

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

Hong V. Nguyen,

Case No. 23-11899

Debtor.

ORDER DENYING MOTION TO DISMISS (DOC. 47)

Debtor Hong V. Nguyen filed this chapter 7 bankruptcy on August 21, 2023. In February 2024, creditor Radiance Capital Receivables Twelve, LLC filed a nondischargeability action against Mr. Nguyen under Bankruptcy Code §§ 523 and 727. That adversary proceeding is set for trial on November 1, 2024 (previously October 25, 2024).

On October 1, 2024, Mr. Nguyen moved to dismiss this bankruptcy because he “suffered a head injury that cause him to be hospitalized for four days starting July 19, 2024 that caused him to incur over \$84,000.00 in medical expenses and the Debtor does not have medical insurance.” (*See* motion to dismiss, doc. 47). He wants to “refile a new Chapter 7 to help discharge the new medical debts.” (*See id.*). The court held a hearing on that motion on October 8, 2024, and heard argument from Mr. Nguyen’s counsel, as well as testimony from Mr. Nguyen. It also heard argument from counsel for Radiance, counsel for the Bankruptcy Administrator, and the chapter 7 trustee, all of whom oppose dismissal. Having carefully considered the argument and evidence, for the reasons discussed below, the court denies Mr. Nguyen’s motion without prejudice.

The court may dismiss a chapter 7 at a debtor’s request “only for cause” *See* 11 U.S.C. § 707(a). “A debtor has no absolute right to a voluntary dismissal of a [c]hapter 7 case.” *In re Yocum*, 488 B.R. 748, 751 (Bankr. N.D. Ala. 2013). The bankruptcy court “must view the facts case-by-case to determine whether sufficient cause exists for dismissal.” *See id.* “The burden for demonstrating cause is on the debtor and determination of cause is within the sound

discretion of” this court. *See id.* (citations omitted). “If the debtor shows cause, the court nevertheless should deny the motion if there is any showing of prejudice to creditors.” *See id.* (citation and quotation marks omitted).

A bankruptcy court should generally consider the following when ruling on a voluntary motion to dismiss and whether prejudice exists:

- (1) Whether all of the creditors have consented;
- (2) Whether the debtor is acting in good faith;
- (3) Whether dismissal would result in a prejudicial delay in payment;
- (4) Whether dismissal would result in a reordering of priorities;
- (5) Whether there is another proceeding through which the payment of claims can be handled; and
- (6) Whether an objection to discharge is pending.

See id.

Nearly all factors for prejudice to creditors weigh against dismissal, and in particular factors (1), (2), and (6). None of the creditors have consented, and Radiance – which has an objection to discharge pending – has filed an objection to the motion to dismiss. *See, e.g., In re Mercer*, No. 09-71621, 2010 WL 5209254, at *4 (Bankr. M.D. Ga. Dec. 16, 2010). The timing of the motion to dismiss does not demonstrate good faith, as Mr. Nguyen waited until about three weeks before the nondischargeability trial to move to dismiss to add the medical debt. *See, e.g., In re Surace*, No. 07-77545-MHM, 2009 WL 6498187, at *1 (Bankr. N.D. Ga. June 12, 2009).

Radiance has objected to discharge on several grounds, including (1) under § 727(a)(2) because the debtor allegedly intentionally concealed property of the estate; (2) under § 727(a)(4) because the debtor allegedly made multiple false oaths and accounts in his bankruptcy; and (3)

under § 727(a)(3) because the debtor allegedly failed to preserve adequate records regarding his financial condition. Radiance has expended significant time and money pursuing these claims. Mr. Nguyen filed this case in August 2023 but did not amend his schedules to add missing assets until September 2024, after Radiance raised the issue in a motion for summary judgment.

Radiance and the other creditors will be prejudiced if Mr. Nguyen is allowed to dismiss now and refile because Mr. Nguyen will presumably be able to cure some or all of the problems which gave rise to the § 727 claims. If Radiance does not prevail on its § 727 claims at trial, then the court will entertain another motion to dismiss from Mr. Nguyen before he receives a discharge so that he can refile to add the medical debt in a new case. However, if Radiance prevails on those claims and Mr. Nguyen does not receive a discharge in this case, he can seek discharge of his postpetition medical debts in a new case after the conclusion of this one. Under this arrangement, Mr. Nguyen will have the opportunity to discharge the new medical debt but Radiance and the other creditors will have their day in court on the § 727 claims.

To the extent the court has not specifically addressed any of the parties' arguments at the hearing or in other filings with this court, it has considered them and determined that they would not alter this result. Because the factors demonstrating prejudice to creditors weigh against dismissal, the court denies the motion to dismiss (doc. 47) without prejudice.

Dated: October 8, 2024


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE