

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 21-50044
	)	Chapter 7
JEFFREY DOYLE OFSTAD	)	
SSN/ITIN xxx-xx-1441	)	DECISION RE: <i>SUA</i>
	)	<i>SPONTE</i> DISMISSAL OF CASE
Debtor.	)	UNDER 11 U.S.C. § 305(a)(1)

The matter before the Court *sua sponte*<sup>1</sup> is whether this bankruptcy case should be dismissed under 11 U.S.C. § 305(a)(1). This is a core proceeding under 28 U.S.C. § 157(b)(2). For the reasons discussed below, the Court will dismiss this case.

I.

Jeffrey Doyle Ofstad ("Debtor") filed a chapter 7 petition in bankruptcy on April 21, 2021.<sup>2</sup> He listed his address as 1332 4th Street, Rapid City, South Dakota. His mailing list of creditors included only Zach Nesbit and Wilmington Savings Fund Society, FSB ("Wilmington Savings").<sup>3</sup> The Bankruptcy Noticing Center served the notice of the commencement of the case on Wilmington Savings at an electronic mailing address Wilmington Savings had on file with the noticing center.<sup>4</sup>

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<sup>1</sup> "*Sua sponte*" is a frequently used legal phrase that means "on its own motion."

<sup>2</sup> Debtor filed his petition *pro se*, that is, without the assistance of an attorney. On his petition, Debtor listed as a joint debtor, not a spouse as is permitted by 11 U.S.C. § 302, but "ALL OCCUPANTS[,]" seemingly referencing one or more persons at the same address (a "1" is missing from the house number in the address for "ALL OCCUPANTS"). The Court *sua sponte* dismissed "ALL OCCUPANTS" as ineligible joint debtors.

<sup>3</sup> The other parties on the official case mailing list, which include Debtor, the case trustee, and the United States trustee, were added by the bankruptcy clerk's office, pursuant to its usual procedure when the case file was created on the Court's electronic filing system.

<sup>4</sup> Pursuant to 11 U.S.C. § 342(f) and Fed.Rs.Bankr.P. 2002(g)(4) and 9036, Wilmington Savings had registered an electronic mailing address with the Bankruptcy Noticing Center to use in all bankruptcy cases involving Wilmington Savings.

The same day he filed his petition, Debtor filed an Initial Statement About an Eviction Judgment Against You, Official Form 101A, dated April 21, 2021. In the certification required therein by 11 U.S.C. § 362(l)(1)(A), Debtor said his landlord's name was Wilmington Savings. He certified under penalty of perjury: "Under the state or other nonbankruptcy law that applies to the judgment for possession (*eviction judgment*), I have the right to stay in my residence by paying my landlord the entire delinquent amount." Immediately following this statement on the form, he added "zero delinquency[.]" In this statement, Debtor also certified, as required by § 362(l)(1)(B), under penalty of perjury: "I have given the bankruptcy court clerk a deposit for the rent that would be due during the 30 days after I file the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101)." Immediately following this statement on the form, he added "zero dollars due[.]" The bankruptcy clerk did not receive any rent funds from Debtor.

Two days later, Debtor filed a Statement About Payment of an Eviction Judgment Against You, Official Form 101B, also dated April 21, 2021. Therein, Debtor again certified under penalty of perjury: "Under the state or other nonbankruptcy law that applies to the judgment for possession (*eviction judgment*), I have the right to stay in my residence by paying my landlord the entire delinquent amount." He also certified, as required by 11 U.S.C. § 362(l)(2), under penalty of perjury: "Within 30 days after I filed my *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101), I have paid my landlord the entire amount I owe as stated in the judgment for possession (*eviction judgment*)." The bankruptcy clerk advised Debtor he needed to serve his two statements on Wilmington Savings and file

a certificate of service.

Several days later, Debtor filed two new statements regarding an eviction judgment, each dated April 28, 2021. His April 28, 2021 Initial Statement About an Eviction Judgment Against You again had the extra notes typed on it stating there was "zero delinquency" and "zero dollars due" for rent in the 30 days after his petition. Debtor also filed a certificate of service indicating he had served the statements on Wilmington Savings at 500 Delaware Avenue, Delaware 19801. Since no city was included in the address, it is unknown whether Wilmington Savings ever received these statements. Wilmington Savings did not file an objection to either statement.

On his statement of intention, Debtor indicated Wilmington Savings had a "disputed claim" secured by his Rapid City residence and he stated he intended to "Retain the property and redeem it." He also checked the "No" box on this form where it asked whether he had claimed this property exempt on schedule C.

