ORDERED.

Dated: November 16, 2022

Caryl E. Delano
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
www.flmb.uscourts.gov

In re:

Herman Walter Katzel,

Debtor.
_____/

Case No. 8:21-bk-06184-CED
Chapter 13

ORDER GRANTING MOTION TO DISMISS

The Debtor and his former wife entered into a marital settlement agreement under which the Debtor retained four residential properties and agreed to pay $700,000 to his former wife as an "equalizing payment." Less than a year after entering into the marital settlement agreement, the Debtor transferred three of the properties to his son's company; defaulted on his agreement to pay his former wife; arranged for the forgiveness of a large debt he owed to his son; made payments to his former spouse that reduced his obligation to her to an amount that rendered him eligible to be a debtor in a Chapter 13 bankruptcy case; and then, still owing almost $400,000 to his former wife, filed a Chapter 13 bankruptcy case.

Judge Michael G. Williamson granted the former wife's motion to dismiss the Chapter 13 case as a bad-faith filing.[1] The Debtor timely moved for reconsideration, asserting that the dismissal motion raised factual issues that require a trial.[2] Judge Williamson granted the reconsideration motion and set the dismissal motion for trial.[3] At trial, counsel for the parties agreed that the relevant facts are not in dispute, proffered their clients' testimony, and presented argument on the motion.[4]

For the reasons set forth below, the Court will grant the motion to dismiss and dismiss the case.

I. FACTS

The Debtor and Gail Katzel were married for forty years.[5] During their marriage, the couple acquired a marital home and four additional residential properties.[6] Gail filed for divorce in 2018. At the time, Gail resided in one of the properties; the Debtor resided in the marital home and had possession of three of the residential properties, which he used as rentals.

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[1] Doc. No. 24.

[2] Doc. No. 30.

[3] Doc. No. 51.

[4] Due to Judge Williamson's unavailability, Judge Caryl E. Delano presided at the trial.

[5] Joint Ex. 13, Doc. No. 44-13, p. 1; Joint Ex. 14, Doc. No. 44-14, p. 1. Ordinarily, the Court refers to parties by their surname. Because the parties here share the same surname, the Court will refer to Mrs. Katzel by her given name, Gail.

[6] Joint Ex. 13, Doc. No. 44-13, pp. 2 – 3; Joint Ex. 14, Doc. No. 44-14, at p. 2.

In his November 24, 2020 affidavit filed in the state court (the "State Court Affidavit"), the Debtor stated he had $507,484.91 in liabilities, including $446,613.03 the Debtor claimed he owed to his son.[7] He also stated that he was retired; had income of $2,400 per month, consisting of $900 in Social Security benefits and $1,500 in rental income; and had $2,398.33 in monthly expenses, leaving him $1.67 per month in net income.[8]

Ultimately, the Debtor and Gail entered into a marital settlement agreement (the "MSA").[9] Under the MSA, (a) the Debtor received the marital home (the "South Shore Property") and the three rental properties; (b) Gail received the property at which she resided; and (c) as an "equalizing" payment to ensure the equitable distribution of the parties' marital assets, the Debtor agreed to pay Gail $700,000 within thirty days of the date the parties executed the MSA.[10] The $700,000 was calculated, in part, on the parties' respective appraisals for the properties.

On January 27, 2021, the state court entered a final judgment of dissolution that incorporated the couple's MSA.[11]

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[7] Joint Ex. 2, Doc. No. 44-2, pp. 3 – 5 & 7 – 8.

[8] Joint Ex. 2, Doc. No. 44-2, at pp. 1 – 5.

[9] Joint Ex. 13, Doc. No. 44-13.

[10] *Id.* at ¶¶ 1.1 – 1.10 & 3.4.

[11] Joint Ex. 14, Doc. No. 44-14, p. 2, ¶ 2.

Although the Debtor retained ownership of the four properties he was awarded under the MSA, he did not pay Gail the $700,000 equalizer payment. On February 24, 2021, Gail filed a motion in the state court to enforce the MSA.[12] The state court granted Gail's motion and entered a $700,000 money judgment in her favor (the "State Court Judgment").[13]

In the meantime, however, the Debtor sold the three rental properties to JEK Holdings, Inc.—a company owned by his son—for the total sales price of $483,000.[14] The Debtor claims that he used approximately $178,000 of the sales proceeds to make improvements to the South Shore Property, where he still resides.[15]

Just days after the entry of the State Court Judgment, the Debtor paid Gail $149,296 (perhaps from the sales proceeds he received from JEK Holdings), which reduced the balance of Gail's $700,000 money judgment to $550,704.[16] And on December 6, 2021, the Debtor paid Gail another $155,000, which brought the

[12] Joint Ex. 15, Doc. No. 44-15.

