

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Brunswick Division

IN RE:)
)
A. BERNARD FRECHTMAN)
SS# 134-18-6320)
374 Oglethorpe Lane)
Sea Island, Georgia 31561)
)
Debtor)
_____)

Chapter 11 Case
Number 92-20433

ALETA E. FRECHTMAN)
)
Movant)

FILED
at 10 O'clock & 17 min A.M.
Date: 11-19-92

vs.)
)
A. BERNARD FRECHTMAN)
)
Respondent)
_____)

IN RE:)
)
A. BERNARD FRECHTMAN)
)
Debtor)
_____)

A. BERNARD FRECHTMAN)
)
Plaintiff)

vs.)
)
ALETA E. FRECHTMAN)
)
Defendant)

Adversary Proceeding
Number 92-2051

ORDER

Before the court is the motion to dismiss debtor's Chapter 11 case, or, alternatively, for transfer of venue to the Bankruptcy Court for the Southern District of New York filed by Aleta Frechtman in the underlying Chapter 11 case, and the debtor's complaint for a temporary restraining order and injunction, adversary case No. 92-2051 against Aleta Frechtman. Based on the evidence presented at hearings on these matters and relevant legal authorities, I make the following findings.

FINDINGS OF FACT

In 1979 the debtor, A. Bernard Frechtman, and Aleta E. Frechtman were divorced by order of the New York Supreme Court. Prior to their divorce, on March 21, 1978, the parties executed a separation agreement and a separate "letter agreement." The separation agreement requires debtor to pay Aleta Frechtman One Thousand One Hundred and No/100 (\$1,100.00) Dollars for support and maintenance and provides a formula whereby the monthly alimony payment is increased or reduced based on changes in debtor's annual income. Under the separation agreement, the alimony payments continue until the death of either party or Aleta Frechtman's remarriage. The letter agreement requires that debtor pay Aleta Frechtman the difference between the sales price of the parties' marital home at 15 Thornewood Road, Armonk, New York ("the Armonk property") and the "adjusted valuation" of the property, defined

pursuant to a formula set forth in the letter agreement.¹

In August 1989 debtor sold the Armonk property. The parties apparently disputed the amount of the sales proceeds payable to Aleta Frechtman. Debtor made no payment from the sale proceeds to Aleta Frechtman. During the same month debtor and his current wife, Patricia Frechtman, purchased a cooperative apartment at 333 East 68th Street, New York, New York ("the 68th Street property") for Six Hundred Five Thousand and No/100 (\$605,000.00) Dollars. In December 1989, Aleta Frechtman filed an arbitration proceeding in New York to determine the amount owed her from the sale proceeds of the Armonk property. In February 1991, an arbitrator awarded Aleta Frechtman One Hundred Fifty Thousand Seven Hundred Twenty and No/100 (\$150,720.00) Dollars, plus costs and interest.² In March 1990, debtor and Patricia Frechtman purchased a house in Sea Island, Georgia ("the Sea Island property"). In March 1991, debtor ceased making alimony payments to Aleta Frechtman. In April 1991, debtor

¹The letter agreement also provides that if the Armonk property is not sold on or before July 1, 1989, the American Arbitration Association in New York, New York will determine the property's fair market value and the transfer taxes and other expenses that would be payable by debtor had the property been sold, and that based on these expenses and any capital improvements made by debtor after March 21, 1978, the parties would determine the "adjusted valuation" of the house and debtor would be obligated to pay Aleta Frechtman the difference between the fair market value of the house and the adjusted valuation.

²That award was affirmed by the New York Supreme Court on February 25, 1992. The affirmed award, with costs, fees and interest through February 25, 1992, totals One Hundred Eighty-Six Thousand Nine Hundred Five and 68/100 (\$186,905.68) Dollars.

transferred to Patricia Frechtman his interest in a cooperative apartment at 44 Gramercy Park, North, New York, New York ("the Gramercy Park property"), formerly owned jointly by debtor and Patricia Frechtman.

In November 1991, Aleta Frechtman brought a fraudulent conveyance action in the New York Supreme Court, case No. 32736-91, seeking to set aside debtor's and Patricia Frechtman's joint purchase of the 68th Street property, debtor's transfer of his interest in the Gramercy Park property to Patricia Frechtman, and debtor's and Patricia Frechtman's purchase of the Sea Island property, as well as other alleged transfers of assets by debtor to Patricia Frechtman. In December 1991, Aleta Frechtman moved the New York Supreme Court to hold debtor in contempt for violating the terms of the separation agreement, incorporated into the 1979 judgment of divorce by an order of the New York Supreme Court issued in October 1991. The New York Supreme Court held debtor in contempt by order dated January 2, 1992 and on April 3, 1992 an order was entered providing for debtor's arrest, and awarding judgment of Twenty Thousand and No/100 (\$20,000.00) Dollars in favor of Aleta Frechtman for alimony arrearage, legal fees and costs of Ten Thousand Thirty-Seven and No/100 (\$10,037.00) Dollars, and payment of future alimony.

Debtor testified that he currently resides at the Sea Island property, which is located in the Southern District of

Georgia, having moved there in January 1992 to avoid arrest in New York. Debtor filed a Chapter 11 petition in this court on June 17, 1992. His schedules reflect monthly expenses of Eleven Thousand Twenty-Five and No/100 (\$11,025.00) Dollars. Debtor is currently unemployed, although he testified that he actively seeks employment. Debtor's current total monthly income, according to his bankruptcy schedules, is One Thousand and No/100 (\$1,000.00) Dollars, which he receives as social security benefits.

