UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TRANSMITTAL SHEET FOR OPINIONS FOR POSTING

Will this opinion be published?	No
Bankruptcy Caption:	In re Abraham N. Tofa
Bankruptcy No.:	23bk15233
Date of Issuance:	September 13, 2024
Judge:	Deborah L. Thorne
Appearances:	
Movant/PRO SE	Corey Wiggins
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Summary:

Complainant filed a motion requesting the court investigate the debtor's filings and dismiss the bankruptcy case for bad faith. HELD: The motion was denied.

United States Bankruptcy Court, Northern District of Illinois

JUDGE	Deborah L. Thorne	**Case No.**	23-15233
DATE	September 13, 2024	**Adversary No.**	
CASE TITLE	In re Abraham N. Tofa.		
TITLE OF ORDER	Order Denying Motion to Investigate False Oaths, False Declarations, Bad Faith Filings and to Dismiss Bankruptcy Case for Bad Faith Filings		

STATEMENT

This matter comes on Corey Wiggins' Motion to Investigate False Oaths, False Declarations, Bad Faith Filings and to Dismiss Bankruptcy Case for Bad Faith Filings (Motion). The court has reviewed the Motion and heard arguments from Wiggins[1] and counsel for Abraham N. Tofa. The Motion will be denied as explained below.

Background

Tofa filed a voluntary chapter 7 petition in November 2023. Previously, in 2022, Tofa's company A.B. Tofa, LLC had filed a voluntary chapter 7 case, Case Number 22-14012. The schedules in the A.B. Tofa case listed a disputed claim in the amount of $200,000 owed to Wiggins. (Docket 1, Case No. 22-14012.) The A.B. Tofa case was closed in August 2023, after a finding by the chapter 7 trustee that there were no assets to distribute. (Docket 37-38, Case No. 22-14012.) As a chapter 7 entity case, A.B. Tofa was not entitled to a discharge.[2]

Similarly, the schedules for Tofa's individual case listed an unsecured debt owed to Wiggins in the amount of $200,000. (Docket 2, Schedule E/F.) The claim in the individual case was not listed as disputed but rather was characterized as a "Contract Dispute." Wiggins was given notice of the case. The chapter 7 panel trustee held a meeting of creditors as required under 11 U.S.C. § 341, and on

[1] Wiggins has made a conscious decision not to employ counsel. (Docket 19, Adv. Dkt in Case No. 24-00044.)
[2] Shortly after Tofa's individual chapter 7 was filed, Wiggins filed a motion to reopen the A.B. Tofa case. (Docket 40.) The court denied the motion. (Docket 43.)

February 26, 2024, the panel trustee reported that there were no assets to administer. On February 6, 2024, an order of discharge was entered.[3] On February 2, 2024, Wiggins filed an adversary case objecting to the discharge of Tofa under section 727(c), (d) and (e) of the Bankruptcy Code.[4] On February 12, Tofa filed a Notice of Appeal seeking, among other things, to have Tofa's discharge revoked or dismissed "due to Debtor not listing debt properly." (Docket 20.) A short time later, the Notice of Appeal was withdrawn. (Docket 30.)

In the present Motion, Wiggins requests that the court investigate why Tofa has listed a claim on behalf of Wiggins valued at $200,000, when there has been no judgment in the state court case filed in September 2020 as Case No. 2020 CH 05685. The state court complaint, which was stayed by the filing of both the entity and the individual chapter 7 cases, seeks damages in an amount in excess of $50,000 for breach of contract and unjust enrichment.

The Motion also seeks an order that Tofa is not entitled to a discharge, based on sections 707 and 727 of the Bankruptcy Code.[5] The court has sought at every turn (but perhaps sometimes failed) to understand Wiggins' precise issue(s) and arguments. Based on the Motion and Wiggins' oral statements to the court, the court understands that Wiggins alleges that Tofa has acted in bad faith by listing the claim in the amount of $200,000, and he requests that the court "conduct a thorough investigation into Debtor's bankruptcy filings, including but not limited to the alleged $200,000.00 debt owed to Movant and the $50,000.00 debt allegedly owed to Debtor's legal representative." (Docket 36, at 6.)

