

UNITED STATES BANKRUPTCY COURT

**DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463**

**IRVIN N. HOYT
BANKRUPTCY JUDGE**

**TELEPHONE (605) 224-0560
FAX (605) 224-9020**

May 17 2002

Ms. Darci Stanford
Mr. John Stanford
600 North Mable
Sioux Falls, South Dakota 57103

Lee Ann Pierce, Esq.
Chapter 7 Trustee
Post Office Box 524
Brookings, South Dakota 57006

Bruce J. Gering, Esq.
Assistant United States Trustee
Suite 502, 230 South Phillips Avenue
Sioux Falls, South Dakota 57104-6321

Subject: *In re Darci and John Stanford,*
Chapter 7; Bankr. No. 02-40129

Dear parties in interest:

The matter before the Court is the Motion to Dismiss Case filed by Debtors. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, the Court will deny Debtors' Motion.

SUMMARY. Darci and John Stanford ("Debtors") filed a Chapter 7 petition on February 8, 2002. In their schedules and statements of financial affairs, also filed February 8, 2002, Debtors stated that they owned a home, which was fully secured and which they declared exempt as their homestead. Debtors also stated that they owned \$66,580 in personalty. They declared all the personalty exempt except for a 1993 Subaru, a 1995 Chevrolet Blazer, and a 1999 Kawasawki Vulcan, which had a total value of \$21,000. Debtors scheduled as secured creditors those who held an interest in the three non exempt vehicles, a 2001 Bobcat, and their home. This schedule indicated all this property was fully encumbered with no equity. Debtors listed their student loans of \$25,000 as unsecured, priority claims. Debtors also scheduled four unsecured, general claims that totaled \$19,283.

Re: Darci and John Stanford
May 17, 2002
Page 2

Administration of the case progressed after the petition. In mid-March 2002, one secured creditor sought abandonment of the Blazer from the bankruptcy estate and another creditor sought relief from the automatic stay regarding the Kawasaki. Debtors filed a reaffirmation agreement with their home mortgage lender on March 21, 2002. It indicated that Debtors' remaining balance on their home was \$8,103.38 and that the home's value was \$74,365. On April 10, 2002, Debtors filed a motion to voluntarily dismiss their case. They stated a couple changes in circumstances would now allow them to "get current with creditors without filing bankruptcy." In early April, Debtors amended their schedule to add an unsecured creditor. On April 12, a bank obtained an order that abandoned the 1995 Blazer from the bankruptcy estate. On April 19, 2002, the case trustee objected to Debtors' claimed exemptions on the grounds that the value of the items declared exempt exceeded the allowance under S.D.C.L. § 43-45-4. The trustee also indicated that she had requested additional information from Debtors. The trustee filed an amended objection to exemptions on May 16, 2002, that provided some additional details. A hearing on the creditor's request for relief from the automatic stay regarding the Kawasaki was held April 30, 2002. The Court directed the parties to negotiate because it was anticipated that Debtors' motion to dismiss their case would not be granted. Since the hearing, the case trustee and creditor have reached an agreement on the Kawasaki.

APPLICABLE LAW. A Chapter 7 case may be dismissed only for cause. 11 U.S.C. § 707(a). There is no absolute right for the Chapter 7 debtor to voluntarily dismiss his case. Compare 11 U.S.C. §§ 707(a), 1208(b), and 1307(b); *Turpen v. Eide (In re Turpen)*, 244 B.R. 431, 434 (B.A.P. 8th Cir. 2000); *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. *Turpen*, 244 B.R. at 433-34. The burden to show cause rests with the debtor. *Id.* at 434. The motion is generally denied if there is any showing of prejudice to creditors. *Id.* (cites therein); *Wilde*, 160 B.R. at 627. The Court must balance the interests of the debtor and creditors. *In re Churchill*, 178 B.R. 478, 479 (Bankr. D. Neb. 1995). Factors to be weighed include whether all creditors have consented, the good faith of the debtor, whether dismissal would result in any prejudicial delay in payment; whether dismissal would re-order priorities; and whether an objection to discharge, an objection to exemptions, or a preference action is pending. *Turpen*, 244 B.R. at

Re: Darci and John Stanford
May 17, 2002
Page 3

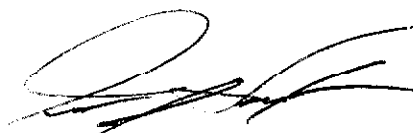
434; see *In re Eichelberger*, 225 B.R. 437, 439 (Bankr. E.D. Mo. 1998); *Churchill*, 178 B.R. at 479. Equitable considerations are relevant only in the absence of dispositive legal arguments. *In re Leach*, 130 B.R. 855, 857 (B.A.P. 9th Cir. 1991). Legal considerations must take precedence. *Id.* at 858.

DISCUSSION. Based on the present record, it appears that the case trustee will have non exempt assets that she can liquidate to pay a meaningful portion of unsecured creditors' claims. Creditors will thus benefit from this bankruptcy case continuing. They would not have to resort to state court proceedings to recover on their claims. Accordingly, under the circumstances presented here, the Court will not allow Debtors to voluntarily dismiss their case.

Debtors still have the option of converting their Chapter 7 case to a Chapter 13 case. That would allow them to pay creditors through a three to five-year plan with their disposable income rather through the liquidation of non exempt assets. Should they decide to exercise this option, Debtors should immediately seek the assistance of a bankruptcy attorney so that a conversion motion and a Chapter 13 plan can be filed as soon as possible.

An order denying Debtors' Motion to Dismiss Case will be entered. The Court will also extend until June 17, 2002, the entry of Debtors' Chapter 7 discharge order so that Debtors will have time to consider a conversion of their Chapter 7 case to a Chapter 13 case.

Sincerely,



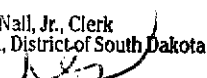
Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: case file (docket original; serve copies on parties in interest)

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

MAY 17 2002

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

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

MAY 17 2002

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

Bruce J. Gering
Office of the U.S. Trustee
230 S Phillips Ave, Suite 502
Sioux Falls, SD 57104-6321

Robert E. Hayes
PO Box 1030
Sioux Falls, SD 57101-1030

Scott M. Perrenoud
PO Box 1157
Sioux Falls, SD 57101

Lee Ann Pierce
Trustee
PO Box 524
Brookings, SD 57006

Darci Stanford
600 North Mable
Sioux Falls, SD 57103

John Stanford
600 North Mable
Sioux Falls, SD 57103