SO ORDERED.
SIGNED this 5th day of April, 2017

Suzanne H. Bauknight
UNITED STATES BANKRUPTCY JUDGE

THIS ORDER HAS BEEN ENTERED ON THE DOCKET.
PLEASE SEE DOCKET FOR ENTRY DATE.

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

TRACEE SHAWAN LANE-GARNER
aka TRACEE S. LANE

Case No. 3:16-bk-31473-SHB
Chapter 7

MEMORANDUM AND ORDER

On March 9, 2017, the Court held a contested hearing on Debtor's Second Motion to Dismiss Chapter 7 Case Without a Discharge ("Motion to Dismiss") filed on August 16, 2016, and the Trustee's Response to Debtor's Motion to Dismiss Chapter 7 Case filed by John P. Newton, Jr., Chapter 7 Trustee ("Trustee"), on September 6, 2016. The parties identified the issues for trial as (1) whether Debtor has equity in her personal residence of consequential value to the estate which precludes her from having the Court dismiss her case pursuant to her second motion to dismiss and (2) whether Debtor's equity in her personal residence is of inconsequential value to the estate which warrants abandonment by the Chapter 7 Trustee.

I. Findings of Fact

The record reflects the following facts. Debtor filed the Voluntary Petition commencing this Chapter 7 bankruptcy case on May 10, 2016. Debtor disclosed within her statements and schedules a personal residence located at 261 W. Howe Street, Alcoa, Tennessee ("Property"). The Property is secured by two mortgages held by Blount County Habitat for Humanity, Inc., which had an aggregate outstanding indebtedness owed of $17,217.28 on the petition date, according to the proofs of claim filed by Habitat for Humanity, Inc. on June 6, 2016. Debtor scheduled the value of the Property at $45,000.00, and she scheduled unsecured claims totaling $40,243.80. [Doc. l.]

On August 16, 2016, Debtor filed the Motion to Dismiss, stating that she sought dismissal because "the Chapter 7 Trustee assigned to this case concluded that Debtor's personal residence had equity of consequential value to the bankruptcy estate that would cause her personal residence to be sold if she remained in a Chapter 7 case." [Doc. 22 at ¶ 4]. Debtor claims a $25,000.00 homestead exemption, to which the Trustee has not objected.

At the March 9 hearing, the parties submitted ten pre-marked and pre-filed exhibits, along with five stipulations of undisputed facts. The following three witnesses testified: Louis H. Holmes, Jr.; Debtor; and the Trustee.

Debtor's appraiser, Mr. Holmes, testified that, in his opinion, the Property is not currently marketable because it is in a state of disrepair. Nonetheless, he agreed with Debtor's scheduled value of $45,000.00. Mr. Holmes also acknowledged that if the house were not damaged, it would be worth approximately $80,600.00. The Trustee discounted Mr. Holmes's appraisal because his focus is what the Property would bring if it were listed for sale, and after discussions

with his long-time consulting broker, the Trustee believes that the Property could be successfully marketed in the mid-$60,000 range.

Debtor testified that if the case is dismissed, she intends to satisfy the bulk of the unsecured debt, having consulted with a credit advisor. Debtor, however, did not explain how she would be able to come up with funds to pay unsecured creditors or how long she thought it would take to pay them.

As stated, Debtor's sole reason for seeking to dismiss her case is to avoid the sale of the Property by the Trustee and retain her home, which she argues is of inconsequential value to the bankruptcy estate and should be abandoned by the Trustee. Conversely, the Trustee opposes the Motion to Dismiss, averring that the Property is worth substantially more than the $45,000.00 scheduled by Debtor and should be sold for the benefit of creditors.

B. Conclusions of Law

Because a debtor does not have an absolute right to dismiss a Chapter 7 bankruptcy case, *see In re Dzierzawski*, 528 B.R. 397, 403 (Bankr. E.D. Mich. 2015), "[a] debtor seeking to voluntarily dismiss a case under [11 U.S.C.] § 707(a) has the burden to show cause for dismissal." *In re Herrera*, 554 B.R. 262, 266 (Bankr. D.N.M. 2016). The determination whether a debtor has established cause for dismissal is within the sound discretion of the Court and is determined on a case-by-case basis. *Iberiabank v. Yocum (In re Yocum)*, 488 B.R. 748, 751 (Bankr. N.D. Ala. 2013); *accord In re Segal*, 527 B.R. 85, 90 (Bankr. E.D.N.Y. 2015) (stating that "[e]quitable considerations guide the court in weighing factors in favor of and against dismissal."). Generally, the court looks to a number of factors, including the best interests of the debtor and creditors; whether the trustee and/or creditors consent or object; potential delay to creditors; whether the request to dismiss was in good or bad faith; the debtor's ability to pay

debts outside of bankruptcy; whether any objections to exemptions or discharge are pending; and whether dismissal would reorder priority of payments. *In re Herrera*, 554 B.R. at 266. Other factors that courts have considered in determining whether there is sufficient cause to dismiss a case under § 707(a) include "whether dismissal would result in an abuse or manipulation of the system[] and . . . whether dismissal is justified by compelling equitable principles." *In re Dzierzawski*, 528 B.R. at 404 (quoting *Hopper*, 404 B.R. 302, 308 (Bankr. N.D. Ill. 2009) (citations omitted)).