At the same time, Wiggins is also the plaintiff in an open adversary proceeding, case number 24-00044. His amended complaint in this adversary proceeding requests an order denying Tofa a discharge under section 727 and an order that Wiggins' claim is not dischargeable under section 523 (Docket 22, Case No. 24-00044). Because the facts alleged in this Motion are most relevant to section 707, and

[3] On April 4, 2024, the court entered an order vacating the discharge. (Docket 35.)
[4] Although there was some controversy over the timeliness of the filing of the adversary case, the court deemed it timely in an order entered on April 4, 2024. (Docket 33.)
[5] The Motion is closely linked to the adversary case which seeks denial of discharge under sections 727 and 523.

because Wiggins' claims under 727 are pending in the adversary case, the court here addresses only the 707 claims, which in any case appear to be the primary basis for this Motion.

The court will deny Wiggins' Motion for the reasons discussed below.

Discussion

1. Jurisdiction

The court has jurisdiction over this proceeding under 28 U.S.C. § 1334(a) and the district court's Internal Operating Procedure 15(a). Venue is proper under 28 U.S.C. 1409(a). Motions such as this, which might impact a debtor's right to a discharge, are core proceedings under 157(b)(2)(I) and this court has jurisdiction to consider it.

2. The Bankruptcy Court Is Not Empowered to "Conduct Investigations"

In asking the court to investigate, Wiggins misunderstands the powers of the bankruptcy court. The court has jurisdiction to hear complaints and decide contested matters based upon the facts and law pled by the parties appearing before it. While the court is mindful that Wiggins alleges that Tofa may have breached a contract, may have been unjustly enriched, and may not be entitled to a discharge, these questions are already before the court in the Adversary Case (Docket 1 and 22, Case No. 24-00044). Any investigation needed to prove the allegations included in the Adversary Case and for which Wiggins bears the burden of proof, must be conducted by Wiggins and not the court. The Federal Rules of Bankruptcy Procedure provide for discovery to conduct investigations needed to prove allegations of a complaint.

3. The Motion to Dismiss the Case as a Bad Faith Filing is Denied

Wiggins alleges that the individual chapter 7 case should be dismissed as a bad faith filing. Allegations of a pro se complainant are held to "less stringent standards than formal pleadings drafted by lawyers," but they must nonetheless be sufficient "to support [a] claim which would entitle him to relief." *Haines v. Kerner,* 404 U.S. 519, 520-21 (1972).

Section 707(a) of the Bankruptcy Code provides that a case under chapter 7 may be dismissed only after notice and a hearing and only for cause, including "unreasonable delay by the debtor that is

prejudicial to creditors . . . [and] nonpayment of any fees or charges required under chapter 123 of title 28." While the list is not exclusive, courts generally examine whether the case was filed in bad faith. The bad faith inquiry looks at the totality of circumstances, focusing on a debtor's pre- and post- petition conduct. *In re Collins,* 250 B.R. 645, 653–654 (Bankr. N.D. Ill. 2000); *In re Horan,* 304 B.R. 42 (Bankr. D. Conn. 2004). The facts required to mandate dismissal are as varied as the number of cases. *Id.* (quoting *In re Bingham,* 68 B.R. 933, 935 (Bankr. M.D. Pa. 1987)). Some of those factors include: whether the debtor has manipulated the bankruptcy process to frustrate creditors; whether the debtor is unwilling to make lifestyle changes to pay his debts; or whether the debtor concealed or misrepresented assets and/or sources of income. *In re Zick,* 931 F.2d at 1129; *Collins,* at 654–55; *In re Sekendur*, 334 B.R. 609, 618–19 (Bankr. N.D. Ill. 2005). None of these factors has been pled by Wiggins to support the Motion to dismiss for bad faith under section 707.

Wiggins did not cite case law supporting his allegations under section 707, but in oral statements, Wiggins alleged that Tofa's bankruptcy filings were an abuse of judicial process because they prevented the resolution of the state court dispute between Tofa and Wiggins. In other words, Wiggins seems to allege that Tofa's bankruptcy petition, and the resulting automatic stay, distorted traditional judicial process. Wiggins also argues that Tofa committed a false oath by estimating Wiggins' claim in his bankruptcy schedules. Wiggins stated that the claim was inaccurate in amount as well as unfounded, as there had been no judgment in the state court litigation underlying it.

