UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Western Division

In re:	)	Bankr. No. 96-50173
	)	
DICKSON WARREN JORGENSEN Soc. Sec. No. 504-78-0894	)	Chapter 13
	)	MEMORANDUM OF DECISION RE:
and	)	DEBTORS' MOTION TO DISMISS
	)	
CHRISTINE MARION JORGENSEN Soc. Sec. No. 484-74-7952	)	
	)	
Debtors.	)	

The matter before the Court is the Motion to Dismiss filed by Debtors on August 6, 1996. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Memorandum of Decision and accompanying Order shall constitute the Court's findings and conclusions under F.R.Bankr.P. 7052. As set forth below, the Court concludes that the Motion to Dismiss shall be denied but that the bankruptcy estates of Debtors Dickson W. and Christine M. Jorgensen shall be deconsolidated to allow the separate estates to pay the respective Debtor's separate debts and an equal share of joint debts. Each Debtor will continue in Chapter 7 and each Debtor will retain the option of converting to a Chapter 13 case.

I.

Dickson W. Jorgensen and Christine M. Jorgensen were married in September 1993. Dickson Jorgensen farmed in southeast South Dakota. Christine Jorgensen worked as a secretary at the University of South Dakota. She was not involved in her husband's farming operation.

Dickson Jorgensen quit farming early in 1995 and sold his personal property to pay creditors. Since May 1995, he has worked for a rancher in the Belle Fourche, South Dakota area. Christine

32

Jorgensen was unemployed from October 1995 until early June of 1996. She is now living in her late father's home in Iowa. Dickson Jorgensen remains in Belle Fourche. The couple is living apart but are not legally separated. They have no present plans to divorce.

Dickson and Christine Jorgensen filed a joint petition under Chapter 7 on May 9, 1996. Pursuant to 11 U.S.C. § 302, F.R.Bankr.P. 1015, and Local Bankr. R. 1015-1, the individual estates of each Debtor are substantively consolidated, that is, all debts and assets are common for purposes of this bankruptcy case.[1]

On August 5, 1996, creditor Union County Fertilizer Company filed a complaint objecting to Debtors' discharge. The Fertilizer Company claimed that Debtors had defrauded creditors by transferring title of a 1993 pickup to Dickson Jorgensen's father, that Debtors had not adequately accounted for 1994 crop input funds and crop proceeds, and that Debtors had not accurately recounted their employment history and other financial transactions for the two years preceding the petition date.

Christine Jorgensen's father passed away July 23, 1996.

---

[1] As previously noted by this Court, *see, e.g., In re Glen J. Brinkman*, Bankr. No. 94-30004, slip op. at 1-2 (Bankr. D.S.D. June 20, 1994), there is a significant difference between the joint administration and the substantive consolidation of two or more bankruptcy estates.

> Under joint administration, the estates are not combined but matters are handled under one docket for convenience and efficiency. Separate accounts are kept and a separate distribution is made to creditors. F.R.Bankr.P. 2009(e). . . . When cases are substantively consolidated, the estates are combined and only one distribution to all creditors is made from joint assets.

Id. at 2.

Pursuant to his will, Christine Jorgensen is entitled to receive a one-fourth share of his property. The value of his estate has not yet been formally appraised. Christine Jorgensen estimated she may receive one-fourth of $50,000.00.[2] Christine Jorgensen and her bankruptcy counsel promptly informed Trustee Dennis C. Whetzal of this potential inheritance. Debtors have not yet filed a supplemental schedule to reflect this inheritance as required by F.R.Bankr.P. 1007(h).

On August 6, 1996, Debtors filed a Motion to Dismiss. They requested one of three alternatives: (1) that the case be dismissed; (2) that only Debtor Christine Jorgensen be dismissed from the case; or (3) that they be allowed additional time to amend their schedules.[3] They argued that the majority of debts are Dickson Jorgensen's, that the couple is physically separated, and that Christine Jorgensen's expected inheritance will allow her to pay her creditors and the joint creditors outside bankruptcy and preserve her credit record.

