UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:
LYLE H. EDWARDS, JR.,
Debtor

Case # 03-10018
Chapter 13

Appearances:

Gleb Glinka, Esq.	*Nancy J. Creswell, Esq.*	*Jan Sensenich, Esq.*
Glinka & Schwidde	*Office of the U.S. Attorney*	*Chapter 13 Trustee*
Cabot, VT	*Burlington, VT*	*White River Junction, VT*
For the Debtor	*For Farm Service Agency (FSA)*	*Pro Se*

MEMORANDUM OF DECISION DENYING FSA'S MOTION TO DISMISS

I. PROCEDURAL BACKGROUND

On January 6, 2003, Debtor Lyle H. Edwards, Jr. (the "Debtor") filed a petition for relief under chapter 13 of the Bankruptcy Code and a chapter 13 plan (doc. #3). Creditor Farm Service Agency ("FSA") filed an Objection to Confirmation of Plan (doc. #8). A confirmation hearing was held on February 13, 2003, and then adjourned to allow FSA to conduct Rule 2004 examinations of the Debtor and his wife, Katherine Edwards. After completion of those examinations, FSA filed a Motion to Dismiss Case for Bad Faith (doc. #16). The Court set an evidentiary hearing to consider both FSA's Motion to Dismiss and FSA's Objection to the Chapter 13 Plan.

The evidentiary hearing commenced on July 15, 2003 and concluded on July 16, 2003. At the hearing, evidence was taken and a stipulation of facts were entered on the record. After the first day of the hearing, the parties agreed to sever FSA's Motion to Dismiss from FSA's Objection to the Chapter 13 Plan. At the conclusion of the hearing, the parties were directed to file affidavits, a stipulation of facts and exhibits, and post-hearing memoranda of law. Pending receipt of those items, the Court reserved decision on FSA's Motion to Dismiss. The Court tentatively set a confirmation hearing on Debtor's chapter 13 plan for August 28, 2003.

After review of the affidavits, the stipulation of facts and exhibits, and memoranda of law, and upon consideration of all the papers and evidence presented with regard to FSA's Motion to Dismiss, the Court DENIES the Motion to Dismiss for the reasons stated below.

II. ISSUE PRESENTED

The issue presented is whether it is "bad faith" for a debtor to file a chapter 13 case when:

(I) he owes just one significant debt;

(ii) as a result of settlement negotiations in an adversary proceeding under a prior chapter 7 bankruptcy case, the significant debt has been reduced by 70% and excepted from discharge in that case;

(iii) the Debtor has no assets in his own name which could be attached for satisfaction of the significant debt; and

(iv) the Debtor has filed numerous corrections and revisions to his schedules, budget, statement of financial affairs, and plan in the instant case.

III. STIPULATED FACTS

In their Joint Pre-Trial Statement (doc. #37), the parties presented 25 undisputed material facts, which the Court adopts and summarizes as follows. On February 10, 1993, the Debtor and his former wife, Barbara Edwards, filed a voluntary petition under chapter 12 of the Bankruptcy Code.[1] Their Chapter 12 Plan of Reorganization was confirmed on November 29, 1993. On February 24, 1995, the Debtor and Barbara Edwards converted their chapter 12 case to a case under chapter 7. On August 17, 1995, the United States filed an adversary proceeding complaint in this Court, pursuant to 11 U.S.C. § 523(a)(2)(B), (a)(6), and (c), to determine the dischargeability of a debt owed by the Debtor and Barbara Edwards to Rural Economic and Community Development Services, formerly known as Farmer's Home Administration and now known as the Farm Services Agency or FSA. The parties entered into a Settlement Stipulation resolving the adversary proceeding, which provided that $75,000.00 of the total debt of $250,681.77 would be excepted from discharge, without any admission of wrongdoing by the Debtor, and dismissed the proceeding against Barbara Edwards. On June 12, 1996, the United States Bankruptcy Court issued a judgment against Lyle H. Edwards, Jr., in the amount of $75,000.00 (the "$75,000 FSA Obligation"). Between the date of the Settlement Stipulation in April 1996 and the instant chapter 13 bankruptcy case (filed on January 6, 2003), the Debtor made no voluntary payments on the $75,000 FSA Obligation.

