

PREVENTING CREDITOR ABUSE!
Chapter 7 Case Dismissed Because Debtor Could Pay Debts!

By Louis J. Ebert

You've been there before: spending legal fees chasing after someone who owes you money, who can actually afford to repay his or her debt. Then, and after having obtained a judgment against the debtor, you learn that the person filed a bankruptcy petition. Now, a remedy may be available for creditors.

Deciding an issue on which it had not previously ruled, the United States Court of Appeals for the Eleventh Circuit recently issued an opinion affirming a bankruptcy court's decision in a Chapter 7 (liquidation) case dismissing an individual debtor's case based on his pre-petition bad faith. The dismissal had been made under Section 707(a) of the Bankruptcy Code, which authorizes bankruptcy courts to dismiss cases "for cause." In this case, *Piazza v. Neuterra Healthcare Physical Therapy*, the court found sufficient evidentiary support for the trial court's finding that the debtor, whose debts were primarily business debts, had primarily filed his petition in order to avoid a single large business debt which had been reduced to judgment, despite the debtor having the ability to pay the debt. The court also found a sufficient basis for the finding that, prior to filing his petition, the debtor was paying other debts (some not even his own) and transferring funds to his wife. The court approved the use of a "totality of the circumstances" test to find that the debtor acted in "bad faith" when he filed his petition, and found that this bad faith constituted sufficient "cause" under Section 707(a) of the Bankruptcy Code to grant a creditor's motion to dismiss.

This case is only one of a handful of reported cases issued subsequent to the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") discussing this issue. BAPCPA amended §707(b) of the Bankruptcy Code by authorizing bankruptcy courts, in a Chapter 7 case involving primarily consumer debts, to consider whether the bankruptcy petition was filed in bad faith as one of the factors used in determining whether a case should be dismissed based on "abuse". In the *Piazza* case, the debtor argued that: (a) his conduct did not constitute "bad faith"; (b) interpreting Section 707(a) to dismiss a case for "bad faith" rendered superfluous other sections of the Code which expressly require a finding of "bad faith" to dismiss a case; and (c) inasmuch as Congress chose to expressly authorize the court to consider the debtor's "bad faith" in determining whether to dismiss a case involving primarily consumer debts, the failure to include similar language in Section 707(a) demonstrated Congress' intent that bad faith should not be considered in deciding whether to dismiss a Chapter 7 case involving primarily business debts. The court rejected all of these arguments.

Why is this case noteworthy? Since the enactment of BAPCPA, there is little controlling precedent on the issues raised in this case. Now, if one of your debtors who is an individual with primarily business debts files a Chapter 7 bankruptcy petition, can afford to repay the debt to you and filed the petition to avoid paying the debt to you, you may have grounds for having the case dismissed, depending upon other relevant facts and circumstances. If the case is dismissed, you may be able to have included in the order dismissing the case a provision prohibiting the debtor filing a new case for a fixed period of time, and then you can utilize state court remedies to collect the debt.

For any of your other creditors' rights needs, please contact an attorney in our creditors' rights group:

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