On August 26, 1996, the Fertilizer Company objected to the Debtors' Motion to Dismiss. The Fertilizer Company realleged the grounds set forth in its discharge complaint and further argued that dismissal would prejudice creditors because it would deprive

---

[2] The testimony was not clear on this point. While Debtor estimated the value of her father's estate to be $50,000.00, she did not state whether that was the total value or her one-fourth share.

[3] Pursuant to F.R.Bankr.P. 1009(a) and Local Bankr. R. 1009-3, Debtors may amend their schedules at any time before the case is closed. Consequently, the Court will not consider further Debtors' third alternative in their Motion to Dismiss.

all creditors of Christine Jorgensen's assets to pay all claims. Trustee Whetzal joined in the Fertilizer Company's objections. Debtors filed a reply on August 29, 1996 that offered to condition the dismissal and that urged the Court to dismiss the case based on the balance of equities.

An evidentiary hearing was held September 10, 1996. Appearances included Trustee Whetzal, Jerry L. Pollard for Debtors, and Michael J. McGill for the Fertilizer Company. Both Debtors testified. Christine Jorgensen reiterated her employment history and the circumstances surrounding her expected inheritance. She also stated which debts she would repay if the case were dismissed. Dickson Jorgensen testified about his earlier farming operation and the farm sales that were held after he quit farming. He also explained that his father took title to the 1993 Ford pickup after his father paid Norwest the balance due on Dickson's pickup loan. Dickson Jorgensen acknowledged that he had some equity in the pickup when his father took title and he stated he continues to use the pickup with his father's permission as he has no other vehicle.

According to Christine Jorgensen's testimony, the following scheduled unsecured debts are personal to her: Associates National Bank, $2,721.47; Citi Bank Visa, $5,807.49; First USA Visa, $5,030.91; Gary G. Prosser, D.D.S., $207.46; Great Lakes Collection Bureau, Inc., $47.82; Hauge Associates, Inc., $461.72; James W. Roat, M.D., P.C., $149.25; Olson Medical Clinic, $43.43; Roach Veterinary Hospital, $204.39; Saoi Professional Association, $100.80. According to the schedules, her personal unsecured debts also include Professional Collection Services (for Yankton

Radiology) for $22.22. Her personal unsecured debts total $14,796.96. According to both Debtors' testimony, Dickson Jorgensen's personal debts include Valley Bank for $138,000.00 (undersecured judgment creditor). According to the schedules, joint unsecured debts include American Express, $504.93; Amoco, $1,086.76; Randy Houska, $797.93; Sears, $1,297.47; and Union County Fertilizer, $55,757.65. However, testimony and arguments at the evidentiary hearing indicate that Union County Fertilizer holds a judgment against Dickson Jorgensen only.

II.

A Chapter 7 case may be dismissed only for cause. 11 U.S.C. § 707(a). Unlike in other chapters, a Chapter 7 debtor may not dismiss his case voluntarily. *Compare* 11 U.S.C. §§ 707(a), 1208(b), and 1307(b); *see In re Wilde*, 160 B.R. 625, 626-27 (Bankr. W.D. Mo. 1993).

Whether to grant a Chapter 7 dismissal is within the discretion of the Court. *In re Leach*, 130 B.R. 855, 856 (9th Cir. BAP 1991)(cites therein); *In re Komyathy*, 142 B.R. 755, 757 (Bankr. E.D. Va. 1992)(cites therein). The principal question for the court to consider is whether a dismissal will cause some plain legal prejudice to creditors. *Komyathy*, 142 B.R. at 757. Other factors to weigh include the debtor's good faith, whether the debtor is guilty of laches, and the absence or presence of creditor consent. *Id.* Equitable considerations are relevant only in the absence of dispositive legal arguments. *Leach*, 130 B.R. at 857. Legal considerations must take precedence. *Id.* at 858.

Where the debtor seeks dismissal, the Court also should consider whether there are substantial non exempt assets available for distribution to creditors. *In re Baylies*, 114 B.R. 324 (Bankr. D.D.C. 1990); and *Wilde*, 160 B.R. at 627. An ability for a Chapter 7 debtor to pay creditors outside of bankruptcy, however, does not necessarily constitute cause for dismissal. *In re Mathis Insurance Agency, Inc.*, 50 B.R. 482, 486 (Bankr. E.D. Ark. 1985). Questions of efficiency and economy must also be addressed. *In re Iowa Trust*, 135 B.R. 615, 623 (Bankr. N.D. Iowa 1992). Prejudice to creditors remains the most important consideration. *Mathis Insurance Agency, Inc.*, 50 B.R. at 486.

