

11 U.S.C. § 1307(c)
11 U.S.C. § 105(a)

In re Michael A. Monniere

Case No. 395-35991-psh13
District Ct. No. 96-691-HA

11/14/96

Haggerty aff'm PSH

Unpublished

The bankruptcy court denied confirmation of the debtor's chapter 13 plan and dismissed the debtor's case based on its conclusion that the plan, which provided for payment of attorney fees and administrative costs only, was merely a disguised liquidation and was filed in contravention of §1325(a)(3). The debtor appealed contending that, under §1307(c)(5), the court should have allowed him to modify his plan rather than dismissing the case. The district court affirmed the bankruptcy court noting that §105 grants the court broad authority to grant such relief as is necessary to effectuate the goals of the bankruptcy code, including the right to sua sponte dismiss a case which conflicts with those goals.

P97-7(5)

M-11/14/96

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Entered on the Docket on 11/5/96
DONALD M. CINNAMOND
By [Signature] Deputy

CLERK OF DISTRICT COURT
PORTLAND, OREGON
BY [Signature]

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

NOV 14 1996 ^{Lod} 5.154

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395-35991

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:)
) Civil No. 96-691-HA
MICHAEL MONNIERE,)
) JUDGMENT
 Debtor,)
_____)

Based on the record,
IT IS ORDERED AND ADJUDGED this action is dismissed.
All pending motions are denied as moot.
DATED: Nov 14, 1996

Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge

[Signature]

1 - JUDGMENT

Certified to be a true and correct
copy of original filed in my office.
Date: MAY 13 1997
Donald M. Cinnamond, Clerk
By: [Signature], Deputy

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(31)

FILED

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CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

BY

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

NOV 14 1996

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395-35991

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

In re:)
MICHAEL MONNIERE,) Civil No. 96-691-HA
Debtor,)
ORDER)

HAGGERTY, Judge:

Debtor Michael Monniere appeals from the January 31, 1996, Order of the bankruptcy court denying confirmation of his proposed Chapter 13 plan and dismissing his petition. For the reasons stated in the opinion, the judgment of the bankruptcy court is affirmed. Monniere's appeal is dismissed and all pending motions are denied as moot.

IT IS SO ORDERED.

Dated this 14 day of November, 1996.

Ancer L. Haggerty
Ancer L. Haggerty
United States District Judge

1 - ORDER

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Date: MAY 13 1997

Donald M. Cinnamond, Clerk

By: *[Signature]*, Deputy

[Handwritten initials]

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CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

Entered on the Docket on
11/15/96
DONALD M. CINNAMOND
By *[Signature]* Deputy

CLERK, U.S. BANKRUPTCY COURT
DISTRICT OF OREGON

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IN THE UNITED STATES DISTRICT COURT

395-35991

FOR THE DISTRICT OF OREGON

In re:)
MICHAEL MONNIERE,) Civil No. 96-691-HA
Debtor,) OPINION

Alan Unkeles
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Mark B. Block
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Attorney for Robert W. Myers, Trustee

HAGGERTY, District Judge:

Debtor Michael Monniere appeals from the January 31, 1996, Order of the bankruptcy court denying confirmation of his proposed Chapter 13 plan and dismissing his petition. For the reasons stated below, the judgment of the bankruptcy court is affirmed.

PROCEDURAL BACKGROUND

Michael Monniere filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code in Oregon

1 - OPINION

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Donald M. Cinnamon, Clerk

By: *[Signature]*, Deputy

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1 on August 30, 1995. A confirmation hearing was held January
2 11, 1996, and neither Monniere or Robert W. Meyers, Trustee,
3 appeared. There were no objections to the plan and Meyers
4 recommended confirmation. Nevertheless, on January 31, 1996,
5 the bankruptcy court entered an order denying confirmation of
6 the plan and dismissing Monniere's petition. The court
7 determined that the plan was filed in contravention of section
8 1325(a)(3) of the United States Bankruptcy Code, 11 U.S.C. §
9 1325(a)(3), and dismissed the petition sua sponte.

10 On February 7, 1996, Monniere filed a notice of appeal
11 from the decision of the bankruptcy court. Subsequently, on
12 March 6, 1996, Myers filed an objection to Bankruptcy Appellate
13 Panel determination. Accordingly, this court has jurisdiction
14 pursuant to 28 U.S.C. § 158(a). Monniere has appealed the
15 decision of the bankruptcy court to dismiss his petition sua
16 sponte.

