

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT HAMMOND

IN RE:)
ALFREDO SERGIO OROPEZA)
) BANKRUPTCY NO. 08-20351
)
Debtor)

MEMORANDUM OPINION
AND
ORDER

I

Statement of Proceedings

This Chapter 13 case came before the Court on July 30, 2009 on a Motion filed by the U. S. Trustee (“UST”) on May 22, 2008 to Dismiss the Case with Prejudice in the Form of a Permanent Bar to Re-Filing Under Any Chapter of Title 11 pursuant to §1307(c), §105, and §349.

UST appears by Attorney Prokop.

Debtor Alfredo Sergio Oropeza (“Debtor”) appears Pro se.

Submitted. Evidence and Arguments heard.

II

The Motion by the UST

The Motion by the UST alleges, in part, as follows:

2. Debtor's Official Form 21 contains a Social Security number ending in x3627.

* * * *

4. Since the date this Bankruptcy was filed, the UST has learned that Alfredo Sergio Oropeza may not be the actual name of this Debtor; that this Debtor may, instead, be a Mr. Sixto Santillan.

5. The UST has been unable to locate a Social Security Number for Sixto Santillan.

6. On information and belief, Debtor has fraudulently obtained a driver's license under the false name of Alfredo Sergio Oropeza.
7. On information and belief, Debtor has fraudulently obtained a Social Security card using the false name of Alfredo Sergio Oropeza but which contains the Social Security number of a different, deceased, individual.
8. In the alternative, on information and belief, Debtor is using, for identification and/or other purposes, a document that he purports to be a Social Security card issued by the Social Security Administration when, in fact, it is not, and it is this document which contains both the false name of Alfredo Sergio Oropeza and the Social Security number of the above referenced deceased individual.
9. On information and belief, Debtor has used the above-referenced Social Security number and driver's license to obtain the credit extended for each and every debt listed in his bankruptcy schedules, including the mortgage on his residence at 6730 New Jersey Avenue in Hammond, Indiana.
10. On information and belief, Debtor made material misstatements in his bankruptcy documents in that he failed to disclose his true identity, he failed to disclose whether he had a valid Social Security number, and perpetrated a fraud upon this Honorable Court by claiming another's Social Security and another's identity as his own.
11. On information and belief, Debtor presented the above-referenced license and Social Security card, holding them out to be legitimate verification of Debtor's identity, to the Chapter 13 Trustee at the §341 Meeting of Creditors held on March 27, 2008.
12. On information and belief, Debtor falsely testified at the §341 that his bankruptcy petition and schedules were true and correct when, in fact, they were not.

II

Findings of Fact

1. That the Debtor filed Official Form 21: Statement of Social Security Number under penalty of perjury asserting that Social Security Number XXX-XX-3627 was his Social Security Number in Case no. 08-20351, when it, in fact, was not. [Form 21, Case No. 08-20351].
2. That the Debtor filed Official Form 21: Statement of Social Security Number under penalty of perjury asserting that the Social Security Number XXX-XX-3627 was his Social Security Number in Case No. 08-22559 when it, in fact, was not. [Form 21, Case No. 08-22559].

3. That the Debtor testified that he received the above Social Security Number, from the Social Security Administration in California.

4. That although asked to verify this information by the UST's First Set of Interrogatories, Debtor failed to do so and, instead, provided vague, untraceable, unverifiable, and incomplete information in his responses to the UST Interrogatories. [UST Exh. No. 12].

5. That Paralegal Specialist Rae Beehler has received training in reviewing and verifying Social Security Numbers and is experienced in verifying Social Security numbers using certain databases of Lexis, Westlaw, and the Social Security Death Index. [Testimony of Ms. Beehler.]

6. That Social Security Number xxx-xx-3627 was never issued to Debtor. [UST Exh. No. 1 and testimony of Ms. Beehler].

7. That in fact, the SSN xxx-xx-3627 was issued to a man, in Illinois, who had passed away in the 1970s. [Testimony of Ms. Beehler and Docket Entry No. 33 (Motion to Dismiss filed by Wells Fargo Financial on May 14, 2008 alleging that the Debtor was using the Social Security Number of a deceased person attaching as Exhibit A a report by Equifax that the Social Security Number used by the Debtor was that of a deceased person).]

