

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:) Case No. 04-23190
)
MIKE ROSSI,) Chapter 13
)
Debtor.) Judge Arthur I. Harris

ORDER TO APPEAR AND SHOW CAUSE

On October 14, 2004, the pro se debtor, Mike Rossi, filed a petition under Chapter 13 of the Bankruptcy Code. On December 23, 2004, this case came before the Court on separate motions to dismiss filed by the Chapter 13 trustee (Docket #12) and creditor Homecomings Financial (Docket #14). Both motions also seek to impose a 180-day filing bar on the debtor pursuant to 11 U.S.C. § 109(g). Because the Court is concerned that dismissal of this case under section 109(g) may not be sufficient to prevent an abuse of the bankruptcy process by the debtor and/or those acting in concert with the debtor, the debtor is ordered to appear at an evidentiary hearing at the conclusion of the 3 p.m. Chapter 13 docket on January 27, 2005, in Courtroom 3102, 127 Public Square, Cleveland, Ohio, and show cause why he should not be sanctioned for his conduct in filing this petition in bad faith.

DISCUSSION

This Court has inherent authority to impose sanctions on offending parties

and counsel. *See, e.g., Mapother & Mapother, P.S.C. v. Cooper (In re Downs)*, 103 F.3d 472, 477 (6th Cir. 1996) (“Bankruptcy courts, like Article III courts, enjoy inherent power to sanction parties for improper conduct.”); *In re French Bourekas, Inc.*, 175 B.R. 517, 525 (Bankr. S.D.N.Y. 1994) (noting that bankruptcy court possesses power to impose sanctions as inherent authority and by virtue of 11 U.S.C. § 105(a)).

A court must be careful when considering whether to impose sanctions. “Because of their very potency, inherent powers must be exercised with restraint and discretion. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991). The sanction levied must thus be commensurate with the egregiousness of the conduct.” *In re Downs*, 103 F.3d at 478. While this Court already has ample basis for dismissing the debtor’s case without a further hearing under 11 U.S.C. § 109(g), nothing in that subsection suggests that the Court is prohibited from imposing other sanctions, separate and apart from a bar on refiling, that may be warranted under the Court’s inherent authority or 11 U.S.C. § 105.

11 U.S.C. § 105

Section 105 of the Bankruptcy Code provides in pertinent part:

Power of court.

(a) The court may issue any order, process, or judgment that is

necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Specific Conduct That Appears to Merit Sanctions

The specific conduct that appears to merit sanctions is the filing of this petition in bad faith. The Court bases this supposition on the record in this case and in the four prior cases filed by the debtor or related entities, as detailed below.

On July 10, 2001, Mike Rossi filed a Chapter 7 case, Case #01-16687. On July 30, 2002, Rossi received a Chapter 7 discharge in Case #01-16687.

Case #01-16687 was not closed until July 30, 2004.

On February 18, 2003, Rossi filed a Chapter 13 case, Case #03-11810. On April 3, 2003, the case was dismissed for failure to file a plan and schedules (Case #03-11810, Docket #6).

On July 25, 2003, Rossi filed a second Chapter 7 case, Case #03-19888, even though his first Chapter 7 case was still pending and he had already received a Chapter 7 discharge in a “case commenced within six years before the date of the filing of the petition.” 11 U.S.C. § 727(a)(8). Case #03-19888 was dismissed on September 19, 2003 (Case #03-19888, Docket #16).

On February 27, 2004, Rossi caused another Chapter 13 case to be filed, Case #04-12251. The name of the debtor was “Ryan and Rossi Family Partnership,” and the petition was signed by Mike A. Rossi, as general partner. The U.S. Trustee filed a motion to dismiss (Case #04-12251, Docket #15) asking for dismissal because a partnership is not eligible to file in Chapter 13. *See* 11 U.S.C. § 109(e); *In re Fisk*, 36 B.R. 924, 927-28 (Bankr. W.D. Mich. 1984) (“It is a fundamental principle of bankruptcy law that a partnership entity cannot file for relief under Chapter 13 which under 11 U.S.C. § 109(e) is limited to an individual with regular income.”). Case #04-12251 was dismissed on June 14, 2004 (Case #04-12251, Docket #25).

On October 14, 2004, Rossi filed the current Chapter 13 case, Case #04-23190. The real property described in Schedule A of the current case is the same as that in Schedule A of the “Ryan and Rossi Family Partnership” Chapter 13 case, Case # 04-12251. The parcels of property are:

6782 Glenella Dr., Seven Hills, Ohio 44131

1555 Elizabeth Lane, Macedonia, Ohio 44056

2122 Eton Street, Twinsburg, Ohio 44087

6586 Richmond Road, Oakwood, Ohio 44146

The debtor's schedules do not indicate that the above properties have other owners or that the debtor's wife has any interest in the properties.

