

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

**In re:**  
**LIONEL DIAZ**  
**2773 East 15<sup>th</sup> St.**  
**Brooklyn, NY 11235**  
**SSN: xxx-xx-3027**

**Case No.: 8:14-bk-01237-CPM**

**Chapter: 13**

**Debtor**

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**ORDER DISMISSING CASE WITH FIVE YEAR BAR AS TO REFILING**

THIS CASE came before the Court on April 16, 2014, at 1:30 p.m., to consider the United States Trustee's Motion to Dismiss Case with Prejudice (the "Motion") (Doc. No. 14). The Motion asks the Court to bar the Debtor from filing for bankruptcy for a period of five years. At the hearing, no party in interest appeared in opposition of the requested relief.

The Motion initiates a core proceeding and contested matter in accordance with 28 U.S.C. § 157(b)(2)(A) and (O); 11 U.S.C. §§ 105(a) and 1307(c); and Fed. R. Bankr. P. 1017 and 9014. This Court has jurisdiction to enter final orders and judgments in this matter under 28 U.S.C. §§ 157 and 1334 together with the Standing Order of Reference entered by the United States District Court for the Middle District of Florida. Venue is not proper, as the Court will address *infra*. Adequate and sufficient notice of this hearing on dismissal with prejudice (Doc. No. 21) was provided to the Debtor. *See also* Fed. R. Bankr. P. 4002(a)(5).

*Initial Findings of Fact*

This chapter 13 case was commenced voluntarily by the Debtor *in propria persona* on February 3, 2014. The Debtor executed his Voluntary Petition (the "Petition") (Doc. No. 1) under penalty of perjury, which constitute judicial admissions. The Debtor stated in his Petition that his address as Brooklyn, New York. The Debtor failed to complete the information

regarding venue on his Petition. The Debtor also failed to complete Exhibit D to his Petition regarding his compliance with the pre-petition credit counseling requirements of 11 U.S.C. § 109(h).

The Debtor disclosed that he had filed one (1) prior bankruptcy case within the last eight (8) years.<sup>1</sup> The Debtor stated that his prior case was filed in the Eastern District of New York, but did not disclose either the bankruptcy case number or the date that prior case was filed. The Debtor provided a telephone number in his signature block in accordance with Fed. R. Bankr. P. 9011(a).<sup>2</sup>

### *Propriety of Venue*

A Debtor has the duty and obligation to accurately, fully, and completely provide the information required of Official Form 1 – Voluntary Petition. 11 U.S.C. § 521. Anything less than the full measure of disclosure is unacceptable under the Bankruptcy Code and Rules, as the Court and the parties are not required to ferret out pertinent information. *In re Saturley*, 131 B.R. 509, 517 (Bankr. D. Me. 1991). The Court finds and concludes that venue is improper in the Middle District of Florida. Accordingly, the Court shall dismiss a case laying venue in the wrong district. 28 U.S.C. § 1406(a).<sup>3</sup>

However, filing a case laying venue in the wrong district does not wrest from the Court its inherent power and authority to enter any order that is necessary or appropriate to carry out

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<sup>1</sup> A review of U.S. Party Index, maintained by the United States Courts PACER website, which the Court may take judicial notice of, provides the Debtor's bankruptcy case in the Eastern District of New York was *In re Lionel Diaz*, 1:13-bk-45532 commenced on September 11, 2013 and dismissed on October 29, 2013 by statutory operation of 11 U.S.C. § 521(i)(1).

<sup>2</sup> At the hearing, the Court directed the Courtroom Deputy to call the Debtor at the provided telephone number so that he could be connected to the hearing and participate in the hearing. The telephone number provided had been disconnected or no longer in service.

<sup>3</sup> *Thompson v. Greenwood*, 507 F.3d 416, 422-24 (6th Cir. 2007), *cert. denied*, 555 U.S. 880, 129 S. Ct. 193 (2008) (Section 1406 governs cases commenced in an improper venue).

the provisions of title 11. The Court will consider and rule upon the United States Trustee's request to dismiss this case with prejudice.

*Additional Findings of Fact*

In addition to the one disclosed prior bankruptcy case in New York, the Debtor has been a serial filer with the Middle District of Florida. Including the instant chapter 13 case, the Court takes judicial notice of its own court files, as maintained by PACER, for the following case filings by the Debtor: (1) *In re Diaz*, 8:13-bk-07397, commenced on June 3, 2013 and dismissed on October 15, 2013; (2) *In re Diaz*, 8:12-bk-03801, commenced on March 16, 2012 and dismissed on August 1, 2012; (3) *In re Diaz*, 8:09-bk-15295, commenced on July 16, 2009 and dismissed on August 27, 2009; and (4) *In re Diaz*, 8:09-bk-04937, commenced on March 18, 2009 and dismissed on October 9, 2009. This is the Debtor's sixth serial bankruptcy filing, in two jurisdictions, over a five year time period.

All of the five bankruptcy cases commenced in the Middle District of Florida have been dismissed for failure to comply with the requirements of title 11. Further, the Debtor has failed to comply with the Court's Chapter 13 order establishing the Debtor's duties entered in each of the five bankruptcy cases the Debtor has filed in the Middle District of Florida. The Debtor has paid filing fees in only one of his prior bankruptcy cases.

In all cases, the Debtor has not filed schedules, statements of financial affairs, chapter 13 plans, provided information and documents to the case trustee, or attended and submitted to examinations under oath. In all five bankruptcy cases commenced in the Middle District of Florida, the Debtor has been ineligible to be a debtor under 11 U.S.C. § 109(h), which requires a

debtor to participate in a pre-petition credit and budget counseling with an approved credit counseling agency.

