UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

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| In re: | ) | Chapter 13 Proceedings |
| | ) | |
| MARJORIE J. JUSCZAK, | ) | Case No. 04-21670 |
| Debtor. | ) | |
| | ) | Judge Arthur I. Harris |

ORDER DENYING U.S. TRUSTEE'S MOTION TO DISMISS (DOCKET #5) AND DENYING ALL BUT THE RULE 9011 SANCTIONS PORTION OF CHARTER ONE'S MOTION TO DISMISS (DOCKET #8)

On September 13, 2004, the debtor, Marjorie J. Jusczak, filed a petition under Chapter 13 of the Bankruptcy Code. On November 5, 2004, Jusczak filed a motion for voluntary dismissal of her Chapter 13 case pursuant to 11 U.S.C. § 1307(b) (Docket #44). Among the motions pending when Jusczak filed her motion for voluntary dismissal were: (1) a motion by the United States Trustee to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c) and impose a filing bar of at least 360 days (Docket #5) and (2) a motion of Charter One Bank, N.A., to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c), to impose a filing bar of at least one year, and to impose sanctions against the debtor and debtor's counsel pursuant to Bankruptcy Rule 9011 (Docket #8). On November 9, 2004, this Court granted Jusczak's motion for voluntary dismissal, which resulted in the imposition of a 180-day filing bar pursuant to 11 U.S.C. § 109(g)(2) (Docket #47). The Court also retained jurisdiction "to consider sanctions that have been or may

be requested by a party in interest or that the Court may seek to impose on its own initiative." *Id.* For the reasons that follow, the Court denies the U.S. Trustee's motion to dismiss (Docket #5) and denies all but the Rule 9011 sanctions portion of Charter One's motion to dismiss (Docket #8).

DISCUSSION

Courts have grappled with the appropriate remedies for serial and bad faith Chapter 13 cases for many years. *See generally* KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY, 3D ED. § 339.1 (2000 & Supp. 2004). For example, some courts have imposed filing bars that extend beyond the 180-day sanction under subsection 109(g). *See, e.g.*, *In re Casse*, 198 F.3d 327, 337-40 (2d Cir. 1999) (finding authority in Bankruptcy Code to sanction bad-faith serial filers for periods longer than 180-day bar under subsection 109(g)); *In re Price*, 304 B.R. 769 (Bankr. N.D. Ohio 2004) (court imposed 360-day refiling bar against debtor who, with non-debtor spouse, engaged in tag-team filing of six successive petitions over period of six years). On the other hand, other courts have held that the Bankruptcy Code is properly interpreted to preclude bars on refiling other than the sanction provided under subsection 109(g). *See, e.g.*, *In re Frieof*, 938 F.2d 1099 (10th Cir. 1991); *see also In re Barrett*, 964 F.2d 588, 591 (6th Cir. 1992) (suggesting in *dicta* that injunction against debtor from filing a bankruptcy case in the future would exceed

the "powers properly invoked by a bankruptcy court").

This Court believes that the better reading of subsections 109(g) and 349(a) is that the Bankruptcy Code authorizes only one filing bar – that contained in 11 U.S.C. § 109(g). *See, e.g.*, *In re Frieof*, 938 F.2d at 1102-04; *accord* KEITH M. LUNDIN, CHAPTER 13 BANKRUPTCY, 3D ED. § 339.1 at 339-34 to 339-35 (2000 & Supp. 2004):

> Congress has spoken to the eligibility of individual debtors to refile bankruptcy cases. Section 349(a) is properly interpreted to preclude conditions on refiling other than the conditions fixed by Congress in § 109(g).

While the Court recognizes the harm caused by serial or bad faith filings, the Court believes that other remedies are available to protect creditors and other parties from such abuses, notwithstanding a debtor's right to voluntary dismissal under 11 U.S.C. § 1307(b) and notwithstanding the difficulties, at least in some jurisdictions, in concluding foreclosure sales within 180 days. These remedies include sanctions against the debtor's counsel under 28 U.S.C. § 1927 and Bankruptcy Rule 9011 as well as in rem relief. One form of in rem relief would modify the automatic stay so that, in any future bankruptcy filing, the automatic stay would not apply to the real property that is held subject to a creditor's security interest. Anyone would be free to move for the automatic stay to apply to the

property in question, provided that the movant could demonstrate that the creditor's security interest would be adequately protected. Under this procedure, a foreclosure sale would be unaffected by any future bankruptcy filings, unless the debtor or other movant could demonstrate to the Court's satisfaction that the creditor's security interest is adequately protected. The Court finds authority for this limited injunctive relief pursuant to 11 U.S.C. §§ 105, 361, 362, and 349(b)(3). *See, e.g.*, *In re Amey*, 314 B.R. 864 (Bankr. N.D. Ga. 2004) (granting in rem relief as to debtor's interest in real property).

> Unlike the dismissal remedies discussed above, the *in rem* remedy is specifically tailored to the problem of abusive use of the stay, provides certainty for the creditor, and does not unfairly affect the positions of other parties in interest.

314 B.R. at 869.

CONCLUSION

Given the imposition of sanctions under 11 U.S.C. § 109(g) and this Court's determination that the Bankruptcy Code authorizes no other filing bar, the U.S. Trustee's motion to dismiss (Docket #5) and all but the Rule 9011 sanctions portion of Charter One's motion to dismiss (Docket #8) are denied.

IT IS SO ORDERED.

/s/ Arthur I. Harris 11/10/2004
Arthur I. Harris
United States Bankruptcy Judge