

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN RE: JIM EARL ARON

CASE NO. 03-13235

OPINION

On consideration before the court is a motion filed by the above captioned debtor, Jim Earl Aron, (Aron and/or debtor), to voluntarily dismiss his bankruptcy case; an objection to said motion having been filed by HAM Management and Development Co., LLC, (HAM); and the court, having heard and considered same, hereby finds as follows, to-wit:

I.

The court has jurisdiction of the parties to and the subject matter of this contested proceeding pursuant to 28 U.S.C. §1334 and 28 U.S.C. §157. This is a core proceeding as defined in 28 U.S.C. §157(b)(2)(A) and (O).

II.

FACTUAL BACKGROUND

The debtor, Jim Earl Aron, originally filed a voluntary petition under Chapter 7 of the Bankruptcy Code on May 19, 2003. Thereafter, on October 7, 2003, the debtor filed a motion to dismiss the bankruptcy case which was opposed by the Office of the U.S. Trustee (UST), the Chapter 7 trustee, Stephen P. Livingston, (trustee), as well as, the debtor's former spouse, Sandra (Aron) Bryan.

On December 5, 2003, the UST filed a complaint objecting to the debtor's discharge (Adv. Proc. No. 03-1029) asserting that the debtor had failed to disclose pertinent information

regarding his financial condition, as well as, certain business transactions. The trustee, one day earlier, had filed a similar complaint (Adv. Proc. No. 03-1327).

As a result of several hearings concerning the debtor's motion to dismiss, as well as, the allegations set forth in the complaints filed by the UST and the trustee, the court entered orders on December 23, 2003, and March 1, 2004, requiring the debtor to fully disclose all of his assets, liabilities, and financial transactions. These orders, in pertinent part, provided the following:

1. Order dated and entered on December 23, 2003:

The motion to dismiss will be held in abeyance pending a related hearing in this bankruptcy case which is scheduled for January 9, 2004. In the interim, the court directs that the following requirements be undertaken by the debtor, to-wit:

1. The bankruptcy schedules must be corrected and supplemented to reflect the following:
  - a. An accurate listing of all real property assets owned by the debtor, including a summary description that would sufficiently identify the property's location and its present use, e.g. commercial building, residential dwelling, etc. The market value of the properties should be reflected, as well as, any and all indebtednesses that might encumber the property.
  - b. A similar listing of all personal property assets or intangible assets owned by the debtor including stocks, bonds, or other investment interests.
2. The debtor is directed to provide the following:
  - a. A listing disclosing all transfers of property, real, personal, or otherwise, which have occurred post-petition.
  - b. A listing disclosing all transfers of property, real, personal, or otherwise, which occurred within one year prior to the filing of the bankruptcy petition by the debtor.

- c. An accounting of all income generated by and received the debtor post-petition from any of his assets.
- d. An accounting and description of all transaction in which the debtor has participated with Automotive Finance Company on a post-petition basis.
- e. A listing and description of any and all assets acquired by the debtor post-petition including the method and source of the payment therefor, whether in cash or by financing.

To insure the aforementioned information is accurate, all inclusive, and reliable, the debtor is directed to consult with his accountant in Booneville, Mississippi, as well as, any individual lender or lending institution with which the debtor has engaged in financing transactions.

The aforesaid information shall be furnished to the court with copies to the Office of the United States Trustee, and the Chapter 7 trustee, Stephen P. Livingston, on or before January 8, 2004.

In addition, Cliff Easley, the attorney for the debtor's former spouse, Sandra Bryan, shall furnish on or before January 8, 2004, to this court, debtor's counsel, the Office of the U.S. Trustee, and the Chapter 7 trustee, an itemization of his fees and expenses incurred on behalf of his client in connection with the above referenced bankruptcy case. Debtor's counsel will be permitted a period of time thereafter, if necessary, to comment on the reasonableness of any fees and expenses so itemized.

The court deems these requirements to be mandatory whether this bankruptcy case is dismissed or not.

2. Supplemental Order dated February 20, 2004, and entered March 1, 2004:

This order supplements that certain order entered by the court in the above captioned bankruptcy case on December 23, 2003, as amended by that certain order entered on January 9, 2004. The court directs that the following requirements be undertaken:

1. All bankruptcy schedules must be supplemented to appropriately reflect the information that has been disclosed to the court pursuant to the aforementioned order entered on December 23, 2003. This supplementation shall be completed on or before March 11, 2004. In the event it is not so completed, a fine of \$200.00, per day, shall be assessed against the debtor's attorney until said supplementation is completed.

2. As a condition of the dismissal of this bankruptcy case, the debtor shall pay Attorney Cliff R. Easley, Jr., who has represented the aforementioned creditor, Sandra Bryan, the sum of \$7,115.00, as attorney fees and expenses applicable to services which directly led to the disclosure of additional information by the debtor. Said payment shall be made in full prior to the case being finally dismissed.

3. That certain adversary proceeding filed in the bankruptcy case of Automotive Finance, Case No. 99-20087, by the above captioned debtor, James Earl Aron, shall be amended to reflect that Automotive Finance is the appropriate party plaintiff. That said amendment to the complaint shall be completed on or before March 11, 2004.