[13] Joint Ex. 16, Doc. No. 44-16.

[14] Joint Exs. 23 – 25, Doc. Nos. 44-23 – 25.

[15] The Debtor, who suffers from cancer, says the $178,000 was needed to remediate mold and other problems at the South Shore Property.

[16] Doc. No. 16, ¶ 7.

balance due Gail down to $395,704,[17] slightly below the Chapter 13 eligibility limits of 11 U.S.C. § 109.[18]

On December 9, 2021, three days after Debtor made the $155,000 payment to Gail, he filed a Chapter 13 bankruptcy case and listed just one creditor: Gail.[19] And although the Debtor had stated in his November 2020 State Court Affidavit that he owed his son $446,613.03, he did not list his son as a creditor in his bankruptcy schedules.[20]

Later, the Debtor amended his bankruptcy schedules to increase the amount he owed to Gail from $395,704 to $411,245.80, and he listed three additional creditors in amounts totaling just under $7,050.[21] The Debtor again did not list his son as a creditor in his amended schedules.

Other than Gail, only one other creditor, Palms of Pasadena Hospital, has filed claims in the case, filing four proofs of claim, each in the amount of $90.00.[22] In other words, only $360 in claims other than Gail's will receive distributions in the Debtor's Chapter 13 case.

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[17] Doc. No. 16, ¶ 10.

[18] Unless otherwise stated, statutory references are to the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq*. On the date of the petition, under § 109(e), to be eligible for relief under Chapter 13, a debtor's unsecured debts could not exceed $419,275.

[19] Doc. No. 1.

[20] *Id.*

[21] Doc. No. 31.

[22] Claim Nos. 1-1, 2-1, 3-1, and 4-1.

Under the Debtor's proposed Chapter 13 plan (the "Plan"), the Debtor will make payments to the Chapter 13 trustee of $202 per month for 60 months, with general unsecured creditors receiving $10,980, which Gail and the other creditor would share pro rata.[23] This would result in Gail's being paid approximately 3% on account of her claim. But the Debtor has filed an objection to Gail's claim, arguing that she has "grossly miscalculated the statutory interest" to which she is entitled, that the interest sought is usurious, and that her claim is unenforceable.[24]

In Gail's motion to dismiss the case as a bad-faith filing,[25] she contends that the Debtor (a) agreed to pay her $700,000 under the MSA so he could keep four of the couple's five properties; (b) transferred three of the properties to his son for below market value; (c) in order to reduce the total amount of his debts, arranged for his son to "waive" the $446,613 debt the Debtor owed him; (d) paid a portion of his debt to her so that he was eligible to be a debtor in a Chapter 13 case; and (e) within a year of entering in to the MSA, filed a Chapter 13 case in order to discharge his otherwise nondischargeable debt to her.[26]

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[23] Doc. No. 10.

[24] Doc. No. 21, ¶ 8.

[25] Doc. No. 16.

[26] *Id.* at ¶¶ 4, 6, 7, 10, 13, 14, 18, and 20. In Chapter 13 cases (unlike in Chapter 7 liquidation and Chapter 11 individual reorganization cases), debts incurred in connection with a marital settlement agreement—other than domestic support obligations—are dischargeable. *See* 11 U.S.C. § 1328(a)(2) (omitting the types of debts to a former spouse described in § 523(a)(15) from the list of debts excluded from a Chapter 13 debtor's discharge).

As further evidence of the Debtor's bad faith, Gail contends that despite the Debtor's having maintained throughout the divorce proceeding that he was retired, he suddenly took a job with his son's company.[27]

The Debtor disputes that he filed his bankruptcy case in bad faith.[28] He claims (a) he transferred the three rental properties to his son for fair market value by averaging the appraisals that he and Gail obtained during the divorce case; (b) he paid the "bulk" of the sales proceeds (roughly $305,000 out of the $483,000) to Gail; (c) he planned to take out a mortgage on the South Shore Property—which he owns free and clear—to gain the additional funds necessary to pay Gail, but due to the property's condition, he wasn't able to obtain a loan; and (d) because he would never be able to get out from under the nearly $400,000 debt to Gail, he took a job with his son's company to enable him to pay down some of the debt and filed a Chapter 13 case to discharge the balance.

