

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF: : CASE NUMBER:-04-98160-PWB
: :
BEVERLY BROWN, : CHAPTER 7
: :
: JUDGE BONAPFEL
Debtor. :

ORDER DENYING MOTION TO DISMISS AND DIRECTING NOTICE TO CREDITORS OF TIME FOR FILING CLAIMS

The Debtor filed this Chapter 7 case on November 15, 2004, without consulting an attorney. She apparently expected to discharge two unsecured debts of about \$25,600 while retaining her residential real estate and car as exempt property.

The Chapter 7 Trustee believes that the sale of the Debtor's real estate will produce enough money (after accounting for the Debtor's exemption, mortgage debt, and expenses of sale and administration) to pay a 60% to 80% dividend to unsecured creditors. Consequently, the Trustee has the duty to market and sell the Debtor's real estate. 11 U.S.C. § 704(1).

Faced with the sale of her residence, the Debtor, now represented by counsel, has requested the voluntary dismissal of her case pursuant to 11 U.S.C. § 707(a). In essence, she asserts that she was the victim of a bankruptcy petition preparer who did not provide adequate legal counsel with regard to the potential consequences of filing a bankruptcy case. In this regard, she invokes the principle of *In re Anderson*, 79 B.R. 482 (Bankr. S.D. Cal. 1978), in which the bankruptcy court permitted the Debtor to voluntarily dismiss her case because a paralegal who had assisted the Debtor in the bankruptcy filing had engaged in the unauthorized practice of law.

The Court is sympathetic to the plight of the Debtor and agrees that she, like many other debtors who choose to proceed in bankruptcy without engaging a qualified bankruptcy lawyer, has

become the “victim” of a bankruptcy petition preparer because the bankruptcy filing has resulted in unintended and unexpected consequences. Nevertheless, the situation here, unlike that in *Anderson*, does not involve any unauthorized practice of law. To the contrary, it appears that the petition preparer explicitly advised the Debtor to consult an attorney if she had any questions. Thus, the bankruptcy petition preparer appears to have operated within the legal rules that govern petition preparers; the preparer prepared papers like an automaton in accordance with the Debtor's direction and provided no guidance whatsoever.

This Court has pointed out the difficulties that consumer debtors face when they attempt to proceed without a lawyer. *In re Egwim*, 291 B.R. 559, 567-69, 571-73 (Bankr. N.D. Ga. 2003). But the fact that a debtor proceeds without legal counsel and later finds out that the bankruptcy filing was a bad choice does not constitute a valid ground for voluntary dismissal of a case where prejudice to other parties will occur. The prejudice here of course, is that creditors with the reasonable prospect of receiving a significant payment on their claims may never recover anything if the Debtor regains control of her assets. Accordingly, the Court must deny the Debtor's motion to dismiss.

The Debtor asserts that the sale of her residence will impose a significant hardship on her and her sixteen year old grandchild. Although that hardship is insufficient to permit dismissal of the case if creditors will be prejudiced, it is a factor that should be taken into account during the administration of this case. In this regard, whether there will be claims to be paid in the case should be determined promptly. Therefore, the Court will direct the Clerk to proceed to notify creditors of the possibility of the payment of a dividend pursuant to FED. R. BANKR. P. 3002(c)(5).

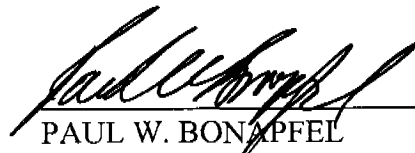
Based on the foregoing, it is hereby ORDERED and ADJUDGED as follows:

1. Debtor's motion to dismiss is denied.

2. Pursuant to FED. R. BANKR. P. 3002(c)(5), the Clerk is directed to notify creditors of the possibility of a dividend in this case and that they may file proofs of claims within 90 days after the mailing of the notice.

The Clerk is directed to mail a copy of this order to the Debtor, her counsel, the Chapter 7 Trustee, the United States Trustee, and all parties in interest.

IT IS SO ORDERED this 4 day of March, 2005.



PAUL W. BONAPFEL
UNITED STATES BANKRUPTCY JUDGE