The Debtor and Katherine Edwards ("Mrs. Edwards") were married in December 1996. The Debtor is a dairy farmer who, with Mrs. Edwards, operates a farm known as Spring Brook Farm in Westfield, Vermont. Both the Debtor and Mrs Edwards work on the farm. In September 1999, the Debtor and Mrs. Edwards bought their 55-acre farm from Mr. and Mrs. Gerald Choquette, financing $130,000 of the purchase price. The Debtor and Mrs. Edwards both contributed to the down payment on the farm. In March 2000, the

[1] The Debtor and Barbara Edwards were not represented by Attorney Glinka in that case.

Debtor and Mrs. Edwards bought two ten-acre adjoining lots from Mr. and Mrs. Marcel Choquette, financing $19,500 of the purchase price. The Choquette families are holding mortgages on this property. As of July 1, 2003, the Debtor and Mrs. Edwards owed the Choquettes approximately $116,000. Other than these mortgages, the Debtor and Mrs. Edwards have no commercial loans for the farm operation; their cattle and farm equipment are unencumbered. All of the Debtor's asset, except for an old pick-up truck, are owned by the Debtor and Mrs. Edwards together, as "tenants by the entireties."

Mrs. Edwards is a registered nurse who has been employed for a number of years by North Country Hospital. Her income at North Country Hospital was $32,481.00 in 1999; $37,262.25 in 2000; $43,200.92 in 2001; and $46,401.34 in 2002. Mrs. Edwards participates in a retirement plan sponsored by the hospital (to which her employer contributes), and she carries health and dental insurance for herself and the Debtor.

The Debtor and Mrs. Edwards have one bank account – a checking account (the "Joint Checking Account") – at the Lyndonville Savings Bank. The Debtor and Mrs. Edwards deposit all their income into the Joint Checking Account, including, but not limited to, the proceeds of milk checks, government subsidy payments, sales of cows and calves and Mrs. Edwards' pay check from North Country Hospital. The Debtor and Mrs. Edwards pay all farm, household and other expenses from the Joint Checking Account.

In May of 2002, the Debtor and Mrs. Edwards began to convert their dairy farm from commercial to organic milk production. They received their first organic milk check on October 25, 2002.

On October 23, 2002 , the United States Department of Agriculture, Commodity Credit Corporation, had set off the sums of $3,185.72, $546.51, $537.10 and $972.00 from farm subsidy payments due to the Debtor under the Milk Income Loss Compensation ("MILC") and Livestock Compensation programs and applied the set offs to the outstanding $75,000 FSA Obligation. In November and December 2002, FSA also set off payments of $606.33 and $475.20, respectively, for a total of $6,322.86. The subsidy payments set off represent one-half of the payments due to the Debtor and Mrs. Edwards from MILC during this period.

On January 6, 2003, Lyle H. Edwards, Jr. filed a bankruptcy petition under chapter 13 of the Bankruptcy Code. Mrs. Edwards did not join in this filing. On February 10, 2003, FSA filed an Objection To Confirmation on the grounds that the chapter 13 plan was proposed and filed in bad faith, and that the plan did not require all of the Debtor's disposable income to be applied to the plan. On February 26, 2003, the Court issued an Order (doc. #14) authorizing Rule 2004 examinations by FSA of the Debtor and Mrs. Edwards. Those examinations occurred on March 3, 2003, and March 5, 2003. In addition, on June 12, 2003, FSA deposed Dr. Richard Wackernagel, the Debtor's expert witness. On March 7, 2003, FSA filed a Motion To Dismiss Chapter 13 Case For Bad Faith (doc. #16). Subsequently, the Debtor amended his schedules to include an asset omitted from Schedule B, namely, the ownership of certain stock in the St. Albans Creamery.

On July 8, 2003, the parties participated in a full-day mediation session that did not result in a

resolution of their dispute. After the mediation attempt, but before the July 15-16, 2003 evidentiary hearing, the Debtor filed another amendment to his schedules and a First Amended Chapter 13 Plan, see docs. #39 and #40 respectively.

