

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

In re:

JOHN MICHAEL BAIRD and
JANE NELSON BAIRD,

Case No. 6:09-bk-04578-ABB
Chapter 7

Debtors.

ORDER

This matter came before the Court on the Motion for Relief from Judgment or Limited Discovery (Doc. No. 86) (“Motion”) filed by Bourbon Community Hospital, LLC (“BCH”) pursuant to Federal Rule of Civil Procedure 60(b). A hearing was held on July 19, 2010 at which counsel for BCH and counsel for the Debtors John Michael Baird and Jane Nelson Baird. BCH’s Motion is due to be denied for the reasons set forth herein.

Background

BCH sought dismissal of the Debtors’ Chapter 7 case for bad faith pursuant to 11 U.S.C. Section 707. The Court entered a Memorandum Opinion on January 20, 2010 (Doc. No. 61) denying BCH’s dismissal motion finding: (i) 11 U.S.C. Section 707(b) was inapplicable because the Debtors’ debts were primarily business debts, not consumer debts; and (ii) the circumstantial factors did not establish the Debtors acted in bad faith warranting the dismissal of their case “for cause” pursuant to 11 U.S.C. Section 707(a). BCH appealed the decision and is pending in the United States District Court for the Middle District of Florida, Orlando Division (“District Court”).

BCH's Motion

BCH filed a Notice with the District Court pursuant to Federal Rule of Civil Procedure 62.1 setting forth it intended to file a Motion in the Bankruptcy Court seeking relief from the Memorandum Opinion.

BCH filed its Motion asserting new evidence has come to light that is relevant to the Section 707(a) adjudication. BCH asserts the Debtors moved from Kentucky to Florida prepetition to “forum shop” and then returned to Kentucky, to a town near where they originally lived, post-petition. BCH attached to its Motion a magazine article discussing Mr. Baird’s gynecological practice in Kentucky. BCH contends the Debtors’ actions reflect bad faith. It requests relief from the Memorandum Opinion, or, in the alternative, an opportunity to conduct discovery regarding the Debtors’ employment and moving expenses.

A debtor’s post-petition behavior is a relevant factor in a Section 707(a) totality of the circumstances analysis regarding a debtor’s intentions in seeking bankruptcy protection. In re Sekendur, 334 B.R. 609, 618–619 (Bankr. N.D. Ill. 2005). BCH generally pled the Debtors’ relocation to Kentucky evidences bad faith, but failed to specifically set forth how the Debtors’ filing a bankruptcy case in Florida and subsequent return to Kentucky constitute bad faith actions.

This Court has authority to reconsider a judgment based upon newly discovered evidence pursuant to Rule 60(b), if the motion for relief “raises a substantial issue” even though an appeal of the judgment is pending. FED. R. CIV. P. 62.1(a). BCH’s Motion does not establish a substantial issue pursuant to Rule 62.1(a). BCH fails to set forth how the Debtors’ relocation to Kentucky after filing their bankruptcy case in Florida

constitutes bad faith. The Debtors' post-petition relocation does not form a basis for reconsideration of the Memorandum Opinion pursuant to Rule 60(b). The Motion is due to be denied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that BCH's Motion (Doc. No. 86) is hereby **DENIED**; and it is further

ORDERED, ADJUDGED and DECREED that the Clerk of Court is hereby directed to transmit a copy of this Order to the United States District Court for the Middle District of Florida, Orlando Division, as this Order relates to the pending appeal captioned *Lifepoint Hospitals d/b/a Bourbon Community Hospital, LLC v. John Michael Baird, et al.*, Case No. 6:10-cv-00302-JA.

Dated this 22nd day of July, 2010.

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