

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

In re:

Case No. 3:17-bk-3086-PMG

Michael Doganis,

Debtor.

Chapter 13

**ORDER ON MOTION TO DISMISS PURSUANT TO 11 U.S.C. SECTION 1307(c)
WITH PREJUDICE AND FOR SANCTIONS BASED ON BAD FAITH FILING**

THIS CASE came before the Court for trial on Richard and Michelle Vaughn's Motion to Dismiss Pursuant to 11 U.S.C. Section 1307(c) with Prejudice and for Sanctions based on Bad Faith Filing. (Doc. 27).

In determining whether a Chapter 13 case should be dismissed for bad faith, the inquiry is whether the circumstances of the case show that the filing was an abuse of the provisions, purpose, or spirit of the Bankruptcy Code.

In this case, the Debtor is not a repeat bankruptcy filer, he filed the bankruptcy petition to protect his homestead, and he is proposing to pay his secured creditors under his Chapter 13 Plan. Under these circumstances, the Court cannot find that the Debtor intended to abuse the provisions or purpose of Chapter 13, and the Motion to dismiss his case should be denied.

Background

The Debtor filed his petition under Chapter 13 of the Bankruptcy Code on August 23, 2017.

On his amended schedule of assets, the Debtor listed a 100% ownership interest in a corporation known as Mama Sally's North, Inc. Mama Sally's operates a restaurant located in Inglis, Florida. On his schedule of income, the Debtor stated that he was "self-employed" at Mama Sally's Family Restaurant. (Doc. 35).

On his schedule of assets, the Debtor listed certain real property located at 12481 W. Foss Grove Path, Inglis, Florida (the Property), and claimed the Property as his homestead. According to the schedules, the Property is valued at \$235,000.00, and is subject to a secured claim held by Richard and Michelle Vaughn (the Vaughns) in the amount of \$85,535.30. (Doc. 35).

The schedule of assets also includes additional real property described as (1) a single-family home in Dunnellon, Florida, (2) three vacant lots in Levy and Citrus Counties, (3) a property with a manufactured home, and (4) an investment property. (Doc. 35). The total value of the non-homestead property is \$99,756.00.

Finally, on his schedule of assets, the Debtor listed a mortgage receivable in the amount of \$35,000.00.

On his schedule of liabilities, the Debtor listed the Vaughn's secured claim in the amount of \$85,535.00, a judgment lien held by Ralph and Cathy Koplak in the amount of \$56,000.00, and a claim for property taxes held by the Citrus County Tax Collector in the amount of \$4,013.00.

Eight proofs of claim were filed in the case. The filed claims consist of the Vaughn's secured claim in the amount of \$85,555.30, four secured claims for real estate taxes filed by the Citrus County Tax Collector in the total amount of \$8,276.20, a secured claim for real estate taxes filed by the Levy

County Tax Collector in the amount of \$6,121.90, and two unsecured claims in the total amount of \$1,985.54.

On November 1, 2017, the Debtor filed a First Amended Chapter 13 Plan. (Doc. 33). The proposed Plan provides for the Debtor to make payments in the amount of \$3,198.80 per month for 60 months. From these payments, the total sum of \$99,241.15 would be paid to the Vaughns, the total sum of \$61,879.70 would be paid to Ralph and Cathy Koplak, and the total sum of \$6,114.35 would be paid to the Citrus County Tax Collector.

On October 13, 2017, the Vaughns filed the Motion to Dismiss the Debtor's case that is currently before the Court. (Doc. 27). In the Motion, the Vaughns assert that the Debtor filed the case in bad faith, as evidenced by his failure to disclose certain prepetition transactions, assets, leases, and income on his schedules and statement of financial affairs. At trial, the Vaughns also asserted that the Debtor's bad faith is further evidenced by his inability to fund the proposed Chapter 13 Plan.

Discussion

Section 1307(c) of the Bankruptcy Code provides that a Chapter 13 bankruptcy case may be dismissed for "cause," and it is well-settled that a debtor's bad faith in filing the bankruptcy petition may constitute "cause" for dismissal under §1307(c). In re Kirk, 548 B.R. 597, 602-03 (Bankr. S.D. Ga. 2016); 11 U.S.C. §1307(c).

The term "bad faith" is not defined in the Bankruptcy Code, but Courts in the Eleventh Circuit generally determine whether a case was filed in bad faith by using a non-exhaustive list of factors to evaluate the totality of the debtor's circumstances. In re Murphy, 375 B.R. 919, 922 (Bankr. M.D. Ga. 2007).

In the Eleventh Circuit, the factors to consider include the debtor's income and expenses, his motivation in filing the bankruptcy case, his sincerity in dealing with his creditors, and any special circumstances affecting his financial situation. In re Kitchens, 702 F.2d 885, 888 (11th Cir. 1983)(cited in Orcutt v. Crawford, 2011 WL 4382479, at 4 (M.D. Fla.)). In all cases, however, the "basic inquiry is whether, under the circumstances, the debtor has abused the provisions, purposes, or spirit of the Bankruptcy Code." In re Vick, 327 B.R. 477, 487 (Bankr. M.D. Fla. 2005)(citing In re Kitchens, 702 F.2d at 888-89).

In re Morris, 2017 WL 3503651, at 2 (Bankr. M.D. Fla.)(Emphasis supplied). In determining bad faith, "courts have emphasized an intent to abuse the judicial process and the purpose of the reorganization provisions." In re Kollar, 357 B.R. 657, 661 (Bankr. M.D. Fla. 2006)(quoting In re Albany Partners, Ltd., 749 F.2d 670, 674 (11th Cir. 1984)).

