

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
Central Division

In re:) Bankr. No. 99-30043
)
KANDIS K. RIEGER,) Chapter 7
a/k/a Kandi Rieger)
Soc. Sec. No. 503-66-3994) DECISION RE: DEBTOR'S
) MOTION TO DISMISS
Debtor.)

The matter before the Court is the Motion to Dismiss Petition [Case] filed by Debtor and the responses filed by the United States Trustee and creditor Shirley Myers. This is a core proceeding under 28 U.S.C. § 157(b)(2). This Decision and accompanying Order shall constitute the Court's findings and conclusions. As set forth below, the Court concludes that Debtor's Motion must be denied.

I.

Debtor filed a Chapter 7 petition. Creditor Shirley Myers timely commenced a non dischargeability complaint against Debtor and was granted summary judgment. This left Debtor still liable to Myers for \$17,224.04. While the adversary proceeding was pending, Debtor did not seek a delay in the entry of the discharge order as provided by F.R.Bankr.P. 4004(c)(2). A discharge order was entered the day after Myers filed her non dischargeability complaint.

On May 8, 2000, Debtor moved for dismissal of her case on the grounds that the bankruptcy no longer afforded her any

"practical relief" due to the Court's decision in the non dischargeability adversary proceeding by Myers. The United States Trustee timely objected to Debtor's Motion. She argued that Debtor already had received her discharge of other debts, that dismissal of her case would not revoke the discharge, and that it would be inequitable to allow her the benefits of that discharge and still dismiss her case. Myers also timely objected to Debtor's Motion. Myers argued that Debtor's Motion was untimely because Debtor already had received a discharge, that Debtor was trying to avoid the consequences of the adversary proceeding, and that Debtor had not cited any authority in support of her Motion.

II.

Contrary to the procedure under some other chapters, a Chapter 7 debtor may not dismiss his case voluntarily without notice and an opportunity for hearing. Compare 11 U.S.C. §§ 707(a), 1208(b), and 1307(b); *In re Wilde*, 160 B.R. 625, 626-27 (Bankr. W.D. Mo. 1993). A Chapter 7 case may be dismissed only for cause. 11 U.S.C. § 707(a).

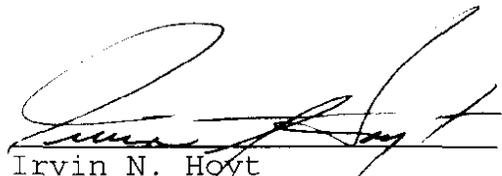
Whether to grant a Chapter 7 dismissal is within the discretion of the Court. *In re Leach*, 130 B.R. 855, 856 (B.A.P. 9th Cir. 1991) (cites therein); *In re Komyathy*, 142 B.R. 755, 757

III.

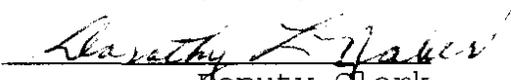
Dismissing the case will not change Debtor's liability to Myers and it will not revoke the discharge of her other debts. Moreover, Debtor will still be barred from obtaining another discharge under § 727(a)(8) any time soon in a new case. Thus, there is no cause to dismiss her case at this late stage of its administration. An order denying Debtor's Motion will be granted.

Dated this 8 day of June, 2000.

BY THE COURT:


Irvin N. Hoyt
Bankruptcy Judge

ATTEST:
Charles L. Nail, Jr., Clerk

By: 
Deputy Clerk

NOTICE OF ENTRY
Under F.R. Bankr.P. 9022(a)
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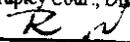
JUN 08 2000

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



I hereby certify that a copy of this document was mailed, hand delivered, or faxed this date to the parties on the attached service list.

JUN 08 2000

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

(Bankr. E.D. Va. 1992) (cites therein). The principal question for the court to consider is whether a dismissal is in the best interest of creditors; that is, will dismissal cause some plain legal prejudice to them. *Wilde*, 160 B.R. at 627; *Komyathy*, 142 B.R. at 757. The Court must balance the interests of the debtor and creditors. *In re Churchill*, 178 B.R. 478, 479 (Bankr. D. Neb. 1995). Other factors to be weighed include the good faith of the debtor, whether the debtor is guilty of laches, and whether all creditors consent to the dismissal. *Churchill*, 178 B.R. at 479; *Komyathy*, 142 B.R. at 757. Equitable considerations are relevant only in the absence of dispositive legal arguments. *Leach*, 130 B.R. at 857.

A Chapter 7 discharge is tantamount to a final judgment in the case and establishes the rights of the parties. *In re Baylies*, 114 B.R. 324, 325 (Bankr. D.C. 1990) (citing *In re Shell*, 14 B.R. 1010, 1011 (Bankr. E.D. Wisc. 1981)). A dismissal of a Chapter 7 case does **not** revoke a previously entered discharge. 11 U.S.C. § 349. If a Chapter 7 case is dismissed after discharge, the debtor is still barred from getting another discharge until six years from the first petition date. 11 U.S.C. § 727(a)(8).

Case: 99-30043 Form id: 122 Ntc Date: 06/08/2000 Off: 3 Page : 1

Total notices mailed: 5

Debtor Rieger, Kandis K. 1615 East Park, #2, Pierre, SD 57501
Aty Fuoss, Anita L. PO Box 508, Murdo, SD 57559
Trustee Lovald, John S. PO Box 66, Pierre, SD 57501
Aty Gering, Bruce J. Office of the U.S. Trustee, #502, 230 South Phillips Avenue, Sioux Falls, SD 57104-6321
Aty Zell, Bradley G. PO Box 129, Miller, SD 57362



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Phone Number: 605-224-6013

Time Sent: Thursday, Jun 8, 2000 12:57PM
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Rieger Decision and Order

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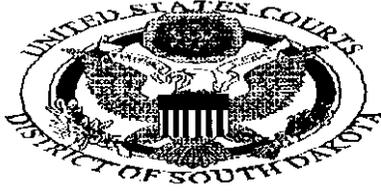
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