8. That Ms. Beehler's attempts to verify whether Debtor had a valid SSN were not successful. In fact, her search returned results indicating that Debtor may have used other SSNs that were not issued to him.

9. That the Debtor used xxx-xx-3627, someone else's SSN, to obtain employment. [Debtor's Testimony].

10. That the Debtor used SSN xxx-xx-3627 to incur each and every debt listed in his schedules and in the claims filed in his case. [UST Exh. No. 2, UST Exh. No. 5, and Debtor's Testimony].

11. That the Debtor's bankruptcy petition, signed under penalty for perjury, his W-2 forms, and

his Tax Returns contain the middle initial "S" or the name "Sergio" even though this is not part of the Debtor's name. [UST Exh. No. 2, UST Exh. No. 13].

12. That without accurate information, particularly an SSN, all of a debtor's creditors may not receive notice of a bankruptcy filing. [Testimony of Trustee Chael].

13. That without accurate information, particularly an SSN, bankruptcies may be incorrectly reported on credit reports. [Testimony of Trustee Chael].

14. That if a debtor is using an incorrect SSN, or if a debtor is using several SSNs, the debtor may have creditors that he has failed to disclose in his bankruptcy. [Testimony of Trustee Chael].

15. That in fact, a bankruptcy court may never know about additional creditors if a debtor has used numerous SSNs, but has not disclosed them all. [Testimony of Trustee Chael].

16. That the Debtor Alfredo Oropeza did not cooperate in discovery. He failed and refused to provide a Social Security Consent Form until the UST filed a Motion to Compel. [Docket Entry No. 75 dated August 7, 2008] and he failed and refused to provide complete answers in his responses to the UST's First Set of Interrogatories. [Docket Entry No. 2 dated March 25, 2009 U. S. Trustee Affidavit and UST Exh. No .12].

IV

Conclusions of Law and Discussion

No Objection was made by the parties to the subject-matter jurisdiction of this Court. The Court concludes that it has subject-matter jurisdiction over this contested matter pursuant to 28 U.S.C. §1334. The Court also concludes that this Proceeding is a Core Proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (O).

Section 1307(c) of title 11 governs the dismissal of a Chapter 13 case on the Motion of a

creditor, the trustee, or the U. S. Trustee.¹ As recognized by the Seventh Circuit:

Chapter 13 does not explicitly contain a good faith requirement for the filing of a petition. Nevertheless, Section 1307(c) of the Bankruptcy Code does state that Chapter 13 petitions may be dismissed “for cause.” 11 U. S. C. §1307(c). This court has indicated that lack of good faith is sufficient cause for dismissal under Chapter 13.

Matter of Love, 957 F.2d 1350, 1354 (7th Cir. 1992), (citing, In re Smith, 848 F.2d 813, 816, n. 3 (7th Cir. 1988)).

In Love, the Seventh Circuit recognized that it had not previously had an opportunity to review “good faith” findings with respect to the filing of a Chapter 13 petition, but had reviewed “good faith” determinations in the context of filing a Chapter 13 plan. Love, 957 F.2d at 1354 (citing, In re Schaitz,

¹ Section 1307 (c) provides as follows:

(c) Except as provided in subsection (e) of this section, on a request of a party in interest or the United States Trustee and after notice and a hearing, the Court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate for cause, including -

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of confirmed plan;
- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan.
- (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521; or
- (10) only on request of the United States Trustee, failure to timely file the information required by paragraph (2) of section 521. (emphasis supplied).