Three approaches have evolved by courts making the determination whether sufficient cause exists to grant a debtor's motion to voluntarily dismiss a Chapter 7 case:

> The first line of cases holds that there can be no dismissal under § 707(a) "if there is any showing of prejudice to creditors." This expression of the test implies that any prejudice to creditors is an absolute bar to voluntary dismissal, no matter how compelling the reasons for the debtor's request for voluntary dismissal.
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> Another line of cases holds that "the test [for cause] turns on whether or not the dismissal is in the best interests of the debtor and the creditors of the estate . . . with particular emphasis on whether the dismissal would be prejudicial to creditors." Courts adhering to this line of cases apply what may be characterized as a balancing of interests test. A "[d]ebtor's interest lies in securing a fresh start while [a] creditor's interest concerns the prejudice and delay encountered in pursuing its claim."
>
> Finally, in a third line of cases, dismissal is granted freely unless it will cause "plain legal prejudice" to creditors. Plain legal prejudice has been described as "prejudice that is significant and real, not potential, when viewed in terms of the rights that debtors and creditors have after dismissal." From the debtor's perspective, the "plain legal prejudice" test is the most hospitable standard. It appears to set the bar for opposing dismissal at the highest level among the three tests because it requires demonstrable prejudice and rules out potential prejudice as a basis for denying the motion.
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> In practice, the three (3) lines of cases described above may not be as distinct as their stated tests may make them appear. For example, courts that purport to employ the "absolutist" approach of the "any prejudice" test in the first line of cases as well as courts that "balance" the interests of the debtor and the creditors may consider the same "factors" in ruling on a voluntary motion to dismiss under § 707(a) . . . .

> Thus, while in the abstract, these three (3) lines of cases articulate a different legal standard for voluntary dismissal under § 707(a), all of the courts may be employing, at bottom, the same analysis – a factually intensive assessment of the debtor's reasons for requesting dismissal and of the impact dismissal can be expected to have on the creditors. Such an approach is susceptible to being labeled a balancing test.

In re Dzlerzawski, 528 B.R. at 403-04 (quoting *Barry v. Sommers (In re Cochener)*, 382 B.R. 311, 337-39 (S.D. Tex. 2007), *rev 'd on other grounds*, 297 F. App'x 382 (5th Cir. 2008)). Stated most simply, Debtor bears the burden of showing cause and that interested parties would not be prejudiced by an outright dismissal of her case. *Cf In re Kaur*, 510 B.R. 281, 286 (Bankr. E.D. Cal. 2014).

In a remarkably similar case, *In re Hopper*, 404 B.R. 302 (Bankr. N.D. Ill. 2009), the bankruptcy court denied the debtor's request to dismiss her case after she discovered that she would lose her residence in administration of the Chapter 7 case. The debtor argued that "if she had been fully aware of the loss of her residence through the filing of the petition, she would not have filed the case." *Id.* at 306. The debtor also informed the court that she intended to satisfy her creditors outside of the bankruptcy process. *Id.*

Citing to this Court's decision in *In re Harker*, 181 B.R. 326, 328 (Bankr. E.D. Tenn. 1995), the *Hopper* court noted that "[i]f dismissal would prejudice the creditors, then it will ordinarily be denied." 404 B.R. at 307. The court went on to explain:

> "Benefits to be derived by the debtor from such dismissal do not constitute such cause, nor does debtor's right to convert to Chapter 13 of the Bankruptcy Code." *In re Watkins*, 229 B.R. 907, 909 (Bankr. N.D. Ill. 1999). Determining whether cause exists to dismiss a case requires a balancing of the interests of the debtor and the creditors. *Id.*; *see also Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 841 (9th Cir. BAP 2008) (stating that "the totality of the circumstances" should be considered in evaluating cause for dismissal and plain legal prejudice).
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> . . . .
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> Courts are not impressed with complaints of attorney negligence, lack of representation, or errors in judgment by debtors when considering motions for

> voluntarily dismissal. *See In re Klein*, 39 B.R. 530 (Bankr. E.D.N.Y. 1984) (denying motion to dismiss even though debtor asserted he was not fully advised of the implications of commencing a bankruptcy case); *In re Martin*, 30 B.R. 24 (Bankr. E.D.N.C. 1983) (denying motion to dismiss because the debtor was represented by counsel despite her assertion that counsel failed to explain the effects of filing a bankruptcy petition); *In re Kimball*, 19 B.R. 300 (Bankr. D. Me. 1982) (denying motion to dismiss where debtors failed to read the petition which contained false information because they believed their attorney "would do nothing which wasn't right for them"); *In re St. Laurent*, 17 B.R. 768 (Bankr. D. Me. 1982) (denying motion to dismiss because mistaken belief by debtor and her counsel that she could retain all assets as exempt and receive discharge of all her dischargeable debts was not cause under § 707(a)).
>
> Further, courts have held that the ability of the debtor to repay debts does not constitute adequate cause for dismissal under § 707(a).

Id. at 307-08.

The *Hopper* court ultimately concluded that the debtor could not establish "cause" to demonstrate that dismissal was justified by a mistaken belief that her residence would be completely exempt. *Id.* at 309. The court also rejected the debtor's claim that she could pay her debts outside of bankruptcy because she did not present reliable evidence of any additional income or a change in circumstances and did not present "a concrete or viable plan for paying her creditors outside of bankruptcy." *Id.* Lastly, the court found that "Debtor's reasons for dismissal do not outweigh the prejudice that would result to her creditors." *Id.* at 310.

The burden is the Debtor's to show cause and a lack of prejudice to interested parties. Simply, she did not show cause, and she did not show that her creditors would not be prejudiced by the dismissal of the case. The Trustee is not required to prove the value of the Property in order to oppose Debtor's Motion to Dismiss.

For the foregoing reasons, constituting the Court's findings of fact and conclusions of law as required by Rule 52 of the Federal Rules of Civil Procedure, applicable to contested matters by virtue of Rule 9014 of the Federal Rules of Bankruptcy Procedure, the Court directs that

Debtor's Second Motion to Dismiss Chapter 7 Case Without a Discharged filed by Debtor on August 16, 2016, is DENIED.

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