4. The Chapter 7 trustee, Stephen P. Livingston, is to immediately return a check in the sum of \$71,781.81, to Joe D. Pegram, the attorney for the debtor. This check represents the net proceeds realized from the sale of a parcel of property owned by the debtor which was sold after the filing of this bankruptcy case without the approval of this court. That said check shall be held in trust by the debtor's attorney pending the resolution of a dispute between the debtor and the holders of a deed of trust, recorded post-petition, which encumbered the aforesaid parcel of property sold by the debtor. The deed of trust holders are to be notified by the Chapter 7 trustee of the whereabouts of these proceeds and that the said proceeds are being held in trust pending the resolution of the dispute. If the dispute is resolved amicably, the debtor's attorney may disburse the proceeds in keeping with any agreement reached by the debtor and the deed of trust holders. If the dispute is not resolved amicably, the debtor's attorney is ordered to interplead the proceeds into an appropriate state court forum where the entitlement to said proceeds can be litigated between the debtor and the deed of trust holders.

Once requirements 1, 2 and 3, hereinabove, have been completed, this court will enter an order dismissing the above captioned bankruptcy case, particularly since no other parties or creditors, other than those noted hereinabove, have filed objections to said dismissal. Requirement 4 shall remain binding on the debtor and the debtor's attorney even if this case is dismissed.

The debtor ultimately complied with the requirements set forth in the aforementioned orders. Thereafter, both the trustee's complaint and the UST's complaint were withdrawn

respectively by orders entered on March 19, 2004, and April 1, 2004. The bankruptcy case was then dismissed on April 15, 2004. The trustee's final report was filed on April 23, 2004, and an order was entered closing the case on May 17, 2004. The debtor, of course, did not receive a discharge of any of his financial obligations.

On September 23, 2005, HAM filed its motion to reopen the debtor's individual Chapter 7 bankruptcy case and to consolidate it with an earlier Chapter 11 business bankruptcy case which had been filed by the debtor, In re: Automotive Finance, Case No. 99-20087. The Automotive Finance case, which had also been closed earlier, had been reopened on May 9, 2003. Following a hearing, the court permitted the reopening of the debtor's Chapter 7 individual bankruptcy case, but denied consolidation because the two cases were completely unrelated.

Thereafter, HAM filed an adversary proceeding, No. 06-1062, against the debtor which involves the debtor's ownership interest in HAM. HAM's complaint sought compensatory, punitive, and consequential damages from the debtor because of his alleged fraud, breach of contract, negligence, and bad faith. The complaint sought to terminate the debtor's membership in HAM, the dissolution of HAM, and the vesting of HAM's single asset in the other two owners, David Hill and David Minyard.

A case, practically identical to the bankruptcy adversary proceeding, was already underway in the Chancery Court of Lafayette County, Mississippi, where HAM's real estate asset is located. The posture of that proceeding is slightly different in that the debtor initiated the chancery court cause of action against HAM. The same allegations set forth in the

bankruptcy adversary proceeding were asserted by HAM in a counterclaim filed against the debtor.

On April 21, 2006, the debtor filed in the adversary proceeding a motion to dismiss or to abstain. Following the consideration of the parties' arguments, the court entered an order of abstention on May 31, 2006, pursuant to 28 U.S.C. §1334(c)(1). In this order, the court noted that, at the conclusion of the chancery court proceeding, it would review this matter to determine if any issues in HAM's adversary complaint required further consideration by this court.

HAM also filed a motion to remove the chancery court case to the United States District Court for the Northern District of Mississippi on September 23, 2005. The district court remanded the matter to the chancery court by an order entered April 18, 2006.

### III.

#### DISCUSSION

At the hearing on the debtor's motion to dismiss, HAM's attorneys asserted that the debtor had perpetrated a fraud upon this court. While the court would readily acknowledge that the debtor's original schedules were woefully incomplete and inadequate, after the painstaking efforts described hereinabove, the schedules were completed and appropriate disclosures were made concerning the debtor's financial activities. Candidly, the information provided by the attorney representing the debtor's former spouse was invaluable in getting this accomplished. The Office of the U.S. Trustee, the case trustee, and this court were all determined that accurate disclosures would be made prior to the case being dismissed. At that time, the only creditor expressing any interest in the debtor's case was his former spouse who had not received payment of the monies awarded to her in the domestic relations proceeding.

Since this case has been reopened, the only creditor expressing any interest is HAM. The debtor did disclose, somewhat vaguely, the HAM asset in the schedules that he previously filed. He indicated that he had a one-third interest in Lafayette County land, Highway 7 South, with David Hill and David Minnard [sic] having the other two-thirds. The property was described as being subject to the claim of Merchants and Farmers Bank in the sum of \$900,000.00. The value of the property was reflected as \$850,000.00. There was also a notation, which coincides with the mathematical calculation, that \$50,000.00 of the Merchants and Farmers claim was unsecured.

At the most recent hearing, this court was advised that the Lafayette County Chancery Court had set a trial date in March, 2007. The chancery court is quite competent to resolve these parties' state law disputes in a reasonably expeditious manner.

Because there is clearly no interest in the administration of this bankruptcy case other than that expressed by HAM, this court is of the opinion that it would be unreasonable to maintain this case in an active posture until the chancery court litigation is completed. There is certainly the likelihood of an appeal by the non-prevailing party. The HAM real property is going nowhere in the interim. As such, this case will be placed in a dismissed status, much like Adversary Proceeding No. 06-1062, until the conclusion of the chancery court proceeding. At that time, either party may request that this bankruptcy case be reopened to address matters that might affect the administration of the bankruptcy estate or for further consideration of the adversary proceeding. The court will reopen the bankruptcy case at that time without requiring a re-opening fee.

An order, consistent with this opinion, will be entered contemporaneously herewith.

This the 24th day of September, 2006.



/s/ David W. Houston, III  
DAVID W. HOUSTON, III  
UNITED STATES BANKRUPTCY JUDGE