913 F.2d 452, 453-56 (7th Cir. 1990); In re Smith, 848 F.2d 813, 816-22 (7th Cir. 1998); In re Rimgale, 669 F.2d 426, 431-33 (7th Cir. 1982)). The Court observed:

In evaluating good faith necessary for the confirmation of a Chapter 13 plan, this court has refused to adopt a specific test or definition of good faith. Instead, this court has held that good faith is a term incapable of precise definition, and, therefore, the good faith inquiry is a fact intensive determination better left to the discretion of the bankruptcy court. In re Rimgale, 669 F.2d at 431. As such, we have directed the bankruptcy courts to look at the totality of circumstances and, thereby make good faith determinations on a case-by-case basis, Schaitz, 913 F.2d at 453; Smith, 848 F.2d at 817. The good faith determination with regard to the filing of a chapter 13 petition is also a fact intensive inquiry to be determined by looking at the totality of circumstances. See Smith, 848 F.2d at 816, n. 3.

Love, 957 F.2d at 1355.

The burden of proof is on the movant in the context of a motion to dismiss for lack of good faith. Id., 957 F.2d at 1355.

As a general rule the good faith doctrine is applicable in both Chapter 11 and Chapter 13 cases. However, the doctrine has been applied differently in Chapter 13 cases as opposed to Chapter 11 cases. See, In re Schaitz, 913 F. 2d 452, 453 (7th Cir. 1990) (despite similar statutory language, issue of good faith differs in Chapter 13 and Chapter 11. Good faith under Chapter 13 depends on the “totality of the circumstances”). Chapter 13 plans, as opposed to Chapter 11 plans, must be promptly filed. See, Fed. R. Bk. P. 3015. Thus, as opposed to Chapter 11, the issue of whether a Chapter 13 case should be dismissed for lack of “good faith” often involves not only a consideration of the circumstances surrounding the filing of the petition, but also the contents of the debtor’s plan. See In re Smith, 848 F.2d 813, 816, n.3 (7th Cir. 1988) (The Smith Court discussed the “overlapping” good faith inquires when both the filing of the petition and the confirmability of the Debtors Chapter 13 plan are in issue. The Court also observed that under §1307 a petition is to be rejected for the same reasons that a plan would not be confirmed, including lack of good faith). See also, Matter of Belt, 97 B.R. 962, 964 and

n. 3 (Bankr. N. D. Ind. 1989) (Motion to Dismiss Chapter 13 case for “bad faith” will be measured against the same standards for determining “good faith” at confirmation under §1325(a)(3)).

The good faith inquiry is both subjective and objective. Matter of Love, 957 F.2d at 1357. Both objective evidence of a fundamentally unfair result and subjective evidence that a debtor filed a petition for a fundamentally unfair purpose that was not in line with the spirit of the Bankruptcy Code are relevant to the good faith inquiry. Id. The same evidence is often relevant to both an objective and subjective showing of unfairness. Objective evidence, when coupled with other evidence may also indicate a subjective intent to abuse the spirit of the Bankruptcy Code. Id. The good faith standard prevents debtors from manipulating the Bankruptcy Code for wrongful purposes. Id., 957 F.2d at 1358-59.

In Matter of Love, the Seventh Circuit noted that the good faith inquiry with regard to the filing of the Chapter 13 Petition is a fact intensive inquiry to be determined by looking at the totality of the circumstances. Id., 957 F.2d at 1355. Because dismissal is harsh, the Bankruptcy Court should be more reluctant to dismiss a petition under §1307(c) for lack of good faith than to reject a plan for lack of good faith under §1325(a). Id. 957 F.2d at 1356.

The good faith analysis under §§1307(c) and 1325(a)(3) are not identical. Id., 957 F.2d at 1360. the good faith inquiry under §1307(c) is a broad inquiry focusing on the fairness involved in the initiation of a Chapter 13 proceeding, while the good faith inquiry under §1325(a)(3) is a more narrow inquiry, focusing on the good faith with regard to the Chapter 13 plan. Id., 957 F.2d at 1360. It is possible to find that the Debtor acted in good faith in filing the petition and yet lacked good faith in filing the plan. Id., 957 F.2d 1360, (citing, Smith, 848 F.2d at 816, n. 3).

The same policy embodies the two good faith inquiries. One of the primary purposes of the good faith evaluation in both contexts is to “force [] the Bankruptcy Court to examine ‘whether or not under

the circumstances of the case there has been an abuse of the provisions, or spirit of [the chapter]...” Matter of Love, 957 F.2d at 1357, (citing, Smith, 848 F.2d at 818 n. 3) (Quoting, Rimgale, 669 F.2d at 431). At base, this inquiry often comes down to a question of whether the filing is fundamentally fair. Matter of Love, 957 F.2d at 1357, (quoting, Schaitz, 913 F.2d at 453 (“the most fundamental and encompassing [factor when evaluating good faith] is whether the Debtor has dealt fairly with his Creditors.”)).

The relevant factors vary from case to case. In re Earl, 140 B.R. 728, 735 (Bankr. N. D. Ind. 1992), (citing, In re Jones, 119 B.R. 996, 1002-03 (Bankr. N. D. Ind. 1990)). “No list, however exhaustive, can be complete. The variety of factors which might be worth of consideration os potentially infinite.”. In re Jones, 119 B.R. at 1003.

As accurately summarized by one bankruptcy court:

The Bankruptcy Code does not define “good faith.” There is no illuminating legislative history. More than 300 reported “good faith” decisions form a maze of rules and exceptions swallowing rules. Nearly identical fact patters have produced inconsistent results with judicial districts and across the circuits. the reported decisions demonstrate that “good faith” is an illusive statutory description of the limits of Chapter 13 relief.

In re Easley, 72 B.R. 948, 950 (Bankr. M. D. Tenn. 1987) (collecting cases).

The Seventh Circuit in Matter of Love set out a non-exhaustive list of factors for a bankruptcy court to consider in determining whether a Chapter 13 petition was filed in good faith. These factors include:

1. The nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding;
2. The timing of the petition.
3. How the debt arose;
4. The Debtors’ motive in filing the petition;

5. How the Debtors' action affected creditors;
6. The debtors' treatment of creditors both before and after the petition was filed;
7. Whether the Debtor has been forthcoming with the bankruptcy court and the creditors.

Matter of Love, 957 F.2d at 1357.

This court in In re Earl, 140 B.R. 728, supra, considered a motion to dismiss a serial filing to prevent a sheriff's sale in the context of §1307. This court noted:

A typical list of factors for the Court to consider are set out in In re Estus, 695 F.2d 311, 317 (9th Cir. 1982) which cited by the Seventh Circuit in Matter of Smith, 848 F.2d 813, 818, n. 4, supra. These are:

- (1) the amount of the proposed payments and the amount of the debtor's surplus;
- (2) the debtor's employment history, ability to earn and likelihood of future increases in income;
- (3) the probable or expected duration of the plan;
- (4) the accuracy of the plan's statements of the debts, expenses and percentage repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court;
- (5) the extent of preferential treatment between classes of creditors;
- (6) the type of debt sought to be discharged and whether any such debt is nondischargeable in Chapter 7;
- (8) the existence of special circumstances such as inordinate medical expenses;
- (9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
- (10) the motivation and sincerity of the debtor in seeking Chapter 13 relief; and,
- (11) the burden which the plan's administration would place upon the trustee. (emphasis supplies).

Id., 140 B.R. at 735.

The Court will apply the various factors outlined above to the case at bar in order to determine whether the Debtor has not filed the Petition in good faith so as to require a dismissal thereof pursuant to §1307(c) of the Code for "Cause".

Federal Rule of Bankruptcy Procedure 4002(b)(1)(B) provides that, in addition to the duties prescribed by the Code or the Rules, every individual debtor shall bring to the Meeting of Creditors under §341 evidence of Social Security Number, or a written statement that such documentation does not exist. This Rule is implemented by Official Form 21, Statement of Social Security, which must be filed by the Debtor under the penalty of perjury. This Form also implements Fed. R. Bk. P. 1007(f) Statement of Social Security Number, which requires the debtor to file a verified statement that sets out the debtor's Social Security Number, or states that the debtor does not have a Social Security Number, which shall be submitted with a voluntary petition. Federal Rule Bankruptcy Procedure 1005, Caption of Petition, requires that the caption of the petition shall contain the last four digits of the Social Security Number, while §342(c)(1) provides that any notice to a creditor shall contain the last four digits of the tax identification of the debtor, i.e. the Social Security Number. Providing a Social Security Number is not just a matter of form, but is of substantive importance because it notifies all creditors of exactly who the debtor is. In re Merlo, 265 B.R. 502, 504-505 (Bankr. S. D. Fla 2001).

