over time pursuant to the Plan, Mr. Rittenhouse could have agreed to accept installment payments from the Debtor without filing any Chapter 13 case or plan, assuming, of course, that Mr. Rittenhouse were authorized to practice law in Michigan, which he is not.⁴ As the Minnesota Trustee's counsel recognized at the hearing, the Adversary Proceeding would likely have been resolved through negotiation, principally concerning the Property's value -- without the expense and delay of a Chapter 13 proceeding -- as many such disputes are typically resolved.

With respect to the Plan's proposal to compel the Minnesota Trustee to sell the Bacon estate's interest in the Property to the Debtor, the court notes that the Plan certainly interferes with his prerogative as trustee and likely violates the automatic stay in Ms. Bacon's bankruptcy proceeding by seeking to gain control of property of that bankruptcy estate. In addition, the Plan could, if confirmed, preclude the Minnesota Trustee from selling the Property to the person or in the manner he deemed most likely to maximize value, usurping his authority in that regard. Moreover, by proposing to pay for the Property over thirty-six months, the Plan would impede the Minnesota Trustee's statutory duty to expeditiously "collect and reduce to money" the property of the Bacon bankruptcy estate, which is the first charge of any Chapter 7 trustee. *See* 11 U.S.C. § 704(a)(1).

The Debtor offered no authority for this unprecedented and unnecessary interference with the proceedings in the Minnesota bankruptcy court. Having reviewed the record, the court concludes that although the automatic stay may have benefited the Debtor for a time, the filing, involving no creditors and therefore no need for a discharge, promised no other, substantive

⁴ *See generally* <http://www.michbar.org/memberdirectory/> (visited March 9, 2012). One could infer that Mr. Rittenhouse may have resorted to a bankruptcy remedy rather than addressing the dispute head on because he is admitted to practice in bankruptcy court but not otherwise authorized to practice law in Michigan. The court assumes that Mr. Rittenhouse will refer non-bankruptcy issues in this matter and others to licensed counsel.

bankruptcy benefit to the Debtor. It simply multiplied proceedings and quite likely imposed unnecessary delay and legal expense on the two interested parties. The court reiterates the conclusion it announced at the March 6 hearing: the Debtor did not file the Plan or the petition in good faith, and the Plan serves no legitimate bankruptcy purpose. Given these findings, the court cannot confirm the Plan.

Because the Chapter 13 Trustee sought dismissal as part of the Trustee's Objection, and because the Debtor offered no opposition to dismissal, the court also announced its intention to dismiss the Debtor's case. The court will dismiss the case by entering a separate order.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Objections (DN 25 and 26) are SUSTAINED and confirmation of the Plan is DENIED.

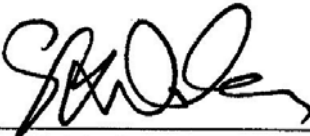
IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Dennis F. St. Vincent, Allan J. Rittenhouse, Esq., Barbara P. Foley, Esq., Darrell R. Dettmann, Esq., and John R. Stoebner, Esq.

END OF ORDER

IT IS SO ORDERED.

Dated March 12, 2012





Scott W. Dales
United States Bankruptcy Judge