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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
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U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

In re:) Case No. 03-19171
)
RUTHANN DISCENZO,) Chapter 13
)
Debtor.) Judge Pat E. Morgenstern-Clarren
)
) **MEMORANDUM OF OPINION**

This is the eighth bankruptcy case filed by the debtor Ruthann Discenzo since 1997. The first seven were all dismissed. Creditor Guaranty Residential Lending, Inc. (Guaranty)¹ moves to dismiss this eighth case with sanctions on the ground that the filing was made in bad faith and solely for the purpose of delay. (Docket 12). The debtor opposes the motion.² (Docket 18).

The court held a hearing on September 9, 2003 on this motion as well as on the court order directing the debtor to appear and show cause why the case should not be dismissed for failure to pay the filing fee. (Docket 16). For the reasons stated below, the motion to dismiss is granted. This case is dismissed with sanctions for cause, including lack of good faith and failure to pay the filing fee.

JURISDICTION

The court has jurisdiction under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2).

¹ Guaranty was formerly known as Temple Inland Mortgage Corp.

² The debtor is representing herself.

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FACTS

I. The Repeat Filings

The material facts are not in dispute. Guaranty holds a note secured by a mortgage on the debtor's residence at 13800 Maple Leaf Drive, Garfield Heights, Ohio (the Property). Guaranty obtained a state court judgment on the note and has made numerous efforts to have the Property sold by the sheriff with the proceeds applied to its debt. The sale has been stopped each time that the debtor filed these eight chapter 13 cases:³

- (1) Case No. 97-10805 filed on February 10, 1997 and dismissed on August 21, 1997 on the chapter 13 trustee's motion for failure to fund the case,⁴ after Guaranty had been granted relief from stay on June 25, 1997 to proceed with its state court foreclosure action.
- (2) Case No. 97-16330 filed on September 15, 1997 and dismissed on February 26, 1998 on the chapter 13 trustee's motion for failure to fund the case, after Guaranty was granted relief from stay on February 4, 1998.
- (3) Case No. 98-12705 filed on April 13, 1998 and dismissed on June 10, 1998 on Guaranty's motion, with a 180-day bar against re-filing.
- (4) Case No. 99-10319 filed on January 19, 1999 and dismissed on April 27, 1999 on Guaranty's motion, with a 180-day bar against re-filing.
- (5) Case No. 99-19951 filed on December 27, 1999 and dismissed on December 12, 2000 on the chapter 13 trustee's motion for failure to fund the case, after the court had issued a bench ruling on October 10, 2000 granting Guaranty relief from stay.
- (6) Case No. 01-12564 filed on March 26, 2001 and dismissed on November 5, 2001 on the chapter 13 trustee's motion for failure to fund the case, with a 180-day bar against re-filing.
- (7) Case No. 02-21892 filed on October 18, 2002 and dismissed on January 14, 2003 on Guaranty's motion, with a 180-day bar against re-filing.

³ The debtor's husband, who also has an interest in the Property, filed an unsuccessful chapter 13 at some point.

⁴ A debtor is required to start making payments to the chapter 13 trustee within 30 days after the proposed plan is filed. 11 U.S.C. § 1326(a).

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- (8) The debtor's current case was filed on July 14, 2003, just after the 180-day bar expired.

Typically, when a case is dismissed and a bar imposed, a secured creditor gives notice to the sheriff's department to recommence the sale proceedings. The sheriff's sales historically could be completed within the 180 days. Based on the statements of counsel, however, and as borne out by the record in this case, the 180-day bar has not given the sheriff enough time to complete the sale in this case. Thus, the cycle we see here of a debtor filing a bankruptcy case, a secured creditor obtaining relief from stay and/or having the case dismissed, and the creditor proceeding to sheriff's sale, followed by yet another bankruptcy filing on the eve of the sale.

II. The Filing Fee

When the debtor filed her most recent case, she paid \$35.00 of the \$185.00 filing fee at the filing. The court granted her application to pay the remaining fee in these installments: \$50.00 on August 22, 2003; \$50.00 on September 19, 2003; and \$50.00 on October 17, 2003. When the August 22, 2003 payment was not made on time, the court issued an order to show cause why the case should not be dismissed for failure to pay the fee. The debtor had not made the payment at the time of the September 9th hearing and did not provide a reasonable explanation for that failure.⁵

⁵ The debtor said that she forgot. Given the number of filings made, and the precision with which the debtor calculated the 180-day bar and filed as soon as it had expired, the court does not believe that she forgot to make the payment. Nor would such an excuse necessarily be accepted even if true because if the debtor forgot until she received the show cause order, she could have made the payment between that date and the hearing date.

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DISCUSSION

I. Lack of Good Faith

Guaranty requests dismissal on the ground that the debtor filed this case in bad faith, as evidenced by her serial chapter 13 filings. The debtor argues that she is determined to make this case work and should be given the chance to do so. Guaranty has the burden of proof on this issue. *Alt v. United States (In re Alt)*, 305 F.3d 413, 420 (6th Cir. 2002).