It appears, from both (1) Debtor's schedules and (2) creditors' unopposed filings, that many of these cases have been filed to stop foreclosure proceedings on the above properties without any realistic effort to propose or follow through on a successful plan of reorganization. First, Debtor's own Statement of Financial Affairs (Statement), when filed, indicated that his bankruptcy filings have stayed pending foreclosure actions: debtor's Statement in Case #03-19888 indicated four foreclosure proceedings pending at the time of filing; debtor's Statement in Case #04-12251 indicated one pending foreclosure; and in the current case, Case #04-23190, debtor's Statement indicated a pending foreclosure with a sheriff sale scheduled for the date after the petition was filed. *See* Case 03-19888, Docket #1 at 2; Case #04-12251, Docket #1 at 2; Case #04-23190, Docket #1 at 2.

Second, creditors filed a number of unopposed motions and objections in the current case indicating that the debtor has large mortgage arrearages on several of his properties and has used bankruptcy repeatedly to stop sheriff sales. Creditor Homecomings Financial (Homecomings) filed several motions and objections to the plan (Docket ## 8, 10, 14, 16, 20, & 24). In these filings, Homecomings stated

that the Oakwood, Ohio, property had arrears of more than \$90,000 and the Twinsburg, Ohio, property had arrears of more than \$80,000. *See id.*

Homecomings' filings also indicate that little or nothing has been paid on these notes and mortgages since early 2001, around the time of debtor's initial bankruptcy, and two sheriff sales on these properties have been stopped by bankruptcy filings. *See* Docket #14 & #16. Creditor M&T Mortgage Corporation (M&T) also filed several motions and objections to the plan (Docket ## 30, 33, & 35) indicating default since July 2001 and arrears of more than \$66,000 on the note and mortgage for the Seven Hills, Ohio, property. M&T's motion to dismiss listed four different occasions where sheriff sales were stopped by bankruptcy filings. *See* Docket #35 at 3-5. Creditor Countrywide Home Loans filed an objection to the plan (Docket #18) indicating arrears of more than \$77,000 on the note and mortgage for the Macedonia, Ohio, property. In total, these creditors indicate arrears on the four properties amounting to more than \$313,000 with minimal or no payments since 2001 when debtor filed his first bankruptcy.

There is also an apparent pattern of improper filings. Debtor filed a new Chapter 7 while a prior Chapter 7 case was still pending, and he filed using a different entity, Ryan and Rossi Family Partnership, which was not eligible for relief under Chapter 13. This pattern suggests that imposing a 180-day filing bar on

Rossi under 11 U.S.C. § 109(g), and lifting the automatic stay as to any bankruptcy petition Rossi himself may file in the future after 180 days, may not be sufficient to prevent an abuse of the bankruptcy process. Thus, the Court is considering a separate sanction, discussed below, tailored to prevent future abuse of the automatic stay without imposing any filing bar beyond that provided under 11 U.S.C. § 109(g).

Range of Potential Sanctions

Among the sanctions that the Court is considering is in rem relief, *i.e.*, modification of the automatic stay as it relates to the real property in the debtor's schedules A and D, so that in any future bankruptcy case filed by *any party*, the automatic stay of Section 362(a) will not apply to such real property unless and until a party in interest moves to apply the stay and demonstrates that the secured interests of all entities in the real property will be adequately protected under 11 U.S.C. § 361. In order to provide due process to all parties, the Court will provide separate notice to debtor's wife, Rita Rossi, who may have an interest in the same property. The debtor's schedules do not list any other current parties with interest in the property.

In rem relief, if granted, would apply to debtor and debtor's wife and any

other parties who may claim an interest in the property through debtor and/or debtor's wife. An injunction preventing application of the automatic stay to such real property would apply until the current mortgagees or their assignees no longer have a security interest in the property.

CONCLUSION

For the foregoing reasons, the debtor is ordered to appear at the conclusion of the 3 p.m. Chapter 13 docket on January 27, 2005, in Courtroom 3102, 127 Public Square, Cleveland, Ohio, and show cause why he should not be sanctioned for his conduct in filing this petition in bad faith.

IT IS SO ORDERED.

/s/ Arthur I. Harris 12/30/2004
Arthur I. Harris
United States Bankruptcy Judge