*Conclusions of Law as to Dismissal with Prejudice*

The United States Trustee seeks a dismissal with prejudice, barring the debtor from filing *in propria persona* for a time period of five years. In essence, the United States Trustee seeks to enjoin the Debtor from filing and further seeks to revoke the Debtor's *in propria persona* abilities to file a bankruptcy case without the assistance of counsel.

In considering whether an injunction against future filings is warranted, the Court should consider: (1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing, or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the court and its personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties. *Martin-Trigona v. Shaw*, 986 F.2d 1384, 1386-87 (11th Cir. 1993).

Here, the Debtor is a serial filer and utilizing the bankruptcy system in an abusive manner toward his creditors' rights and interests in properly protecting their non-bankruptcy rights to their collateral. This sixth bankruptcy filing constitutes an impermissible misuse of the bankruptcy system in that the Debtor presents nothing and has failed to comply with his statutory requirements and the orders of the Court. The timing of these serial bankruptcy cases evidence an intent to delay and frustrate the legitimate efforts of the Debtor's creditors in the enforcement of their rights. *See In re Ebell Media, Inc.*, 462 Fed. Appx. 674, 675-76 (9th Cir. 2011) (case filed in bad faith when it: involved solely a two-party dispute; the only possible effect of the

bankruptcy filing was to stop other proceedings; the timing of the petition was suspect; and there was no estate to be administered). The continuation of this, the Debtor's sixth serially filed bankruptcy case, creates an unreasonable delay by the debtor that is prejudicial to creditors and constitutes an abuse of the bankruptcy system. *See* 11 U.S.C. §1307(c)(1); *see also* 11 U.S.C. §362(c).

Upon the foregoing, this Court finds and concludes that the Debtor's false declarations as to his historical serial case filings, failure to comply with this Court's orders, failure to comply with the requirements under title 11, and his abuse of the bankruptcy system in no less than six cases constitutes grounds for the dismissal of this chapter 13 case and a bar against the Debtor's filing any new bankruptcy petition for a time period of FIVE YEARS.

Further, the Court finds and concludes that although the United States Trustee sought an injunction only as to *in propria persona* filings, the facts and circumstances of this case warrant the imposition of more severe injunctions. Mr. Diaz' serial filing days in bankruptcy have come to an end. The Court will enjoin the Debtor from filing a bankruptcy case for five years, regardless of whether the Debtor is appearing with or without counsel. The Court will further direct its Bankruptcy Clerk to refuse any filings from Mr. Diaz, who has spent years abusing the federal bankruptcy system in multiple jurisdictions. Accordingly, it is

**ORDERED:**

1. The United States Trustee's Motion to Dismiss Case with Prejudice (Doc. No. 14) is hereby **GRANTED**.
2. The bankruptcy case of *In re Fred Diaz*, 8:14-bk-01237-CPM, is hereby **DISMISSED WITH PREJUDICE**, as described herein.

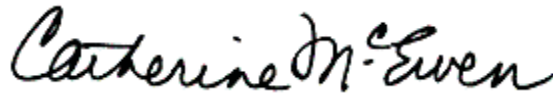
3. In accordance with 11 U.S.C. §§ 105(a), 349, 1307, and Fed. R. Bankr. P. 1017 and 9020, the Debtor, **LIONEL DIAZ**, is hereby **ENJOINED, BARRED, and PROHIBITED** from commencing any bankruptcy case petition in any federal district or bankruptcy court in the United States of America, or its territories, for a period of **FIVE YEARS** commencing **APRIL 17, 2014** and expiring at **11:59 p.m. on APRIL 16, 2019**.
4. No stay shall go into effect under 11 U.S.C. §§ 362(a), 1201, or 1301 in any bankruptcy case filed by the Debtor during the above stated prohibited time period.
5. No stay shall go into effect under 11 U.S.C. §§ 362(a), 1201, or 1301, in any bankruptcy case filed by any transferee of the Debtor during the above stated prohibited time period as to any action upon or against property transferred by the Debtor.
6. The Clerk of the Bankruptcy Court is directed to record this Order in her judgment log maintained in accordance with Fed. R. Bankr. P. 5003(c).
7. The Clerk of the Bankruptcy Court is directed not to accept any future filings from **LIONEL DIAZ** prior to April 17, 2019; provided, however, that the following limited exception shall apply. If the Debtor attempts to file another bankruptcy case prior to this date and does so with the assistance of counsel and the filing is accompanied by all required schedules, statement of financial affairs, mean test form, and the full filing fee, the undersigned directs the Clerk to accept the filing and the Court will schedule an expedited hearing to provide the Debtor with an opportunity to show good cause why the Court should find that the filing is a good faith bankruptcy filing made for either reorganization or liquidation; further provided, however, that no automatic stay will go into effect unless the Court so orders. If the Debtor makes another filing within the proscribed period that fails to meet these requirements, the

Clerk will notify the Debtor that the filing has been rejected and give the Debtor 30 days to claim the filing, after which time the filing will be destroyed if not claimed.

8. This Court retains jurisdiction to hear and determine all matters arising from or relating to the implementation of this Order.
9. This Court shall share concurrent jurisdiction with any of its sister federal courts nationwide in the enforcement of the provisions of this Order.

**DONE** and **ORDERED** in Chambers on July 25, 2014.

BY THE COURT



CATHERINE PEEK MCEWEN  
United States Bankruptcy Judge

Copies to be provide to all parties, and

The Honorable Elizabeth S. Strong  
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