II. ANALYSIS

Under § 1325, the court can confirm a Chapter 13 plan only if, among other things, "the action of the debtor in filing the petition was in good faith." In other words, a Chapter 13 debtor must file his bankruptcy in good faith.[29]

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[27] Doc. No. 16, ¶ 21; Joint Ex. 2, Doc. No. 44-2, p. 1; Joint Ex. 1, Doc. No. 44-1, p. 1.

[28] Doc. No. 30.

[29] 11 U.S.C. § 1325(a)(7).

Section 1307 provides that the Court may dismiss a Chapter 13 case "for cause" and enumerates eleven specific grounds for "cause" justifying dismissal.[30] Although "bad faith" is not among the eleven enumerated grounds, many courts have held that a Chapter 13 case may be dismissed if it was not filed in good faith.[31]

However, the Bankruptcy Code does not define "good faith."[32] Instead, the existence or nonexistence of "good faith" must be determined based on the totality of the circumstances. The leading case on "good faith" in the Eleventh Circuit is *In re Kitchens*. [33] In *Kitchens*, the court enumerated eleven factors that bankruptcy courts

[30] 11 U.S.C. § 1307(c)(1) – (11).

[31] *See, e.g., In re Bertelt*, 250 B.R. 739, 745 (Bankr. M.D. Fla. 2000) ("Section 1307(c) of the Bankruptcy Code provides that on request of a party in interest or the United States trustee, and after notice and a hearing, the Court may dismiss a case for cause. Courts are uniform in holding that 'cause' for dismissal includes lack of good faith."); *In re Bucco*, 205 B.R. 323, 324 (Bankr. M.D. Fla. 1996) ("Although a lack of good faith is not enumerated as a specific basis for dismissal, courts have recognized lack of good faith as cause for dismissal of a Chapter 13 case."); *see also* 8 *Collier on Bankruptcy* ¶ 1307.04[10] (16th ed. 2022) ("Most courts have held that lack of good faith can be cause for dismissal or conversion of a chapter 13 case.") (citing *Alt v. United States (In re Alt)*, 305 F.3d 413, 418 (6th Cir. 2002); *In re Lilley*, 91 F.3d 491, 496 (3d Cir. 1996); *Molitor v. Eidson (In re Molitor)*, 76 F.3d 218, 220 (8th Cir. 1996); *Eisen v. Curry (In re Eisen)*, 14 F.3d 469, 470 (9th Cir. 1994); *In re Love*, 957 F.2d 1350, 1360 (7th Cir. 1992); *Cabral v. Shamban (In re Cabral)*, 285 B.R. 563 (B.A.P. 1st Cir. 2002)).

[32] *See, e.g., In re Brown*, 402 B.R. 19, 36 (Bankr. M.D. Fla. 2008) ("The phrase 'good faith' is not defined in the Bankruptcy Code.").

[33] *Kitchens v. Georgia R.R. Bank & Trust Co. (In re Kitchens)*, 702 F.2d 885, 888 (11th Cir. 1983).

should consider in evaluating the totality of the circumstances.[34] The *Kitchens* list of factors, however, is not intended to be exhaustive,[35] and all eleven factors do not necessarily apply in every case.[36] Rather, the Eleventh Circuit stated, the basic aim is to determine whether, under the circumstances, the debtor has abused the provisions, purpose, or spirit of the Bankruptcy Code.[37]

Here, the Court concludes, based on a totality of the circumstances and the two relevant *Kitchens* factors, that the Debtor has abused the provisions, purpose, or spirit of the Bankruptcy Code.

A. Totality of the Circumstances

From its inception, this case has been a classic two-party dispute, with the Debtor listing Gail as his only creditor in his original bankruptcy schedules. Although the Debtor later amended his schedules to include three other creditors,

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[34] The eleven *Kitchens* factors are: (1) the amount of the debtor's income from all sources; (2) the living expenses of the debtor and his dependents; (3) the amount of attorney's fees; (4) the probable or expected duration of the debtor's Chapter 13 plan; (5) the motivations of the debtor and his sincerity in seeking relief under the provisions of Chapter 13; (6) the debtor's degree of effort; (7) the debtor's ability to earn and the likelihood of fluctuation in his earnings; (8) special circumstances such as inordinate medical expense; (9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act and its predecessors; (10) the circumstances under which the debtor has contracted his debts and his demonstrated bona fides, or lack of same, in dealings with his creditors; and (11) the burden which the plan's administration would place on the trustee. *Kitchens*, 702 F.2d at 888 – 89.