IV. DISCUSSION

A. FSA's Arguments

Creditor FSA seeks dismissal of this case pursuant to 11 U.S.C. § 1307(c).[2] It asserts that allowing the Debtor to proceed under chapter 13 would be fundamentally unfair to creditors and contravene the spirit of the Bankruptcy Code, because the Debtor filed this case in bad faith. Specifically, FSA's Motion to Dismiss alleges four grounds for dismissal under § 1307(c), identifying circumstances, which, if considered together, constitute a bad faith bankruptcy filing. These grounds are:

(1) The Debtor is attempting to discharge a non-dischargeable debt (emphasizing that the Debtor consented to entry of judgment, but then never made any payment on it);

(2) The Debtor lacks proper motivation and sincerity in filing for bankruptcy relief:
- he only filed because of the $75,000 FSA Obligation, i.e., this is a two-party dispute
- the plan provides a small dividend to general unsecured creditors
- the Debtor is not in financial distress
- the Debtor failed to list certain creditors, but then paid them post-petition;

(3) The Debtor is not making his best effort to repay his creditors, but, rather, is attempting to thwart them (demonstrated by the fact that he holds his property in a tenancy by the entirety);

(4) The Debtor filed inaccurate schedules and made misrepresentations to the Court:
- he distorted business expenses
- he failed to disclose preferred stock and equity interest in CROPP Co-operative
- he misstated the balance due on a Choquette mortgage
- he intentionally omitted five creditors from Schedule F
- he failed to disclose a MILC executory contract
- he failed to attach a detailed statement of farm income
- he filed inaccurate Schedule Js (including a line item for voluntary payments to support his children beyond the legal minimum requirements)
- his Schedules I contained inaccurate figures for annual income
- he failed to disclose potential preferences on his Statement of Financial Affairs, and
- the amount of payments and term of repayment to creditors in his plan are minimal

B. Dismissal for 'Bad Faith' Cause Under § 1307(c)

Under § 1307(c), upon the motion of a party in interest, a case may be dismissed or converted to another chapter for cause. Although not defining "cause," § 1307(c) provides many examples thereof:

[2]All statutory references are to Title 11 of the United States Code (the "Bankruptcy Code") unless otherwise specified.

> (c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—
> (1) unreasonable delay by the debtor that is prejudicial to creditors;
> (2) nonpayment of any fees and charges required under chapter 123 of title 28;
> (3) failure to file a plan timely under section 1321 of this title;
> (4) failure to commence making timely payments under section 1326 of this title;
> (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
> (6) material default by the debtor with respect to a term of a confirmed plan;
> (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
> (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
> (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521; or
> (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521.

The list set forth in § 1307(c) is not exhaustive; it merely illustrates circumstances which would constitute cause. While lack of good faith is not one of the enumerated causes, "[C]ourts have held that the lack of good faith in filing a chapter 13 petition is 'cause' for dismissal pursuant to Code § 1307(c)." In re Klevorn, 181 B.R. 8, 10 (Bankr. N.D.N.Y. 1995); see also In re Lilley, 91 F.3d 491 (3rd Cir. 1996); In re Molitor, 76 F.3d 218 (8th Cir. 1996); In re Eisen, 14 F.3d 469 (9th Cir. 1994); In re Barrett, 964 F.2d 588 (6th Cir. 1992); In re Love, 957 F.2d 1350 (7th Cir. 1992). Through § 1307(c), *inter alia*, Congress provided bankruptcy courts with a mechanism to examine and question a debtor's motives when a chapter 13 petition appears to be tainted with a questionable purpose and permitting a court to dismiss a case for "cause." In re Rodriguez, 248 B.R. 16, 18 (Bankr. D. Conn. 1999) . See also; In re Eatman, 182 B.R. 386, 392 (Bankr. S.D.N.Y. 1995); In re Setzer, 47 B.R. 340, 344 (Bankr. E.D.N.Y. 1985). Like good faith, an assessment of bad faith is based on the totality of the circumstances. See In re French, 2003 WL 21288644 (Bankr. D. Vt. 2003); Eatman, 182 B.R. at 392 (citations omitted); In re Klevron, 181 B.R. at 10. It should be noted that the bad faith inquiry is one covering many factors and their interaction. See In re Setzer, 47 B.R. at 348. "The good faith determination with regard to the filing of a Chapter 13 petition is . . . a fact intensive inquiry to be determined by looking at the totality of the circumstances." In re Love, 957 F.2d at 1355. Ultimately, a § 1307(c) good faith analysis must determine whether the filing is fundamentally fair to creditors and, more generally, is the filing fundamentally fair in a manner that complies with the spirit of the Bankruptcy Code's provisions." Id. at 1357.

The potential for blurring the line between the concepts of bad faith and a lack of good faith is significant, since both concepts play an important role in chapter 13 cases. However, it is critical to keep these two concepts distinct because they arise in different aspects of a case and the burden of proof differs depending on which concept is at issue. A case may be dismissed if it was filed in bad faith, pursuant to § 1307(c); and, the creditor has the burden of proving its allegation of bad faith in order to effect a dismissal. By contrast, the burden of proving good faith in a chapter 13 case falls squarely upon the debtor, who must demonstrate that his or her plan was filed in good faith. This is one of the criteria that must be established as a prerequisite to a debtor's plan being confirmed, pursuant to § 1325(a)(3). Here, the parties have agreed to bifurcate the Motion to Dismiss from the confirmation process. Thus, we do not need to address whether the Debtor has sustained his burden of proof on the issue of good faith yet.

Rather, the salient inquiry before the Court is whether the creditor, FSA, has sustained its burden of proof on the question of whether the Debtor filed this case in bad faith. Since Congress specifically formulated chapter 13 to provide a super-discharge and allow debtors to retain non-exempt assets to entice then to repay greater amounts to creditors, it is inappropriate to describe debtors as having filed their cases in bad faith solely because they availed themselves of these chapter 13 benefits. To sustain its burden, the creditor must show affirmative acts which constitute bad faith.

If a creditor succeeds in proving that a debtor filed his or her case in bad faith, then the case must be dismissed. No other outcome will suffice. The integrity of the system is at risk if any chapter 13 case is allowed to proceed after a showing of bad faith. However, dismissal of a case is a harsh remedy that should be applied only in situations where the creditor has demonstrated actual indicum of bad faith, not merely a lack of good faith. See In re Love , 957 F.2d at 1356; see also In re French, 2003 WL 21288644 (Bankr. D. Vt. May 29, 2003); In re Haning, 252 B.R. 799, 807 (Bankr. M.D. Fla 2000).

C. Use of Chapter 13's Super-Discharge is Not Evidence of Bad Faith

FSA has made it clear that it would prefer that the Debtor not be given the opportunity to earn a super-discharge. It argues first that since the Debtor now seeks to discharge a portion of the $75,000 FSA Obligation that was not dischargeable through his prior chapter 7 bankruptcy case, the filing of this chapter 13 case demonstrates bad faith. Many courts have held otherwise, finding debtors to have a statutory right to such relief. As our sister court instructs:

> Congress enacted a super-discharge provision that says to chapter 13 debtors: "Please feel free to file for relief under chapter 13 even though in a chapter 7 case, you might have to defend against a nondischargeability complaint under 523(a)(6)." Since this is the case, again it makes no sense

> as a matter of pragmatic statutory construction for a bankruptcy court to sustain an objection to confirmation or to grant a motion to dismiss because the debtor took advantage of a fundamental provision that Congress intentionally enacted.

In re Mandarino, 277 B.R. 464, 470 (Bankr. E.D.N.Y. 2002); see also Mason v. Young (In re Young), 237 B.R. 791, 799 (B.A.P. 10th Cir. 1999) (noting that attempt to discharge a debt in chapter 13 that is not dischargeable in a chapter 7 is not *per se* bad faith), aff'd 237 F.3d 1168 (10th Cir. 2001). Thus, while this is one of the factors that must be considered in determining a debtor's good faith, it is not a determinative factor.

D. The Debtor's Motivation and Sincerity

FSA contends that the Debtor's chapter 13 filing makes clear that he does not wish or intend to pay the FSA judgment and, in fact, was motivated to file chapter 13 primarily by a desire to discharge part of his $75,000 FSA Obligation. The Debtor counters that, with the exception of an old pick-up truck, all the property he owns is held as "tenants by the entirety" with Mrs. Edwards; and, therefore, he has no assets of his own from which to pay FSA. He is, in essence, "judgment-proof." Moreover, the Debtor's chapter 13 plan represents a voluntary effort to pay FSA from income of the jointly-owned farm and from his non-obligor spouse. Outside of the bankruptcy context, FSA would be paid only if the Debtor's individual financial picture were to improve dramatically. Notwithstanding the Debtor's assertions that his purpose in this filing is to pay FSA, it seems only sensible to deduce that the discharge of the balance of the $75,000 FSA Obligation and the conclusion of the dispute with FSA, that has plagued him for more than a decade, would also be important to the Debtor. However, the quest for relief offered by the statute, without more, does not constitute bad faith. Although it is true that the Debtor stipulated to a judgment for a portion of the amount FSA alleged was due approximately 10 years ago, a consent to judgment is not tantamount to a promise to pay, nor is it a promissory note setting forth an agreement to pay the debt by a specific date. Essentially, the question raised by FSA's argument is whether the glass is half empty, as FSA alleges, and the Debtor is motivated primarily by a desire to discharge part of the $75,000 FSA Obligation; or whether the glass is half full, as the Debtor alleges, and the Debtor filed chapter 13 primarily to pay a portion of the debt. If the question is too close to call, I will opt to see the glass as being half full, presume good intentions on the part of the debtor who voluntarily filed a chapter 13 case, and give him or her an opportunity to perform a plan if he or she proposes one that meets the requirements of the Bankruptcy Code. Here, I therefore conclude, the FSA's argument about the Debtor's motivation is not persuasive. If the Debtor is not able to propose a plan that meets the standards of confirmation or is unable to fulfill his obligations under the plan as confirmed, then the case will be dismissed and FSA will be able to pursue its remedies. However, at this time, the Debtor

is entitled to the opportunity to proceed if FSA cannot demonstrate grounds for dismissal under § 1307(c).

FSA also alleges that the Debtor's filing is fundamentally unfair to creditors. The Debtor in this case is not in the dire financial straits in which most chapter 13 debtors in this District find themselves. However, he does owe a substantial debt to FSA and it may well be very difficult for him to find the resources to repay this given that he currently has essentially no assets of his own and dairy farming can be such a precarious way to earn a living. The Debtor was candid in his testimony that he filed this case primarily to address the $75,000 FSA Obligation. It is with this backdrop that the Court must determine the Debtor's sincerity in filing and whether the Debtor's filing is fundamentally fair and whether, in filing this case, the Debtor has dealt fairly with FSA. See In re Love, 957 F.2d at 1357. Sine it does not appear that FSA would be able to attach any assets which could satisfy its judgement against the Debtor outside of bankruptcy, it does not strike me as unfair that the Debtor is proposing to treat this debt in chapter 13 where FSA will have a portion of its debt discharged but also be paid a more than nominal portion of its debt in a predictable and prompt fashion. While not making any finding on t he sufficiency of the proposed dividend, the Court does not find the proposed dividend of approximately 30% to be nominal. Therefore, after considering all the allegations raised under this argument, the Court does not find that the Debtor is insincere in filing this case or that by filing this bankruptcy case the Debtor is treating FSA in a way that is fundamentally unfair.

E. Whether the Debtor is Making His "Best Effort"

The evidence presented shows that the Debtor and Mrs. Edwards have always had only one bank account, a joint checking account; and that the Debtor and Mrs. Edwards have historically maintained their financial records in a combined manner, commingling their family living expenses with the farm "business" expenses. Through the diligence of FSA's counsel, along with the cooperation of the Debtor and his counsel, both assisted by the Debtor's financial consultant, it appears that the parties have been able to segregate and analyze the Debtor's historical, current, and projected income and expenses for both the Debtor individually and the farm operation.[3]

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[3] While there is no allegation that the Debtor maintained the one joint checking account or structured his financial records this way to confuse creditors or the Court, these arrangements make analysis of the Debtor's financial situation quite burdensome. Therefore, if the Debtor is ultimately able to obtain confirmation of a plan, one condition of proceeding in chapter 13 will be to have the Debtor restructure his financial record keeping system, as of the chapter 13 filing date forward, in a way that segregates the farm income and expenses from the family income and expenses. This will be necessary in order for the creditors, trustee and Court to have information that adequately and clearly sets forth the Debtor's disposable income during the course of the plan. Likewise, if the Court confirms the Debtor's plan, the Debtor may also need to establish a separate checking account into which all the farm income will be deposited and from which all farm expenses will be paid, but the Court will defer decision on that issue until it has heard from the Debtor, the chapter 13 trustee, creditors who participate in the confirmation process, and the Debtor's financial consultant, on the merits of such a requirement.

