

The Bankruptcy Court dismissed a Chapter 7 bankruptcy case on account of the debtor's bad faith pursuant to 11 U.S.C. § 707(a) where the debtor manipulated his bankruptcy schedules to disguise his financial well-being and made no effort to repay his debts despite his apparent ability to do so.

***In re Wilson*, 2016 Bankr. Lexis 995 (Bankr. D. Md. March 30, 2016)**

Summary by Bradley J. Swallow, Funk & Bolton, P.A.

Robert Horace Wilson (“Debtor”), a practicing orthopedic surgeon, filed a Chapter 7 bankruptcy case to stay the collection efforts of his largest creditor (“Creditor”). Debtor’s non-filing spouse (“Spouse”) also was a physician. In his original Schedules, Debtor disclosed monthly income of nearly \$18,000 and ownership interests in a medical practice and an entity called Spike Club, LLC (“Spike”), which owned a gentlemen’s club. Those Schedules, which by Debtor’s admission were incomplete and inaccurate, also disclosed only minimal *bona fide* claims against him apart from Creditor’s claim¹ and dramatically understated Spouse’s income.

Shortly after the petition date, Creditor filed a motion to dismiss the case on bad faith grounds. Thereafter, Debtor, with the assistance of an accountant, prepared and filed Amended Schedules. According to the Amended Schedules, the combined monthly income of Debtor and Spouse exceeded \$48,000, and the combined net monthly income of Debtor and Spouse exceeded \$13,800. However, even though all of their respective earnings were deposited into Spouse’s checking account, the income and expenses of Debtor and Spouse were treated as separate in the Amended Schedules. At the conclusion of a two-day trial on the motion to dismiss, the Court determined that the Amended Schedules improperly portrayed Debtor as insolvent by attributing certain tax obligations of Spouse’s business to Debtor, listing as potential personal liabilities certain substantial tax claims against Spike, and disproportionately allocating family expenses to Debtor as opposed to Spouse. The Amended Schedules also included lavish, unnecessary expenses for country club memberships and season ticket packages, which Debtor unsuccessfully attempted to justify as necessary to support his medical practice. Debtor also testified that he anticipated an increase of approximately \$100,000 in his annual income as a result of his employment by Howard University as an associate professor.

In deciding the Creditor’s motion, the Court first considered whether it had authority under § 707(a) to dismiss Debtor’s case on bad faith grounds. Observing that decisions of the Third, Fifth, Sixth and Eleventh Circuit Courts of Appeal held that § 707(a) provided such authority and that the Fourth Circuit had not specifically address the question, the Court held that the filing of a petition in bad faith constituted cause for dismissal. *Wilson*, at *20-21 (citing *In re Watson*, 2010 Bankr. Lexis 3735, at *3 (Bankr. N.D.W.Va. 2010)). However, the Court also noted that dismissals on bad faith grounds should be granted sparingly and only in egregious cases in which a debtor’s conduct amounted to an abuse of the bankruptcy process.

The Court then considered the totality of the circumstances surrounding Debtor’s bankruptcy filing and concluded that cause existed to warrant dismissal on bad faith grounds. Finding that Debtor’s case did not pass the “smell” test, the Court considered it implausible that

¹ Shortly after the case was filed, Debtor entered into a settlement with his only other significant secured creditor to resolve the creditor’s motion to dismiss. Pursuant to the settlement, an entity controlled by Spouse purchased Spike’s real property, and the proceeds of the sale funded a payment to the creditor to satisfy its claim.

a debtor with monthly household income of more than \$48,000 and extravagant expenses could qualify for Chapter 7 relief. In so finding the Court expressly rejected Debtor's contention that his prospects for an increase in future earnings could not be considered as part of the bad faith analysis and concluded that a "totality of the circumstances" inquiry required consideration of Debtor's ability to repay creditors. *Id.*, at *28-29. The Court noted, however, that "a lavish lifestyle/ability to repay creditors cannot be the sole basis for dismissal under § 707(a)." *Id.*, at *29 (citing *McDow v. Smith*, 295 B.R. 69, 78-79 (E.D. Va. 2003)). Accordingly, on the basis of the evidence at trial, the Court concluded that a host of factors supported dismissal on bad faith grounds, including (i) Debtor's manipulation of his Schedules to create a false impression of insolvency; (ii) Debtor's ability to repay creditors; (iii) the unwillingness of Debtor to reduce his extravagant expenses; and (iv) the fact that Debtor's bankruptcy filing did not result from an extreme circumstance such as prolonged illness or sudden lack of employment. The Court was particularly troubled by Debtor's "complete lack of effort" to repay Creditor, finding that Debtor's manipulation of the bankruptcy process to the disadvantage of Creditor in what amounted to a two-party dispute contributed to the "overall unfairness" of the case. *Id.*, *36-39.