[35] *Id*.

[36] *Id.* ("The factors we have explicitly mentioned are not intended to comprise an exhaustive list, but they should aid bankruptcy courts as they determine whether debtors have proposed chapter 13 plans in good faith."); *In re Clements*, 185 B.R. 903, 906 – 07 (Bankr. M.D. Fla. 1995) ("Not all of these factors are relevant in this case, as they would not be in every case.").

[37] *Kitchens*, 702 F.2d at 888 – 89; *In re Johnson*, 2018 WL 9415066, *3 (Bankr. M.D. Fla. Oct. 1, 2018); *In re Vick*, 327 B.R. 477, 486 (Bankr. M.D. Fla. 2005).

those creditors' scheduled claims total less than $7,050, with Gail's claim making up 98.3% of the scheduled claims.[38] And other than Gail's proof of claim, the *filed* proofs of claim—the only other claims that will receive a distribution in his case—total only $360.

The Debtor acknowledges that, after making payments to Gail through the Plan, he seeks to discharge the balance of the debt he owes her. Although seeking to discharge an otherwise nondischargeable debt in a Chapter 13 case does not alone establish bad faith,[39] numerous courts have recognized that such an intent is a relevant consideration under the "totality of the circumstances" test.[40] As the bankruptcy court in *In re Peterson* stated, "[t]he type of debt sought to be discharged and whether the debt is nondischargeable in Chapter 7 is relevant to the consideration of whether a debtor has proposed a Chapter 13 plan in good faith."[41] In *Peterson*, the court held that confirmation should be denied—based on lack of good

[38] *In re Petersen*, 228 B.R. 19, 25 (Bankr. M.D. Fla. 1998) (finding that Chapter 13 plan was not filed in "good faith" because, among other reasons, the debtor's bankruptcy case was a "classic two-party state law dispute" where "vast majority of the scheduled debt" was related to litigation with one creditor; only one creditor filed a proof of claim; and only one creditor would receive payment under debtor's proposed Chapter 13 plan).

[39] *In re Fulmer*, 535 B.R. 854, 860 (Bankr. M.D. Ala. 2015) ("Congress has determined that some debts that will not discharge in a case under Chapter 7 may nevertheless be discharged in a case under Chapter 13. A debt subject to § 523(a)(15) is one such debt. . . A debtor . . . who lawfully seeks a discharge in bankruptcy is not, by definition, acting in bad faith.") (citation omitted).

[40] *In re Petersen*, 228 B.R. at 26 (citing *In re LeMaire*, 898 F.2d 1346, 1349 (8th Cir.1990)); *In re Bandini*, 165 B.R. 317, 320 (Bankr. S.D. Fla. 1994); *In re Haskell*, 252 B.R. 236, 243 – 44 (Bankr. M.D. Fla. 2000).

[41] *In re Petersen*, 228 B.R. at 26 (citation omitted).

faith—when a Chapter 13 plan serves no purpose other than discharging an otherwise nondischargeable debt owed by a debtor who is otherwise not in need of Chapter 13.[42]

That is precisely the case here. Not including the debt owed to Gail, the Debtor scheduled debts of less than $7,050, and other than Gail's claim, there are only $360 in filed claims in this case. The Debtor has no need of a Chapter 13 case other than to circumvent his obligations to Gail under the MSA and to avoid collection of the State Court Judgment.

But, as the court in *In re Bandini* explained, bankruptcy courts "were never intended to be appeals courts from state court domestic relations issues."[43] In *Bandini*, the debtor entered into a marital settlement agreement with his former spouse.[44] Under the marital settlement agreement, the debtor agreed to pay his former spouse non-modifiable alimony of $2,800 per month in exchange for the release of her rights to a significant marital asset.[45] When the debtor defaulted, the former spouse sought enforcement, and the state court entered a final judgment for past due alimony against him.[46] The debtor then filed a Chapter 13 case and a plan

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[42] *Id.* (citing *Ohio Student Loan Comm'n v. Willis*, 24 B.R. 293, 294 (Bankr. S.D. Ohio 1982)).

[43] 165 B.R. at 320.

[44] *Bandini*, 165 B.R. at 318.