Farm finance specialist Dr. Wackernagel testified that he was employed by Spring Brook Farm; thus, he considered the farm as opposed to the Debtor or Mrs. Edwards to be his client. Dr. Wackernagel further testified that he dealt primarily with the Debtor, that he found the Debtor to be very candid, that he helped the Debtor set up his QuickBook system, and that he taught the Debtor how to use the computerized bookkeeping system. In response to questioning, Dr. Wackernagel stated he was aware that the Debtor and Mrs. Edwards had several mortgages with various Choquette family members, and that he had suggested different options to the Edwardses regarding the payment of the balloon mortgages owed to the Choquettes. Moreover, Dr. Wackernagel testified that he learned of the Debtor's $75,000 FSA Obligation only after the Debtor filed this bankruptcy case. Finally, Dr. Wackernagel testified that he was asked by Debtor's counsel to prepare an Amended Chapter 13 Plan for the Debtor that would stand up to scrutiny.

None of the testimony presented on this argument persuades me that the Debtor structured ownership of his assets or filed this bankruptcy case for the purpose of thwarting his creditors. Thus, the Court finds that FSA has not met its burden of proof regarding bad faith through its allegations on this point.

F. Inaccuracies in the Schedules and Timing of Amendments

FSA's final, most zealous, and strongest argument regarding the Debtor's alleged bad faith is based upon evidence of his inaccurate schedules and questionable timing of his amendments. This Court has recently had the opportunity to address the extent to which inaccurate schedules may be the basis for a finding of bad faith in In re French, 2003 WL 21288644 (Bankr. D. Vt. May 30, 2003). In French, the debtor made several amendments to his schedules, including, *inter alia*, adding creditors to his Schedule F and significantly changing his income and living expenses on his Schedules I and J multiple times. See French, 2003 WL 21288644 at *3. The Court noted: "The timing of these changes creates the impression that the Debtor was engaging in defensive maneuvers," id., and "the nature and time of filing of the documents themselves give rise to questions of bad faith," id., warranting careful analysis of the procedural history of the case. After examining the specific facts and circumstances of the case and weighing the totality of the circumstances, however, the Court found the inaccuracies in, and amendments to, the debtor's schedules were plausibly explained. Thus, the Court declined to find bad faith and denied the motion for dismissal. See id. at *5-6.

This Court considers allegations of inaccurate schedules to be very serious. The integrity and effectiveness of the bankruptcy process is founded upon the premise that debtors file complete and accurate schedules, upon which the Court, trustees and creditors can rely. I have considered the allegations, documents and testimony on this point in light of the overall importance of accurate schedules. In this instance, the Court finds inaccuracies and omissions in the Debtor's schedules, as in the French case, have been plausibly explained by the Debtor. The Court is persuaded that the errors in the initial filings were not intentional or

fraudulent. For example, the Debtor candidly admitted that People's Trust should have been listed as an undersecured creditor, and that he did not understand that People's Trust held a claim at the time he prepared his original schedules. Similarly, the Debtor's misunderstanding of Derby Pond's status as an unsecured claim holder, as opposed to a vendor with a current balance due, explains the omission of creditor Derby Pond from Debtor's Schedule F. Likewise, the Debtor's payment arrangement with other vendors, such as Orleans Veterinary Clinic, Vermont Electric Co-op, and Morrison's Feed, where the Debtor customarily paid these vendors in full within 30 days, elucidates the Debtor's misapprehension about whether these vendors were "creditors" for purposes of his bankruptcy schedules. The Debtor's reference to his conversion from a commercial dairy farm to an organic producer provides a credible explanation for the Debtor's failure to recall his ownership interest in the St. Alban's Co-op (a cooperative organization for commercial dairy farmers, not organic ones), as well as his new contract with MILC. Where, as here, the explanations given by a debtor are at least as credible as the allegations of a creditor, the Court will give the benefit of the doubt to the debtor in order to encourage individual reorganizations, to acknowledge the voluntary nature of chapter 13 cases and to defer to the fact that the purpose of the Bankruptcy Code is debtor relief. Since FSA has not persuaded the Court that the Debtor's inaccurate schedules reflect a lack of veracity or an intent to mislead, the Court has no basis to make a finding of bad faith based upon the errors in the schedules.

