

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF)
)
 JUNIOR C. NACHTIGAL and)
 JANIS GAYLENE NACHTIGAL,) CASE NO. BK86-1122
)
 DEBTORS) Chapter 12

MEMORANDUM OPINION

This matter was heard September 30, 1987, upon Farmers State Bank and Trust Company's ("Bank") motion to dismiss this Chapter 12 petition. Clay Statmore appeared for debtors, and Rick Lange appeared for Bank.

Facts

Debtors filed for Chapter 13 relief in April 1986. In January 1987, debtors moved to convert to Chapter 7, and the Court so ordered. On March 23, 1987, the Bankruptcy Court entered an ex parte order dismissing debtors' Chapter 7 case because debtors failed to appear at the Section 341 meeting as ordered by the Court. At Bank's request, on April 30, 1987, the Court revoked its dismissal order and on July 6, 1987, granted Bank relief from the automatic stay. A hearing on Bank's foreclosure and replevin actions were scheduled for August 5, 1987. On that date debtors filed a Chapter 12 petition.

Analysis

The Court sustains Bank's motion for dismissal.

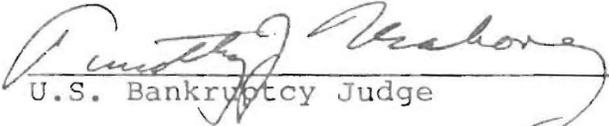
Under certain circumstances, Section 706 of the Bankruptcy Code permits conversion from a Chapter 7 case to a Chapter 12 case. However, the facts show no act to convert as required by Bankruptcy Rule 1017(d) and 9014. Therefore, debtors have two bankruptcy cases pending before this Court.

It is well settled that subsequent bankruptcy filings for the purpose of invoking the automatic stay, unless changed circumstances are shown, is an abuse of the bankruptcy process. In re Dyke, 58 Bankr. 714, 717 (Bankr. N.D. Ill. 1986). See also Freshman v. Atkins, 269 U.S. 121 (1925) (holding that the pendency of a voluntary petition prohibits consideration of a second petition with the same debts).

Section 105(e) of the Bankruptcy Code gives the Court authority to take appropriate and necessary action to prevent an abuse of process. The Court finds that debtors have shown no changed circumstances and that debtors' filing was for the purpose of reinvoking the automatic stay previously lifted by the Court in the Chapter 7 case. The Court finds this an abuse of process and thus sustains Bank's motion to dismiss.

DATED: November 9, 1987.

BY THE COURT:


U.S. Bankruptcy Judge

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