III.

Based on the facts presented, the Court concludes that dismissal of the case for both debtors or for Christine Jorgensen only is not appropriate because creditors would be prejudiced. The evidence presented shows that Debtor Christine Jorgensen's inheritance will allow her to pay a significant portion of her personal debts but not all the joint debts. The creditors holding these joint claims would thus be prejudiced if her personal creditors were paid in full first. Further, without court supervision of the distribution, there is no assurance of how or when Christine Jorgensen would pay her personal or joint claims.

Local Bankruptcy Rule 1015-1 provides that joint petitioners will have substantively consolidated estates unless otherwise ordered. Consequently, the separate bankruptcy estates of Christine Jorgensen and Dickson Jorgensen were substantively consolidated when they filed a joint petition. A review of the

facts and unique circumstances of this case, however, indicates that substantive consolidation is no longer appropriate in this case.[4]

Several factors must be considered when substantive consolidation is at issue: (1) the necessity of the consolidation due to the interrelationship between the debtors; (2) whether the benefits of consolidation outweigh the harm to creditors; and (3) the prejudice resulting from not consolidating the estates. *See First National Bank of El Dorado v. Giller (In re Giller)*, 962 F.2d 796, 799 (8th Cir. 1992). When those factors are applied here, the Court concludes that these estates should no longer be consolidated. Debtors had a short-term marriage and are now living apart. Debtors' financial affairs are not significantly interrelated. One Debtor holds significantly higher unsecured liabilities than the other. Foremost, the potential harm to Christine Jorgensen's creditors if the estates remain consolidated and her assets are distributed between all creditors is outweighed by any prejudice to Dickson Jorgensen's creditors if the estates are not consolidated, especially where there is no evidence that his creditors looked to Christine Jorgensen or her assets for repayment when loans were given to him. Consequently, it is appropriate that the estates be deconsolidated.

When the estates are deconsolidated, Trustee Whetzal will need to treat each Debtor's assets and liabilities separately and keep

---

[4] Neither the Bankruptcy Code nor any federal or local rule requires married debtors to file a joint petition.

separate accounts.[5] Joint debts should be shared equally. *See* F.R.Bankr.P. 2009(e). The estates may continue to be jointly administered. *See* F.R.Bankr.P. 1015(b). Each Debtor will retain the ability under 11 U.S.C. § 706(a) to convert their personal estate to a Chapter 13.

An appropriate order will be entered.

So ordered this 1st day of October, 1996.

BY THE COURT:

Irvin N. Hoyt
Chief Bankruptcy Judge

NOTICE OF ENTRY
Under F.R.Bankr.P. 9022(a)
Entered

OCT 0 1 1996

Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota

ATTEST:
Charles L. Nail, Jr., Clerk

By: _____
Deputy Clerk

(SEAL)

UNITED STATES BANKRUPTCY COURT ★ SEAL

CERTIFICATE OF SERVICE
I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to those creditors and other parties in interest identified on the attached service list.
Charles L. Nail, Jr., Clerk
U.S. Bankruptcy Court
District of South Dakota
By: _____
Date: 10-01-96

---

[5] A new case is *not* created by the deconsolidation. Both Debtors retain the common case number and case file.

Case: 96-50173 Form id: 122 Ntc Date: 10/01/96 Off: 3 Page : 1
Total notices mailed: 6

Debtor	Jorgensen, Dickson Warren HCR 69 Box 122, Belle Fourche, SD 57717
Debtor	Jorgensen, Christine Marion HCR 69 Box 122, Belle Fourche, SD 57717
Aty	Pollard, Jerry L. PO Box 837, Yankton, SD 57078
Trustee	Whetzal, Dennis C. PO Box 8285, Rapid City, SD 57709
Aty	Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321
Aty	McGill, Michael J. PO Box 32, Beresford, SD 57004-0032