Aleta Frechtman maintains that debtor's Chapter 11 case should be dismissed "for cause" pursuant to 11 U.S.C. §1112. She argues that debtor filed his Chapter 11 petition in bad faith, solely as an attempt to frustrate her efforts to satisfy her judgments against him in New York to pursue her pending civil action against him. Alternatively, Aleta Frechtman seeks to have this Chapter 11 case transferred to the Southern District of New York where she contends debtor resides and where the bulk of his creditors are located. Debtor denies Aleta Frechtman's allegations of bad faith. He contends he is entitled to utilize the provisions of Chapter 11 to deal with his debts. Debtor also contends proper venue for this Chapter 11 case is the Southern District of Georgia. In his complaint, debtor seeks a permanent injunction barring Aleta Frechtman from proceeding with her fraudulent conveyance action in New York. On July 30, 1992, Honorable Lamar W. Davis, Jr., Chief Bankruptcy Judge for the Southern District of Georgia, issued a

Temporary Restraining Order preventing Aleta Frechtman from taking any action whatsoever in case No. 32736-91 pending in the New York Supreme Court, until further order of the court.

The Bankruptcy Code provides that "on 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 [11] to a case under chapter 7 of this title [11] or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause. . . ." 11 U.S.C. §1112(b). Bad faith in filing a Chapter 11 petition is "cause" under §1112(b) to dismiss the case. In re: Albany Partners, Ltd., 749 F.2d 670 (11th Cir. 1984). "Good faith," a requirement for confirmation of a Chapter 11 plan, 11 U.S.C. §1129(a)(3), is not defined in the Bankruptcy Code, but must be ascertained on a case-by-case basis. In determining whether a Chapter 11 petition was filed in good faith, the court "may consider any factors which evidence 'an intent to abuse the judicial process and the purposes of the reorganization provisions'" In re: Phoenix Picadilly, 849 F.2d 1393, 1394 (11th Cir. 1988). "The petition must be filed with the honest intent and genuine desire to utilize the provisions of [the Bankruptcy Code] for its intended purpose -- to effectuate a corporate reorganization -- and not merely as a device to serve some sinister and unworthy purpose of the petitioner. . . ." In re: Waldron, 785 F.2d 936, 939 (11th Cir. 1986) [quoting In re: Southern Land Title Corp., 301 F.Supp.

379, 428 (E.D. La. 1968)] (emphasis added in Waldron). Although "good faith" is a confirmation requirement, where it appears from the outset that a Chapter 11 petition was not filed in good faith, the case may be dismissed pursuant to §1112(b) without a hearing on confirmation. Weathers Field Farms, Inc. v. Inter-State Bank, 15 B.R. 282, 283 (D.C. Vt. 1981).

It is clear from the facts of this case that debtor has abused the provisions, purpose, and spirit of Chapter 11 with this petition and shows a lack of commitment to the rehabilitative intent of Chapter 11. This Chapter 11 proceeding is nothing more than a continuation of an ongoing domestic dispute in the New York Supreme Court. The Eleventh Circuit recently held that the provisions of the Bankruptcy Code should not "be used as a weapon in an on-going battle between former spouses over the issues of alimony and child support or as a shield to avoid family obligations. It is important that '[t]he bankruptcy code . . . not be used to deprive dependents, even if only temporarily, of the necessities of life.'" Carver v. Carver, 954 F.2d 1573, 1579 (11th Cir. 1992) [quoting Caswell v. Long, 754 F.2d 608, 610 (4th Cir. 1985)], cert. denied, ___ S.Ct. ___, 1992 WL 193743 (1992). Federal courts are to avoid becoming entangled in "family law matters best left to state court." Carver, supra, at 1578.

That is not to say, of course, that an ongoing domestic dispute in state court precludes either litigant from utilizing the

reorganization provisions of the Bankruptcy Code. However, where under the circumstances it is clear that a bankruptcy petition has been filed solely to thwart a state law proceeding by use of the automatic stay, rather than to reorganize, a finding of bad faith is warranted. Debtor's schedules reflect monthly expenditures in excess of Eleven Thousand and No/100 (\$11,000.00) Dollars and income of only One Thousand and No/100 (\$1,000.00) Dollars. In this case, the debtor's clear inability to effectuate a successful reorganization and his ongoing domestic dispute with Aleta Frechtman in the New York Supreme Court reveals that his intention in filing a Chapter 11 petition was not to reorganize but solely to gain a tactical advantage in this ongoing divorce dispute.

[Bankruptcy] Courts are not required to retain cases on their dockets which were not filed to achieve the valid and legitimate purposes designed by Congress through the enactment of the rehabilitative provisions of Chapter 11. To do so would be a total disregard of the basic overriding purpose of the system designed by Congress which was to enable a financially distressed Debtor to achieve rehabilitation.

Thus, if it evident from the outset that there is no reasonable expectation that the financial situation of a debtor can be successfully repaired through the reorganization process, and the case is filed solely to use the bankruptcy forum to litigation a one-party dispute, "cause" is present which warrants a dismissal because such case is not filed in good faith.

Matter of Welwood Corp., 60 B.R. 319, 323 (Bankr. M.D. Fla. 1986).

Based on debtor's lack of good faith in filing his Chapter 11

petition, "cause" exists under 11 U.S.C. §1112(b) to dismiss this Chapter 11 case. As debtor's Chapter 11 case is dismissed, the issues presented by Aleta Frechtman's motion for a change of venue or debtor's complaint in the adversary proceeding are not addressed.

It is therefore ORDERED that the Chapter 11 case is dismissed;

further ORDERED that the Temporary Restraining Order barring Aleta Frechtman from proceeding with case No.32736-91 pending in the Supreme Court of New York is vacated;

further ORDERED debtor's complaint in adversary proceeding No. 92-2051 is dismissed.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia
this 19th day of November, 1992.