Bankruptcy code § 1307(c) provides for dismissal (or conversion) of a chapter 13 case for cause.” 11 U.S.C. § 1307(c). A debtor’s lack of good faith is a basis to dismiss her case. *In re Alt*, 305 F.3d at 418-19. “Our circuit’s good faith test requires consideration of the totality of circumstances.” *Society Nat’l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 591 (6th Cir. 1992). These factors may generally be considered in determining a debtor’s good faith: (1) the debtor’s income; (2) the debtor’s expenses; (3) the debtor’s attorney fees; (4) the anticipated duration of the plan; (5) the debtor’s sincerity; (6) the debtor’s earning potential; (7) special circumstances which the debtor may be subject to; (8) the frequency with which the debtor has sought bankruptcy relief; (9) the circumstances under which the debt was incurred; (10) the amount of payment offered by the debtor; (11) the administrative burden on the chapter 13 trustee; and (12) the statutory policy in favor of granting relief to debtors. *Id.* at 592. Additional factors which are relevant to whether a case was filed in good faith include: the nature of the debt; how the debt arose; the timing of the petition; the debtor’s motive in refiling; how the debtor’s actions affected creditors; the debtor’s treatment of creditors before and after the filing; and whether the debtor has been forthcoming with the court and creditors. *In re Alt*, 305 F.3d at 419 (citing *In re Love*, 957 F.2d 1350, 1357 (7th Cir. 1992)).

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The totality of the circumstances establish unequivocally that the debtor did not file her present case in good faith. This is the debtor's eighth filing in six years. Repeated filings of that magnitude are an administrative burden for the chapter 13 trustee. The debtor failed to properly prosecute her earlier cases as evidenced by the fact that four were dismissed with sanctions and four were dismissed because she failed to make her plan payments. All of the debtor's creditors have been adversely affected by these repeated filings because each is stayed from pursuing its claims while the case is pending and yet none has received the payment it would be entitled to through a chapter 13 plan. In particular, Guaranty's efforts to sell the Property and apply the proceeds to its debt have been stymied for over six years.

While the debtor argues that she is proceeding in good faith in this case, the facts do not bear that out. In addition to failing to pay her filing fee, she proposed a payment plan that is not feasible and could not be confirmed.⁶ The proposed plan offered by the debtor calls for her to pay \$1,500.00 a month for 60 months (the maximum time allowed under the bankruptcy code), for a total of \$90,000.00. This is not enough to fund the debtor's proposed plan, especially when interest on the secured claims and the trustee's statutory fees are considered. Based on the totality of these circumstances, the court finds that the debtor did not file this case in good faith and Guaranty has established cause to dismiss it.

II. Failure to Pay the Filing Fee

Failure to pay the filing fee is also cause for dismissal of a chapter 13 case. *See* 11 U.S.C. § 1307(c)(2). The debtor failed to make her August 22 installment payment and has not made that payment to date. Dismissal of her case on that ground is, therefore, appropriate as well.

⁶ *See* 11 U.S.C. §§ 1322 and 1325.

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III. Sanctions

The next issue is whether sanctions should be imposed and, if so, what form they should take. The debtor's multiple filings constitute an abuse of the bankruptcy process and merit the imposition of sanctions. A sanction in the form of an extended bar against refiling and prospective relief from stay is appropriate under these circumstances because it will permit the creditors, including Guaranty, to pursue their state court remedies. The debtor will, therefore, be barred from filing a case under the United States Bankruptcy Code for a period of 270 days from the entry of this memorandum of opinion and order. Additionally, any bankruptcy petition which the debtor may file during such period will not operate to stay Guaranty's efforts to sell the debtor's interest in the Property. The court sets this time period based on counsel's statement that the volume of foreclosure sales in this county is such that the sheriff cannot complete a sale during the 180-day bar previously set by the court on multiple occasions. A dismissal with only a 180-day bar would not, therefore, provide any meaningful relief to this creditor. *See* 11 U.S.C. §§ 105(a), 109(g), 349(a), and 362(f).

The court understands that the debtor desperately wishes to save her residence. There comes a time, however, when the bankruptcy code simply cannot provide relief to a debtor. Six years after the debtor first invoked the bankruptcy code's protection, that time has come.

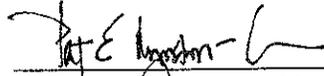
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CONCLUSION

For the reasons stated, Guaranty's motion to dismiss with sanctions is granted.

Additionally, this case is dismissed for the failure to pay the filing fee. A separate judgment will be entered reflecting this decision.

Date: 12 April 2003



Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Phyllis Ulrich, Esq.
Ms. Ruthann Discenzo
Craig Shopneck, Trustee

By: Joyce L. Gordon, Secretary

Date: 9/12/03

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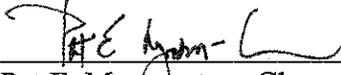
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)
) **JUDGMENT**

For the reasons stated in the memorandum of opinion filed this same date, the motion of Guaranty Residential Lending, Inc. to dismiss this case with sanctions is granted. (Docket 12). In addition, this case is dismissed for the failure to pay the filing fee. The debtor is barred from filing a petition under the United States Bankruptcy Code for a period of 270 days from the date of this order and any bankruptcy petition which the debtor may file during such period will not operate to stay Guaranty's efforts to sell the debtor's interest in the property located at 13800 Maple Leaf Drive, Garfield Heights, Ohio.

IT IS SO ORDERED.

Date: 12 Sept 2003


Pat E. Morgenstern-Clarren
United States Bankruptcy Judge

Served by mail on: Phyllis Ulrich, Esq.
Ms. Ruthann Discenzo
Craig Shopneck, Trustee

By: Joyce L. Gordon, Secretary

Date: 9/12/03