In this case, the Debtor is not a repeat bankruptcy filer, he filed the bankruptcy petition to protect his homestead, and he is proposing to pay his secured creditors under his Chapter 13 Plan. Under these circumstances, the Court cannot find that the Debtor intended to abuse the provisions or purpose of Chapter 13 when he filed his bankruptcy petition.

A. The Debtor's first bankruptcy case

First, the Debtor is not a serial bankruptcy debtor with a history of repeat filings and dismissals. In re Kirk, 548 B.R. at 603. This is his first bankruptcy case.

The Debtor filed the petition without an attorney, and the initial schedules and statement of financial affairs were admittedly incomplete. (Doc. 1).

The Debtor obtained an attorney within six weeks after the case was filed, however, and thereafter filed amended schedules and amended statements with the assistance of the attorney. (Docs. 20, 35, 40, 46). The amendments have attempted to correct the deficiencies noted in the original schedules,

such as by correcting the Debtor's claim of exemptions, and including Ralph and Cathy Koplak as secured creditors.

B. Valid financial need

Second, the Debtor had a valid financial need to seek relief under Chapter 13 of the Bankruptcy Code.

The record shows that the Vaughns hold a lien against his homestead real property in the approximate amount of \$85,555.30. (Claim No. 1). It appears undisputed that the Vaughn's lien is oversecured. (See Claim No. 1, which lists the value of the property as \$275,000.00, and the amount of the Vaughn's secured claim as \$85,555.30).

The record also shows that the Vaughns filed an action to foreclose the Debtor's homestead on June 28, 2016. (Vaughn's Exhibit 17).

Ralph and Cathy Koplak hold a judgment lien against the Debtor's real property in the scheduled amount of \$56,000.00. The Koplaks were named as defendants in the foreclosure action commenced by the Vaughns, and had answered the foreclosure complaint. (Vaughn's Exhibit 17).

A Notice for Trial was issued in the foreclosure action on June 19, 2017. (Vaughn's Exhibit 17).

"A debtor's attempt to retain his home is a proper purpose for filing a Chapter 13 case." In re Fazzary, 530 B.R. 903, 907 (Bankr. M.D. Fla. 2015)(citing In re Scantling, 465 B.R. 671, 682 (Bankr. M.D. Fla. 2012), *aff'd*, 754 F.3d 1323 (11th Cir. 2014)). In this case, the Debtor was facing the foreclosure of his homestead real property, and testified that he filed the Chapter 13 case for the primary purpose of saving his home. He had a valid and pressing financial need for relief at the time that he filed his Chapter 13 petition on August 23, 2017. In re Morris, 2017 WL 3503651, at 3.

C. Meaningful Chapter 13 Plan

Third, the Debtor is proposing to pay his secured creditors under his Chapter 13 Plan. Specifically, the Debtor's Chapter 13 Plan provides for the Debtor to pay the total sum of \$191,928.00 during the 60-month term of the Plan. ($\$3,198.80$ per month \times 60 months = \$191,928.00).

From this total amount, the Plan proposes for the Vaughns to receive the sum of \$99,241.15, and the Koplars to receive the sum of \$61,879.70, representing the full amount of their claims, with interest. (Doc. 33).

The Vaughns and the Koplars are the Debtor's primary creditors. The proofs of claim that were filed in the case are the Vaughn's claim, five claims for real estate taxes in the total amount of \$14,398.54, and two unsecured claims in the total amount of \$1,985.54.

Courts generally consider a debtor's treatment of his creditors during the Chapter 13 case as a factor in determining the debtor's good faith or bad faith. In re Kirk, 548 B.R. at 603. In this case, the Debtor's Plan provides for substantial payments by the Debtor, and substantial distributions to the Debtor's primary creditors. Accordingly, the case is unlike the bad faith circumstances in In re Fazarry, 530 B.R. at 909, where the debtor had failed to meaningfully address his creditor's claims in the Chapter 13 plan.

At trial, the Vaughns introduced evidence related to the Debtor's income in the years surrounding the bankruptcy filing, and indicated that his income may be insufficient to fund the Chapter 13 Plan. (See, for example, Vaughn's Exhibits 11, 21, 26 and 27). The Vaughns also introduced evidence related to the Debtor's bank accounts and landlord/tenant relationships, and indicated that the Debtor may not have accurately disclosed either his sources of his income or his transactions with third parties. (See, for example, Vaughn's Exhibits 12, 13, 18, 19).

If any violation of the disclosure rules occurs during the term of the Chapter 13 case, of course, or if any defaults occur under the Debtor's Chapter 13 Plan, the Court will consider the entry of an appropriate order at that time.

Conclusion

Richard and Michelle Vaughn filed a Motion to Dismiss this case under §1307(c) of the Bankruptcy Code, and asserted that the case was filed in bad faith.

In determining whether a Chapter 13 case should be dismissed for bad faith, the inquiry is whether the circumstances of the case show that the filing was an abuse of the provisions, purpose, or spirit of the Bankruptcy Code.

In this case, the Debtor is not a repeat bankruptcy filer, he filed the bankruptcy petition to protect his homestead, and he is proposing to pay his secured creditors under his Chapter 13 Plan. Under these circumstances, the Court cannot find that the Debtor intended to abuse the provisions or purpose of Chapter 13, and the Motion to dismiss his case should be denied.

Accordingly:

IT IS ORDERED that Richard and Michelle Vaughn's Motion to Dismiss Pursuant to 11 U.S.C. Section 1307(c) with Prejudice and for Sanctions Based on Bad Faith Filing is denied.

DATED this 14 day of March, 2018.

BY THE COURT

Paul M. Glenn

PAUL M. GLENN
United States Bankruptcy Judge