

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)

DAVID and DELMA FISCHER,)

DEBTORS)

CASE NO. BK87-2584

CH. 12

MEMORANDUM

Hearing on Motion to Dismiss by Debtors and Motion to Dismiss or Convert by Federal Land Bank (Filing #65 and #80) was held on August 10, 1988. David Pederson of Murphy, Pederson, Piccolo & Pederson, North Platte, Nebraska, appeared on behalf of the Federal Land Bank. Stanley Goodwin of Colfer, Lyons, Wood, Malcom & Goodwin, McCook, Nebraska, appeared on behalf of the Farmers State Bank of Maywood, Nebraska. Wayne Griffin of Schneider & Griffin, North Platte, Nebraska, appeared on behalf of Southwest Implement, Inc. David and Delma Fischer, debtors, appeared pro se.

Debtors have an absolute right to dismiss a Chapter 12 case. 11 U.S.C. § 1208(b). However, creditors claim debtors have engaged in fraud during the case which would make them subject to conversion to Chapter 7 pursuant to 11 U.S.C. § 1208(d). Creditors argue that to permit debtors to dismiss in the face of fraud allegations is to permit debtors to abuse the bankruptcy process. Both debtor and creditor make a good point, supported by statutory authority.

The Bankruptcy Court has the authority to condition dismissals and the effect of dismissals to protect the integrity of the bankruptcy process. See In re Lerch, 85 B.R. 491 (Bkrtcy. N.D. Ill. 1988). Section 349 governs the effect of dismissals. That section provides, in part, that "unless the court orders otherwise," the dismissal does not prejudice the debtor on refiling.

To retain this case pending a trial on ~~creditors'~~ allegation would keep debtors in the Bankruptcy Court against their will for several months. Such result would be directly contrary to Section 1208(b). To permit voluntary dismissal in the face of allegations of fraud, without some limit on refiling, would be contrary to the ~~spirit~~ of Section 1208(d).

DISTRICT OF NEBRASKA

AT _____ M

88 SEP 12 1988

Judith M. Napier
Clerk, U.S. Bankruptcy Court

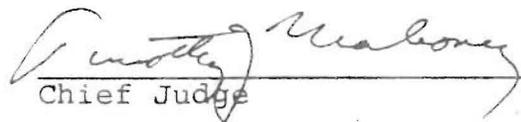
By _____ Deputy

In an attempt to permit congressional intent to be honored, the Court will grant the motion to dismiss by debtors, but, pursuant to the authority of Section 349(a), the Court prohibits debtors from filing another petition under Chapter 11, 12 or 13 for 180 days. The Court finds the allegations of fraud and mismanagement as stated by the creditors' motion and the affidavits admitted at the hearing substantiating the allegations and the voluntary dismissal in response filed by the debtors, to be sufficient cause to invoke this refiling limitation.

Separate journal entry to be entered.

DATED: September 9, 1988.

BY THE COURT:



Chief Judge