On his schedule A/B, Debtor stated he was the owner of a single-family home at 1332 4th Street in Rapid City, the same address as his mailing address on his petition. Debtor listed the home's value at \$50,000.00 and described the nature of his ownership as "adverse possession over 20 years[.]" On schedule C, in Part 1 at question 1, Debtor checked the box indicating he was claiming federal exemptions, but in Part 1 at question 2, he inserted "N/A" where he was instructed to list the property claimed exempt. In Part 1 at question 3, when asked if he was claiming a homestead exemption of more than \$170,350.00, Debtor checked the "Yes" box, indicating he acquired the property covered by the exemption within 1,215 days before he filed this bankruptcy case.

Debtor amended his case mailing list on May 3, 2021. He listed Wilmington Savings, "UNKNOWN MORTGAGE CREDITOR (TBD)[,]" and Zachary Nesbit. The amendment indicates Zachary Nesbit is an attorney for either Wilmington Savings or Debtor's "to be determined" mortgage creditor.

At the case trustee's request, the Court entered an order requiring Debtor to amend schedule A/B to better describe his personal property. In the order, the Court also gave Debtor a deadline to file any amended schedule C. Debtor amended his schedule A/B but did not amend his schedule C. To the extent Debtor actually claimed any property exempt, no party in interest timely objected to Debtor's claim of exemptions.

On his schedule D, Debtor checked the box indicating he did not have any creditors with claims secured by property. On his schedule E/F, Debtor checked the box indicating he did not have any creditors with priority unsecured claims against him. On his schedule E/F, Debtor checked the box indicating he did not have any creditors with nonpriority unsecured claims against him. In sum, Debtor did not schedule any creditors holding any claims against him.

On his schedule G, Debtor checked the box indicating he did not have any executory contracts or unexpired leases. In his statement of financial affairs, Debtor did not list any prior addresses within three years of his petition date. Therein, he also stated Wilmington Savings had a "forcible entry & detainer" action against him in state court that was "Pending" and Wilmington Savings had foreclosed on his house—address not stated—within one year of his petition.

On May 13, 2021, Debtor commenced an adversary proceeding against



Wilmington Savings by filing a complaint entitled "Action to Quiet Title[.]" Therein, Debtor challenged Wilmington Savings's standing to bring a foreclosure action regarding the unidentified "subject premises" and made claims for "Unjust Enrichment" and "Right of First Refusal." The bankruptcy clerk issued a summons, but the record does not indicate Debtor served the summons and his complaint on Wilmington Savings in compliance with Federal Rule of Bankruptcy Procedure 7004(h) before the summons became stale. Wilmington Savings did not answer Debtor's complaint.

The Court entered orders setting a status conference for July 15, 2021 in Debtor's bankruptcy case and in Debtor's adversary proceeding against Wilmington Savings. In the bankruptcy case order, the Court advised the parties it would address two issues at the status conference: (1) the status of property of the bankruptcy estate, including the apparent lack of any property claimed exempt; and (2) the lack of any scheduled creditors. In the adversary proceeding order, the Court raised three concerns: (1) whether Debtor's service of his complaint and summons on Wilmington Savings complied with Fed.R.Bankr.P. 7004(h); (2) whether this Court had jurisdiction under 28 U.S.C. § 1334 to quiet title to the subject property; and (3) whether Debtor had standing to bring his complaint against Wilmington Savings if the subject property was now property of the bankruptcy estate in Debtor's main bankruptcy case. In the adversary proceeding order, the Court directed Wilmington Savings to appear at the status conference through counsel.

The Court conducted the July 15, 2021 status conferences concurrently. Debtor, Amanda Ferguson, the attorney for Wilmington Savings, Acting United States Trustee James L. Snyder, and Trustee Forrest C. Allred participated. The Court

discussed its concerns with the parties and advised them the Court would enter a show cause order in each matter. During the joint conference, Wilmington Savings admitted service of Debtor's complaint in the adversary proceeding, and the Court advised the parties Wilmington Savings's admission would be without prejudice to its later filing an answer.

Following the status conferences, the Court entered a combined notice and order in Debtor's adversary proceeding against Wilmington Savings. In the order, the Court recognized Debtor, in a response to the just-held conference, had highlighted Wilmington Savings's failure to file a responsive document to his complaint. The Court's notice advised the parties to the adversary proceeding the Court intended to take judicial notice the "subject premises" referenced in Debtor's complaint was the same property listed by Debtor on his amended schedule A/B as his principal residence. The Court also gave notice it would take judicial notice of several specific documents from two earlier state court proceedings between Debtor and Wilmington Savings and a federal district court proceeding between Debtor and Wilmington Savings. The Court's order set a deadline for the parties to file their written arguments why the Court—the bankruptcy court—should not abstain *sua sponte* from hearing the adversary proceeding under 28 U.S.C. § 1334(c)(1) and grant Debtor and Wilmington Savings relief from the automatic stay so they could continue the state court proceeding that was pending when Debtor filed his bankruptcy petition.