[45] *Id.*

[46] *Id.* at 318 – 19.

that proposed to pay the past due alimony over 60 months and to pay $200 (rather than $2,800) in alimony per month going forward,[47] and the debtor appealed the state court judgment. The former spouse sought dismissal of the debtor's Chapter 13 case based on bad faith. In considering the *Kitchens* factors, the bankruptcy court found that the debtor's primary, if not sole, motivation in filing for Chapter 13 bankruptcy was to modify his obligations under the marital settlement agreement,[48] and the court concluded that the bankruptcy filing was a bad-faith use of the bankruptcy court to circumvent a state court judgment enforcing a debtor's obligations under a marital settlement agreement.[49]

In addition to the Debtor's motivation to modify his obligation to Gail under the MSA, the Court has also considered that Debtor paid Gail just enough to satisfy § 109's eligibility requirement and the convenient forgiveness of the debt the Debtor claimed to owe his son in the State Court Affidavit. These facts are evidence of the Debtor's intent to manipulate the use of Chapter 13 to discharge his otherwise nondischargeable debt to Gail.

The Court finds that it need not make a finding on the issue of whether Debtor sold the three rental properties for less than their fair market values. First, this

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[47] *Id.* at 319.

[48] *Id.* at 320 ("As to the fifth *Kitchens* factor, it is apparent that the primary, if not the sole motivation of this Debtor in seeking relief under the provisions of chapter 13 is the modification of the [marital settlement agreement] following his loss on that same issue before [the state court].").

[49] *Id.*

determination is not necessary to the Court's ruling, and second, even if the Debtor sold the rental properties for a reasonable price, the facts before the Court are that the Debtor agreed to take ownership of the rental properties when he voluntarily entered into the MSA, and he chose to retain $178,000 of the sales proceeds to make improvements to his own home, the South Shore Property, rather than paying those proceeds to Gail. In other words, the Debtor, having received the benefits of the MSA, now attempts to use this Court to avoid his obligations under the MSA.

The Court can draw only one conclusion: the sole purpose of the Debtor's Chapter 13 case is to discharge the debt he owes to Gail, a debt that would not be dischargeable in a Chapter 7 or a Chapter 11 case.[50]

Under the totality of the circumstances analysis, the Court finds that the Debtor filed his Chapter 13 case in bad faith. The Court will now address the two relevant *Kitchens* factors.

B. The Motivation of the Debtor and his Sincerity in Seeking Relief Under the Provisions of Chapter 13

The first relevant *Kitchens* factor is the motivation of the debtor and his sincerity in seeking relief under the provisions of Chapter 13.

Here, the Debtor's actions in his bankruptcy case do not demonstrate sincerity in seeking relief under Chapter 13 or with respect to Gail's claim. First, the Plan proposes to pay Gail a mere 3% of her claim. And second, the Debtor has *objected* to

[50] 11 U.S.C. §§ 523(a)(15); 1141(d)(2).

Gail's proof of claim.[51] He argues that the proof of claim "grossly miscalculate[s] the statutory interest" to which Gail is entitled and that the interest sought is usurious.[52] Therefore, the Debtor argues that Gail has forfeited her right to principal and interest under Florida usury laws.[53] Certainly, the Debtor may object to Gail's calculation of interest, but to seek the disallowance of Gail's claim *in its entirety* based on an alleged miscalculation of interest[54] belies the Debtor's contention that he filed the bankruptcy case in a good-faith effort to pay Gail.

The Debtor argues he intended to pay Gail by taking out a mortgage on the South Shore Property that he owns—thanks to the MSA—and selling the three rental properties. But he claims he couldn't get a loan on the South Shore Property and was

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[51] Doc. No. 21.

[52] *Id.* at ¶ 8.

[53] *Id.*

[54] Section 687.04, Fla. Stat. (2021) (providing that any person who willfully charges an unlawful rate of interest "shall forfeit the entire interest so charged, or contracted to be charged or reserved, and only the actual principal sum of such usurious contract can be enforced in any court in this state, either at law or in equity."); § 687.071(7), Fla. Stat. (2021) (providing that "no extension of credit" in violation of Florida's criminal usury laws "shall be an enforceable debt in the courts of this state."). The Court doubts that an error in the calculation in the interest due on a judgment claim constitutes the willful charge of an unlawful rate of interest. *Video Trax, Inc. v NationsBank, N.A.*, 33 F. Supp. 2d 1041, 1057 (S.D. Fla. 1998) ("Penalties for the commission of usury are only imposed on lenders who 'willfully' violate the statute. To be willful, the act must proceed from 'a conscious motion of the will, intending the result which actually comes to pass.' As distinguished from inadvertent conduct, usury is 'restricted to such acts as are done with an unlawful intent.' A determination of usury is not predicated on 'whether the lender actually gets more than the law permits, but whether there was a *purpose in his mind* to get more than legal interest for the use of his money, and whether, by the terms of the transaction and the means employed to effect the loan, he may by its enforcement be enabled to get more than the legal rate.'") (citations omitted).

