

11 U.S.C. § 707(b)

In re Mary K. Morris, Bankruptcy Case No. 692-61930-H7  
Mary K. Morris v. U.S. Trustee Civil No. USDC 93-6286-HO

10/26/93 Dist. Ct. , J., Hogan aff'd PSH

(Initially unpublished but may be published since  
original opinion was published at 155 B.R. 559)

U.S. Trustee may file "substantial abuse" motion to dismiss  
under § 707(b) at suggestion of chapter 7 trustee or creditor, so  
long as UST makes independent investigation prior to filing.

E93-4A(4)

FILED  
Entered 10-26-93

RECEIVED  
U.S. DISTRICT COURT  
DISTRICT OF OREGON  
JUL 20 1993

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

MARY K. MORRIS

Appellant,

v.

Civil No. USDC 93-6286-HO

UNITED STATES TRUSTEE

Appellee.

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JUDGMENT

The Bankruptcy Court order dismissing this case pursuant to 11 U.S.C. 707(b) is affirmed. This proceeding is dismissed.

Dated: October 19, 1993.

Donald M. Cinnamond, Clerk

by *Lea Force*

Lea Force, Deputy

JUDGMENT

DOCUMENT NO: \_\_\_\_\_

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

|                        |   |                      |
|------------------------|---|----------------------|
| MARY K. MORRIS,        | ) |                      |
|                        | ) |                      |
| Appellant,             | ) | Civil No. 93-6286-HO |
|                        | ) |                      |
| v.                     | ) | ORDER                |
|                        | ) |                      |
| UNITED STATES TRUSTEE, | ) |                      |
|                        | ) |                      |
| Appellee.              | ) |                      |
| _____                  | ) |                      |

The sole issue presented in this appeal under 28 U.S.C. § 158(A) is whether the United States Trustee (UST) can move to dismiss a case pursuant to 11 U.S.C. § 707(b) after a creditor has suggested that the UST review the case for "substantial abuse."

On May 1, 1992, the debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code. The case was converted to a Chapter 7 proceeding by order entered May 21, 1992. Appellee's Excerpt of Record ("AER") (#52), p. 3.

The UST subsequently received a letter from a creditor which indicated that the schedules of income and expenses

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filed by the debtor were not accurate. Appellaht's Excerpt of Record ("ER") (#52), p. 10. After receiving the creditors letter, the UST reviewed the case for substantial abuse, ER (#50), pp. 15-16, and filed a motion to dismiss the case pursuant to 11 U.S.C. § 707(b). It is undisputed that the UST would not have reviewed the case except for receiving the creditor's letter. ER (#50), p. 16. It is also undisputed that the UST made his own independent investigation of the facts before filing the motion to dismiss. Id., pp. 17-18.

Bankruptcy Judge Higdon found that the debtors schedules were not accurate and concluded that the debtor "had sufficient income after necessary living expenses, to fully pay her unsecured creditors in three years." ER (#50), p. 27. By order filed April 5, 1993, the UST's section 707(b) motion to dismiss was allowed. Id., p. 30.

11 U.S.C. § 707(b) provides:

After notice and a hearing, the court, on its own motion or on the motion by the United States trustee, but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter.

The Fourth Circuit interpreted section 707(b) as follows:

The language of section 707(b) only bars the court from dismissing a debtor's Chapter 7 petition "at the request or suggestion of any party in interest"; it does not bar the trustee from making a motion at the suggestion of a creditor, or the court from considering the motion. The phrase "but not at the request or suggestion of any party in interest" modifies what the court can do, since "the court" is the subject of the sentence. Section 707(b) imposes no such limitations on the trustee. In re Clark, 927 F.2d 793, 797 (4th Cir. 1991).

Appellant contends that the purpose of the statute is to prevent creditors from harassing a debtor with the threat of having their case dismissed in order to obtain concessions from the debtor.

Debtor submits that it was the intent of Congress by the language in question to completely eliminate the possibility of any and all harassment by a creditor of a debtor who may bring to light facts or suggestions to either the Court or the United States Trustee which would result, or could result, in the dismissal of a case. The only way that this could be accomplished is to require that the proceeding be initiated by the Court or by the United States Trustee, but not at the request or suggestion of any party in interest.

Appellant's Brief (#49), p. 4.

Appellant's reliance on In re Restea, 76 B.R. 728 (Bankr. D.S.D. 1987) is misplaced. In re Restea was decided four years before the decision in Clark, supra., and is distinguishable on the law and facts from the case at bar. In addition the court's conclusion in Restea that the UST's motion was tainted by creditor contact was dicta because the facts did not justify a finding of substantial abuse. See 76 B.R. at 735.

I agree with Judge Higdon that a suggestion to the UST that he should investigate a case for possible substantial abuse does not constitute harassment. ER (#50), pp. 23-24. The debtor is protected from creditor harassment because the UST investigates and screens the information received from a creditor before deciding whether to file a motion to dismiss.

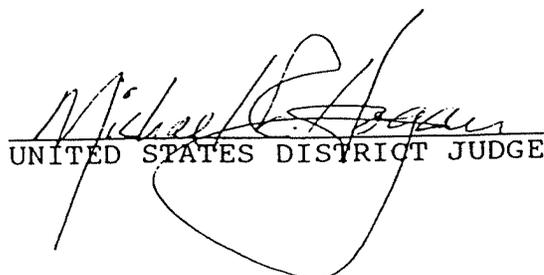
In addition, there is a strong public policy supporting

the Bankruptcy Court's decision in this case. The court, creditors and the UST should be able to rely on the accuracy of documents filed in bankruptcy proceedings. The potential for creditor abuse or harassment of a debtor suggested by Appellant is outweighed by the actual abuse of creditors that could occur from a courts reliance on false or inaccurate information. It is not logical to interpret section 707(b) as preventing a UST from moving to dismiss a case after independently determining that substantial abuse of bankruptcy law provisions would occur, based solely on the source of the information that led the UST to investigate the matter.

I agree with Judge Higdon's conclusion that the legislative history of the Bankruptcy Act of 1986 clearly indicates that Congress intended the UST to have access to all relevant information in reviewing cases under section 707(b). See ER (#50), pp. 20-22. The harassment concern suggested by appellant does not arise from the mere conveyance of relevant information to the UST.

The Bankruptcy Court order dismissing this case pursuant to 11 U.S.C. §707(b) is affirmed. This proceeding is dismissed.

DATED this 13<sup>th</sup> day of October, 1993.

  
UNITED STATES DISTRICT JUDGE