17 STANDARD OF REVIEW

18 The district court must review the bankruptcy court's
19 findings of fact under the clearly erroneous standard, and its
20 conclusions of law, de novo. In re Mellor, 734 F.2d 1396, 1399
21 (9th Cir. 1984). The parties agree that the issue on appeal is
22 a question of law to be reviewed de novo.

23 DISCUSSION

24 Monniere's proposed plan required him to pay the sum of
25 \$41 monthly to Myers for a period of not less than 36 months.
26 All money paid into the plan by Monniere would be paid to
27 attorney fees and administrative expenses with no payments of
28

1 any kind being made to any creditor. Monniere was barred from
2 filing a Chapter 7 plan and receiving a discharge of his debts
3 under Chapter 7 because he was granted a discharge under
4 section 727 within 6 years of the date of his Chapter 13
5 filing. The court concluded that Monniere's plan was merely a
6 "disguised liquidation" and, as such, failed to comply with the
7 provisions of 11 U.S.C. § 1325(a). The court went on to decide
8 that the proposed "no pay" plan also failed to meet the good
9 faith requirement of section 1325(a)(3). Monniere does not
10 challenge either of these findings by the bankruptcy court.

11 Monniere challenges only the bankruptcy court's authority
12 to dismiss his petition sua sponte. Specifically, he contends
13 that the grounds for dismissing a Chapter 13 petition are
14 enumerated in section 1307(c) of the Bankruptcy Code, 11 U.S.C.
15 § 1307(c). He asserts that section 1307(c)(5) is the
16 applicable provision here, and the bankruptcy court ignored the
17 requirements of that section when it failed to provide Monniere
18 an opportunity to either modify his plan or file another plan.
19 Section 1307(c)(5) provides that:

20 Except as provided in subsection (e) of this section, on
21 request of a party in interest or the United States
22 trustee and after notice and a hearing, the court may
23 convert a case under this chapter to a case under chapter
24 7 of this title, or may dismiss a case under this
25 chapter, whichever is in the best interests of creditors
26 and the estate, for cause, including--
27 (5) denial of confirmation of a plan under section 1325
28 of this title and denial of a request made for additional
time for filing another plan or a modification of a

plan[.]

11 U.S.C. § 1307(c)(5) (1996).

1 Section 1307(c) is not the only basis, however, for
2 dismissal of a Chapter 13 plan. Section 105(a) of the
3 Bankruptcy Code provides bankruptcy courts with broad general
4 powers to grant such relief as is necessary to effectuate the
5 provisions of the Bankruptcy Code. 11 U.S.C. § 105(a); In re
6 Easton, 882 F.2d 312, 315 (8th Cir.1989). See also In re
7 Hammers, 988 F.2d 32, 34-35 (5th Cir. 1993)(section 105(a)
8 authorized a sua sponte dismissal by the court). Section
9 105(a) states:

10 the court may issue any order, process, or judgment that
11 is necessary or appropriate to carry out the provisions
12 of this title. No provision of this title providing for
13 the raising of an issue by a party in interest shall be
14 construed to preclude the court from, sua sponte, taking
15 any action or making any determination necessary or
16 appropriate to enforce or implement court orders or
17 rules, or to prevent an abuse of process.

18 11 U.S.C. § 105(a) (1996). Thus, sua sponte dismissals are
19 permitted.

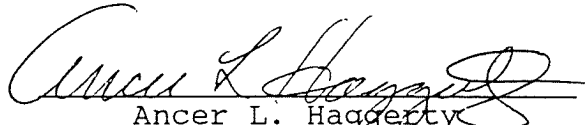
20 The bankruptcy court in this case determined that the
21 plan: 1) ran counter to the legislative purpose of providing
22 debt repayment under Chapter 13; 2) was merely a "disguised
23 liquidation" and did not comply with section 1325(a)(1) of the
24 Bankruptcy Code; and 3) was an attempt to circumvent the clear
25 purpose behind section 727(a)(8) and (9) of the Bankruptcy Code
26 and did not comply with section 1325(a)(3) of the Bankruptcy
27 Code. As stated above, Monniere does not challenge these
28 findings. Further, these findings provide an adequate basis
for a section 105(a) dismissal by the bankruptcy court.

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CONCLUSION

Based on the foregoing, the order of the bankruptcy court denying confirmation of Monniere's proposed Chapter 13 plan and dismissing his petition is AFFIRMED.

Dated this 14 day of November, 1996.


Ancer L. Haggerty
United States District Judge