Only Debtor timely filed a response in the adversary proceeding. He expressed frustration with the earlier legal proceedings before this and other courts, argued the state court lacks jurisdiction over the subject matter in the adversary proceeding, and

contended Wilmington Savings lacks standing before the state court. Debtor also again correctly noted Wilmington Savings has not filed an answer in the adversary proceeding. By separate decision and order entered this day, the Court is abstaining from hearing the adversary proceeding pursuant to 28 U.S.C. § 1334(c)(1).

In Debtor's main bankruptcy case, the Court entered an Order to Show Cause Why Case Should Not Be Dismissed. Therein, the Court noted Debtor had not scheduled any creditors, thus creating a bankruptcy case in which there were no known creditors who may receive a distribution of nonexempt assets and no known claims regarding which Debtor's personal liability could be discharged. The Court set forth the factors to be considered before a case is dismissed under 11 U.S.C. § 305(a)(1) because dismissal better serves the interests of the debtor and any creditors. The Court also set a deadline for any party in interest to file a response to the show cause order. No responses were timely filed.

II.

Section 305(a)(1) of the bankruptcy code (title 11 of the United States code) provides:

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

(1) the interests of creditors and the debtor would be better served by such dismissal or suspension[.]

11 U.S.C. § 305(a)(1). The factors a court considers before dismissing a case under § 305(a)(1) are: (1) whether the case is a two-party dispute; (2) the economy and efficiency of administration; (3) the availability of another case or forum to protect the interests of the parties; (4) the alternative means of achieving equitable distribution of

assets; and (5) the purpose for which bankruptcy jurisdiction has been sought. *Pennino v. Evergreen Presbyterian Ministries (In re Pennino)*, 299 B.R. 536, 539 (B.A.P. 8th Cir. 2003).

III.

Of the five factors from *Pennino*, four weigh in favor of dismissal, and the remaining one is not applicable.

Debtor's mailing list of creditors only included Wilmington Savings and an attorney for Wilmington Savings. Debtor's schedules did not list any creditors. Debtor's only activity in the case has been filing the statements regarding an eviction by Wilmington Savings and bringing the quiet title adversary proceeding against Wilmington Savings. Thus, this bankruptcy case is clearly a two-party dispute. Accordingly, the first factor weighs in favor of dismissal.

Because Debtor has not scheduled any creditors, there are no claims to be discharged and there are no known claim holders the trustee may pay from liquidated nonexempt assets. Thus, there is no true chapter 7 bankruptcy case to administer. Accordingly, the second factor also weighs in favor of dismissal.

The parties have been litigating in state court and that forum remains available to them if the automatic stay in the bankruptcy case is terminated. The automatic stay will be terminated by operation of law if the bankruptcy case is dismissed. This third factor weighs in favor of dismissal.

The fourth factor—the alternative means of achieving equitable distribution of assets—is not applicable in this particular bankruptcy case. Since there are no scheduled creditors, there is no concern regarding the equitable distribution of assets



among two or more creditors, whether through a bankruptcy or another legal proceeding.

Finally, the fifth factor—the purpose for which the bankruptcy court's jurisdiction was sought—also weighs in favor of dismissal of the bankruptcy case. All the circumstances show Debtor filed his bankruptcy case and the attendant adversary proceeding solely to create a new forum to litigate his disputes with Wilmington Savings. Since his adversary complaint sounds only in state law and since Debtor has not filed a chapter 7 case that permits any other relief under the bankruptcy code, including a discharge of debts and a distribution of nonexempt assets to creditors, there is no purpose in continuing this bankruptcy case.

The Court will enter an order dismissing this bankruptcy case under 11 U.S.C. § 305(a)(1).

Dated: September 14, 2021.

BY THE COURT:



Charles L. Nail, Jr.  
Bankruptcy Judge

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

This order/judgment was entered  
on the date shown above.

Frederick M. Entwistle  
Clerk, U.S. Bankruptcy Court  
District of South Dakota

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA

In re:	)	Bankr. No. 21-50044
	)	Chapter 7
JEFFREY DOYLE OFSTAD	)	
SSN/ITIN xxx-xx-1441	)	ORDER DISMISSING CASE
	)	
Debtor.	)	

In recognition of and compliance with the decision entered this day; now, therefore,

IT IS HEREBY ORDERED this bankruptcy case is dismissed *sua sponte* pursuant to 11 U.S.C. § 305(a)(1).

So ordered: September 14, 2021.

BY THE COURT:



Charles L. Nail, Jr.  
Bankruptcy Judge

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