FSA argues that the determination of bad faith must be made not only by reference to the Debtor's initial filings and his pre-petition conduct, but also to the manner and timing of the Debtor's "corrections" to the schedules. FSA finds it particularly offensive that the Debtor should be able to file intentionally misleading documents and then correct them only when the creditor brings the inaccuracies to the Court's attention, and even worse, does not file the accurate, revised documents until the eve of trial. While the timing of the filing of the amended budget and plan was, certainly, inconvenient for both parties in interest and the Court, the critical inquiry is the Debtor's motivation in each set of filings, rather than the impact of the timing on the recipients. The Court finds that the Debtor was justified to wait as long as he could to file the revised budget and plan, so that he had as much historical data to rely upon as possible in proposing his plan. The testimony of both the Debtor and his financial consultant were credible and persuasive on this point. However, FSA's argument on this point is entirely sound and critically important. If I were not convinced of the Debtor's honesty or of the veracity of the schedules currently before the Court or of the lack of intent to deceive, FSA's argument would prevail. Dishonesty in bankruptcy filings requires dismissal of a case and "after the fact" corrections do not exculpate a debtor for the abuse of the system evidenced by his or her initial filings.

The Debtor's failure to identify a possible 10% increase in his disposable income on his most recently filed Schedule I is troubling. The Debtor's testimony was unequivocal on the rationale for converting to organic farming: he expected it would allow him to earn more money. In fact, it appeared that part of the reason the Debtor filed his chapter 13 case at this time was because he anticipated an increase in net income that would allow him to have the disposable income necessary to fund a chapter 13 plan. While the Debtor was not certain he would reach this goal, Schedule I merely asks for "anticipated" increases in income. Thus, this part of Schedule I should have been completed to disclose the anticipated increase; and there was no credible explanation as to why it was not. However, FSA has not demonstrated this omission was motivated by a desire to mislead the creditors or the Court. Therefore, the failure to disclose this anticipated increase in income, alone, is not a basis to dismiss the Debtor's case.[4]

G. The Totality of the Circumstances

As the fact finder, the Court must consider the evidence and determine what weight to give it. See, e.g., In re Love, 957 F.2d at 1354. Having observed the witnesses and heard their testimony, the Court finds the testimony of both the Debtor and Dr. Wackernagel to be credible. The Court finds totality of circumstances in this case, as depicted in the documents filed, the testimony presented, and demeanor of the witnesses, does not portray a dishonest debtor or a debtor seeking to manipulate the bankruptcy system to his own advantage and to the detriment of his creditors. Thus, the case will go forward and any objection FSA has to its treatment under the Debtor's Plan will be addressed through the confirmation process.

V. CONCLUSIONS OF LAW

The Court finds FSA has failed to carry its burden of proof on the issue of bad faith under § 1307 (c). Thus, the Court finds there is not cause under § 1307(c) to dismiss the Debtor's case. FSA's Motion to Dismiss Case for Bad Faith is DENIED.

The evidentiary hearing on FSA's Objection to confirmation of the Debtor's plan, and the confirmation hearing, shall proceed on August 28, 2003, as scheduled.

Rutland, Vermont
August 26, 2003

Colleen A. Brown
United States Bankruptcy Judge

[4]Yet, this does not mean that the Court, trustee and creditors will not get information reflecting changes in income and expenses during the period of the plan, based on the conversion to an organic dairy farming operation. As is the norm with business chapter 13 cases in this District, the Debtor, as a business debtor, will be required to file updated statements of income and expense each year, along with copies of his annual state and federal tax returns, if the chapter 13 plan is confirmed.