unable to sell the three rental properties for more than $483,000 because they all needed extensive repairs.

The Debtor likens this case to one where a debtor takes out a home equity line of credit, secured by a second mortgage on his home, only to have the real estate market crash, leaving the debtor's home (figuratively) under water. In such a scenario—which was not uncommon in the aftermath of the Great Recession—the Debtor says it would not be bad faith for an individual to file a Chapter 13 case and seek to strip off the wholly unsecured second mortgage, which the debtor could not accomplish in a Chapter 7 case.[55]

But this case is distinguishable from the Debtor's hypothetical scenario. First, a real estate market crash may not be entirely foreseeable, but the Debtor surely knew the condition of the properties when he negotiated and entered into the MSA. Second, the Debtor's hypothetical scenario does not involve a debtor who paid down his debts just enough to qualify for relief under Chapter 13, or a debtor who transferred property to a family member in advance of filing a bankruptcy case.

The Court concludes that this *Kitchens* factor supports dismissal of the Debtor's case.

[55] *Bank of Am., N.A. v. Caulkett*, 575 U.S. 790, 792 (2015).

C. The Circumstances Under Which the Debtor has Contracted his Debts and his Past Dealings with his Creditors.

The second relevant *Kitchens* factor has two prongs: (1) the circumstances under which the debtor has contracted his debts; and (2) the debtor's past dealings with his creditors.

1. The Circumstances Under Which the Debtor has Contracted his Debts

The Debtor's obligation to Gail arises under a marital settlement agreement in which he agreed to pay Gail $700,000 as an equalizing payment in consideration for his receiving four of the couple's five marital properties. A mere four months after entering into the MSA, the Debtor conveyed three of the properties to his son's company for $483,000. But he only paid about $305,000 to Gail and used the other $178,000 to make improvements at his home, the South Shore Property. Then, just a year after entering into the MSA, the Debtor filed his Chapter 13 bankruptcy, proposing to make *de minimus* payments to Gail, and seeking to discharge more than half the $700,000 equalizing payment.

As discussed above, bankruptcy courts were not intended as a venue for circumventing unfavorable marital settlement agreements.[56]

[56] *In re Bandini*, 165 B.R. at 320.

2. The Debtor's Past Dealings with his Creditors

Here, just a year before filing his bankruptcy case, the Debtor agreed to pay Gail $700,000 in exchange for receiving the couple's marital home and three rental properties. The Debtor kept the marital home as his homestead; sold the three rental properties to his son's company; used $178,000 in proceeds from the sale of the rental properties to improve his homestead, which he still lives in; and within one year of entering into the MSA, filed this case for the purpose of discharging his remaining obligation under the MSA (just over $400,000) for pennies on the dollar.

The Court concludes that this relevant *Kitchens* factor weighs in favor of dismissal.

III. CONCLUSION

Under the good-faith analysis, the guiding principle "is whether the debtor's proposed Chapter 13 plan demonstrates a sincere intent to repay his creditors to the best of his ability as opposed to instead demonstrating an attempt to defer or avoid the claims of legitimate creditors."[57] Here, based on a totality of the circumstances and the two relevant *Kitchens* factors, the Court concludes that the Debtor filed this case to avoid the claim of a legitimate creditor. Therefore, the Court finds this case was not filed in good faith.

[57] *Florida Dep't of Revenue v. Talley*, 2008 WL 1711410, at *4 (M.D. Fla. Apr. 10, 2008); *In re Brown*, 402 B.R. 384, 401 (Bankr. M.D. Fla. 2008) (quoting *Talley*, 2008 WL 1711410, at *4).

Accordingly, it is

ORDERED:

1. Gail Katzel's Amended Motion to Dismiss is GRANTED.

2. The Court will enter a separate order DISMISSING the case.

Clerk's Office to serve interested parties via CM/ECF.