Wiggins misunderstands the function and purpose of the automatic stay. The automatic stay, required by section 362, is not an abuse of judicial procedure; it is one of the most important elements of the Bankruptcy Code. The automatic stay pauses all attempts to collect a debt from a debtor who files a petition for bankruptcy, including, for example, phone calls from creditors, a pending foreclosure, and lawsuits that seek money damages.[6] In creating the automatic stay—which applies *automatically*, the

[6] "The stay provision of subsection (a)(1) is drafted so broadly that it encompasses all types of legal proceedings, subject only to the exceptions provided in section 362(b). It even covers actions or proceedings against the debtor when the debtor acts solely in a fiduciary capacity. Except as provided in section 362(b), the stay prohibits proceedings on both dischargeable and nondischargeable debts." 3 Collier on Bankruptcy ¶ 362.03.

moment a debtor files his petition—Congress intended two things: first, to allow breathing room for the debtor; and second, to the extent assets exist in a case, to liquidate them in an orderly manner and make a distribution, as provided for in the Bankruptcy Code. These purposes of the automatic stay reflect the fundamental balancing act of bankruptcy: to provide a fresh start to the debtor and an equitable distribution of assets to his or her creditors. *See, e.g. Grogan v. Garner,* 498 U.S. 279, 286-87 (1991).

As he misapprehends the automatic stay, Wiggins likewise misunderstands the requirement that debtors list, in their initial schedules, any claims that may exist against them. Wiggins alleges that Tofa committed fraud by estimating that he may owe Wiggins $200,000 rather than the $50,000 (or more) that Wiggins sought from Tofa in the state court lawsuit. Just as the Code provides for an automatic stay, it also *requires* debtors to list the creditors who may have claims against them and to estimate those claims. 11 U.S.C. 521(a); Rule 1007(a); *see* U.S. Bankruptcy Court, Official Form 106E/F. Because an accounting of potential creditors is necessary for an orderly distribution of assets, the Code defines "claim" in the broadest possible manner: as "any right to payment, whether or not reduced to judgment."[7] 11 U.S.C. 101.05. By requiring debtors to list all of their creditors, Congress sought to ensure that all interested parties will receive notice of the debtor's discharge, protecting his or her fresh start, as well as to ensure that anyone with a claim will receive a distribution from the debtor's estate—if the estate has assets. Where an estate has no assets, there is nothing to distribute to creditors.[8]

Applying these fundamentals of bankruptcy law to the facts of this case and to the allegations raised by Wiggins, the court finds no behavior that would justify a dismissal for bad faith. The panel trustee did not report any behavior supporting a finding of bad faith. This was the first individual chapter

[7] "[T]he list of creditors should be a list of all creditors . . . The debtor is not permitted to omit creditors from the list because the debtor does not want those creditors affected by the bankruptcy case or . . . for any other reason. The definition of 'creditor' in section 101 includes any entity that has a claim against the debtor." 4 Collier on Bankruptcy ¶ 521.03.

[8] The listing of a debt, be it by estimation or based on a judgment previously entered, is prima facie evidence of the claim. 11 U.S.C. 502(a). The creditor is allowed to file a proof of claim, which creates a rebuttable presumption that the claim is valid. The burden then shifts to the debtor to object, if he or she deems it appropriate. In a no-asset case, such as Tofa's, a creditor has no reason to object, because there are no assets to distribute. In this circumstance, the clerk's office notifies creditors that claims do not need to be submitted (unless assets are discovered). The panel trustee in this case did not discover any assets, so no claims were required to be filed.

7 petition filed by Tofa, his income was appropriate for a chapter 7 debtor, he paid his filing fees, he filed documents in a timely fashion, and he attended the section 341 meeting. When Tofa filed his petition, the automatic stay became effective and paused the state court litigation, just as Congress intended. When it came time to list his creditors, Tofa named Wiggins and estimated the value of Wiggins' claim against him, just as he was required to do. Ultimately it is of no moment that the claim was higher than Wiggins estimated, because there would be no distribution. The chapter 7 trustee reported that he had administered the estate and found that there were no assets which should be liquidated for the benefit of creditors 9 (Docket 14.). Thus, taking the allegations in Wiggins' Motion and oral statements as true, and construing them as liberally as possible, there is nothing to support a finding of bad faith that would justify dismissal.

Conclusion

Wiggins has preserved his right to pursue the Adversary Case and, to the extent he is able to prevail, he may be able to obtain an order denying Tofa a discharge. That pursuit is appropriate in the Adversary Case.

The Motion is denied.

ENTER:

Dated: September 13, 2024

Honorable Deborah L. Thorne
United States Bankruptcy Judge