

Office of the United States Trustee
300 Plaza Tower
110 North College
Tyler, TX 75702
(903) 590-1450

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IN RE:	§	
	§	
Jack Weinzierl	§	Case No. 07-42155
891 Wagner Way	§	
Lantana, TX 76226	§	
SSN / ITIN: xxx-xx-8636	§	
	§	
	§	
	§	Chapter 7
Debtor	§	

**UNITED STATES TRUSTEE'S LIMITED OBJECTION TO DEBTOR'S MOTION
TO DISMISS**

TO THE HONORABLE BRENDA T. RHOADES, UNITED STATES BANKRUPTCY
JUDGE:

The United States Trustee hereby objects to Debtor Jack Weinzierl's Motion to Dismiss (the "Motion") and respectfully states:

Procedural History

1. This case was commenced by the filing of a voluntary petition under Chapter 7 of Title 11 on August 11, 2008.
2. The meeting of creditors was held on September 15, 2008.
3. On September 17, 2008, the United States Trustee sent Debtor an extensive request for documents concerning Debtor's income and assets. The United States Trustee indicated that Debtor should respond by October 3. No response has yet been made.

4. On September 24, 2008, the Chapter 7 Trustee made a request upon Debtor concerning certain bank deposits.
5. On September 30, 2008 the Debtor filed his Motion to Dismiss.

Background

6. Debtor filed this Chapter 7 case scheduling the following:
 - Schedule I shows \$0 in monthly income;
 - Schedule J shows \$14,190 in monthly living expenses (including mortgage related payments in excess of \$8,000/mo);
 - Schedule A shows a homestead valued at \$980,000;
 - Schedule D shows 2 liens against the homestead, totaling approximately \$1,163,749;
 - Schedule F shows over \$220,000 in unsecured debt, along with a lawsuit (which was apparently pending-and stayed at the time the bankruptcy was filed);
 - The Statement of Financial Affairs states that Debtor has had no positive income in 2008, but that Debtor has withdrawn some \$53,300 from his SEP;
 - The Statement of Intentions states that Debtor intends to reaffirm the debt against his homestead (over \$1,000,000);
7. At the meeting of creditors, Debtor could provide no clear testimony to indicate how he intended to continue to pay for his home. Nevertheless, Debtor testified that the payments on the first mortgage were current, and that he was only 1 payment behind on the second mortgage.
8. Based upon (1) information obtained by the United States Trustee, (2) Debtor's testimony at the meeting of creditors and (3) Debtors' schedules, Debtor's financial situation seemed extremely odd. How could Debtor pay for a Million Dollar home

- without any income? How did Debtor pay his living expenses during the first 7 months of 2008 (i.e., \$14,000 per month) by using only his SEP account totaling \$53,300? More information was needed to determine Debtor's financial picture.
9. Given the factors listed above, the United States Trustee made an extensive request upon Debtor to provide information concerning Debtor's assets, income and expenses.
 10. The Chapter 7 Trustee has also inquired of Debtor concerning certain bank deposits.
 11. The requests by the United States Trustee and the Chapter 7 Trustee were obviously directed at determining matters related to §707(b), §727 and §541 (as to administration of the Estate).
 12. Debtor has failed to make any reasonable response to the requests of the United States Trustee and/or the Chapter 7 Trustee. To the contrary, Debtor seeks to dismiss his case-without prejudice, and without stating any "cause". 11 U.S.C. §707(a). Debtor simply states that he has "new business ventures" which he "feels" that he can pay his creditors with. This appears to be inconsistent with Debtor's testimony and schedules.
 13. Debtor was being sued when he filed the Petition. That suit was arguably stayed by this Chapter 7 proceeding. Debtor has enjoyed the benefits of bankruptcy, without providing parties in interest with a reasonable explanation of his financial situation. To allow Debtor to simply dismiss his case is prejudicial to creditors and parties in interest. Instead, dismissal under these circumstances should be to the prejudice of Debtor.

14. The United States Trustee objects to dismissal without prejudice. Under the circumstances, Debtor's case should only be dismissed with prejudice. Debtor should be barred from filing a bankruptcy case under any Chapter- in any jurisdiction- for a period of 2 years. This way, creditors should have ample opportunity to attempt collection against Debtor and his assets.

15. Alternatively, dismissal should be denied and the case should proceed.

WHEREFORE, the United States Trustee respectfully requests that the Court enter an Order denying the Motion to Dismiss and granting further proper relief. Alternatively, the United States Trustee requests that the Court enter an Order of Dismissal with prejudice, and barring Debtor from filing another bankruptcy case for a period of 2 years from the date of entry of the Order of Dismissal.

Dated: October 1, 2008

Respectfully submitted,

William T. Neary
United States Trustee

/S/ John Vardeman
By: Timothy W. O'Neal
Assistant U.S. Trustee
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on the following listed persons, and those listed on the attached matrix, through the Court's electronic notification system as permitted by Appendix 5005 II. B. 2 to the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Texas, or by first class United States Mail, postage prepaid, on the 2nd day of October 2008.

/S/ John Vardeman

Debtor:

Jack Weinzierl
891 Wagner Way
Lantana, TX 76226

Debtor's Counsel:

Holly B. Guelich
The Law Office of Holly B. Guelich
3626 N. Hall Street
Suite 822
Dallas, TX 75219

Chapter 7 Trustee:

Christopher Moser
2001 Bryan Street, Suite 1800
Dallas, TX 75201

Persons Requesting Notice:

GE Money Bank
c/o Recovery Management Systems
25 SE 2nd Ave, Suite 1120
Miami, FL 33131-1605
Attn: Ramesh Singh

Matrix

Attached