

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

In re:

JOYCE M. MIRABILE,

Case No. 6:09-bk-04687-ABB

Chapter 7

Debtor.

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**ORDER**

This matter came before the Court on the Motion to Dismiss Case (Doc. No. 11) filed by Paul Mirabile, as Personal Representative of the Estate of John L. Mirabile (“Movant”), requesting this case be dismissed. The Debtor Joyce M. Mirabile (“Debtor”) filed an Objection (Doc. Nos. 20, 22). Hearings were held on June 15, 2009 and August 24, 2009 at which the Debtor, her counsel, and counsel for Movant appeared.

Movant asserts the Debtor’s case should be dismissed “pursuant to 11 U.S.C. § 707, for lack of good faith.” Doc. No. 11, ¶1. Movant failed to delineate the specific provision of Section 707 pursuant to which he seeks dismissal. He, presumably, seeks dismissal pursuant to 11 U.S.C. Section 707(b)(3)(A) which provides for the dismissal of a case where “a debtor filed the petition in bad faith.” 11 U.S.C. § 707(b)(3)(A). Movant has the burden to establish the Debtor’s filing is a bad faith filing by a preponderance of the evidence. In re Parada, 391 B.R. 492, 496 (Bankr. S.D. Fla. 2008).

The dismissal provisions of Section 707(b) apply to cases filed by individual debtors in which the “debts are primarily consumer debts . . . .” 11 U.S.C. § 707(b)(1). A consumer debt is a “debt incurred by an individual primarily for a personal, family, or household purpose.” 11 U.S.C. § 101(8). The term “primarily” in the context of Section 707(b) means “consumer debt exceeding fifty percent of the total debt.” Stewart v.

United States Trustee (In re Stewart), 175 F.3d 796, 808 (10th Cir. 1999); Zolg v. Kelly (In re Kelly), 841 F.2d 908, 913 (9th Cir. 1988).

Movant filed Claim No. 1-1 asserting it has a general unsecured claim against the Debtor for \$186,679.03, plus interest, arising from a Florida State Court Final Judgment. The Debtor listed in Schedule D secured debts of \$78,000.00 relating to her homestead and Honda Civic. She listed in Schedule F general unsecured debts of \$9,373.00. Her homestead, Honda, and Schedule F debts total \$87,373.00.<sup>1</sup> Movant's indebtedness relates to a judgment issued against the Debtor in connection with a probate proceeding and was not incurred primarily for a personal, family, or household purpose. Movant's debt does not constitute a consumer debt pursuant to 11 U.S.C. Section 101(8).

Movant's debt constitutes more than half of the Debtor's debts. The Debtor's debts are not primarily consumer debts and she is not subject to the dismissal provisions of Section 707(b). 11 U.S.C. § 707(b)(1), 101(8). Movant's Motion to Dismiss is due to be denied.

Accordingly, it is

**ORDERED, ADJUDGED and DECREED** that the Movant's Motion to Dismiss (Doc. No. 11) is hereby **DENIED**.

Dated this 3rd day of November, 2009.

/s/ Arthur B. Briskman  
ARTHUR B. BRISKMAN  
United States Bankruptcy Judge

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<sup>1</sup> Plaintiff listed in Schedule D a debt owed to Movant of \$177,474.00 plus interest at the rate of 11% per annum.