This Court agrees with the conclusion reached by the Court in In re Riccardo, 248 B.R. 717 (Bankr. S. D. N. Y. 2000). In that case, the Chapter 7 Trustee moved to dismiss the case of the joint debtors "for cause" for the use of an incorrect Social Security Number. The Court decided that a debtor who files a petition with a false Social Security Number violates, at minimum, his or her oath made in signing the petition and is not entitled to a discharge, even if done mistakenly and not intentionally as it undermines the integrity of the fundamental objectives of the Bankruptcy Code. Id. 248 B.R. at 722-724. As noted by the Court in Riccardo, the use of a false Social Security Number in filing a bankruptcy petition may also be chargeable as a crime under 18 U.S.C. §152. Id. 248 B.R. at 722 (citing, United States v Gellene, 182 F.3d 578, 587-88 (7th Cir. 1999)).

This Court finds that the UST has met her burden by a preponderance of the evidence that the

Debtor used a false Social Security Number in filing his Bankruptcy Petition and "cause" has been shown that this case could be properly dismissed for this reason pursuant to §1307(c). However, this case was already dismissed for default in Plan Payments on the Motions of the Trustee and Wells Fargo Financial, Illinois, Inc. by Order entered June 9, 2008 (Docket No. 51), as Amended on June 20, 2008 (Docket No. 59), whereby the Court reserved jurisdiction to determine if the dismissal should be with or without prejudice. See also Docket Entry No. 39 dated May 28, 2008.

Thus, the only issue to be decided by the Court at this juncture is whether the dismissal shall be a dismissal without prejudice, or with prejudice, and if with prejudice, the extent of dismissal order. The UST seeks an order permanently barring the Debtor from filing another Bankruptcy Case.

The Debtor is an unsophisticated and functional illiterate, who speaks broken English, and was employed in a job for fourteen years as a bus boy. There is no evidence that other than using a false Social Security Number that the Debtor has filed his Petition for an improper purpose, filed incomplete, false, or misleading Schedules or Statements, or that his Plan or Amended Plan was filed in an effort to treat his Creditors in a fundamentally unfair manner. The dismissal of a bankruptcy case with a permanent bar to refiling is a drastic remedy that must be reserved for the most egregious circumstances. See, In the Matter of Hall, 258 B.R. 908, 910-912 (Bankr. N. D. Ind. 2001).

The Court also concurs with the Riccardo Court that no useful purpose will be served to permanently bar the Debtor from filing another Bankruptcy Petition. Id. 248 B.R. at 724-725. The Court will bar the Debtor from filing another Bankruptcy Petition for a period of two years from the date of this Order pursuant to §105(a). See, in re Earl, 140 B.R at 740-741.

In addition, a summary of this Order shall be sent to all Creditors scheduled by the Debtor and the three Credit Reporting Agencies.

Finally, if the Debtor seeks to file another Bankruptcy Petition after two years, the Petition shall

set out a correct Social Security Number and attach a copy of this Opinion to the Petition.

It is therefore **ORDERED** that the Motion by the United States Trustee to Dismiss this Case with a Permanent Bar to Refiling should be and is hereby **GRANTED** in Part and **DENIED** in Part.

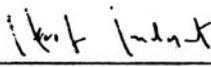
And it is further,

ORDERED, that the Debtor should be and is hereby enjoined from filing another Bankruptcy Petition for a period of two years from the date of this Order. And it is further,

ORDERED, that the Clerk is directed not to accept any Bankruptcy Petition by the Debtor during said two year period.

The Clerk shall enter this Order on a separate document and distribute the same to all Creditors.

October 21, 2011



JUDGE, U. S. BANKRUPTCY COURT

Distribution:

Debtor
Attorney Prokop
Trustee
U. S. Trustee