

IT IS SO ORDERED.

Dated: May 14, 2013
08:35:45 AM



Kay Woods
 Kay Woods
 United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

IN RE:

DANIEL PAUL LUCAS,

Debtor.

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* CASE NUMBER 13-40798
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* CHAPTER 13
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* HONORABLE KAY WOODS
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ORDER (i) DISMISSING CASE; AND (ii) PROHIBITING DANIEL PAUL
LUCAS FROM FILING A BANKRUPTCY PETITION FOR 180 DAYS

This cause is before the Court on Order to Appear and Show Cause Why Case Should Not Be Dismissed for Failure to Make Full Disclosure ("Show Cause Order") (Doc. # 10) issued on April 17, 2013. Debtor Daniel Paul Lucas, *pro se*, filed a voluntary petition pursuant to chapter 13 of the Bankruptcy Code on April 12, 2013 ("Petition Date"). In the Petition, Mr. Lucas disclosed Case Nos. 09-43952 and 10-43898 as "All Prior Bankruptcy Cases Filed Within Last 8 Years." (Pet. at 2.)

Notwithstanding the representation of Mr. Lucas, he also filed a voluntary chapter 7 petition, denominated Case No. 11-41938 ("2011 Case"), on June 27, 2011, and received a discharge in the 2011 Case on October 25, 2011. The 2011 Case was filed within the eight-year period preceding the Petition Date. As a consequence, the Court issued the Show Cause Order directing Mr. Lucas to appear on May 9, 2013, at 10:30 a.m. ("Show Cause Hearing"), and show cause why this case should not be dismissed based upon his failure to fully disclose all required information.

Based upon a review of Mr. Lucas's Petition, Schedules and Plan, together with the Petitions and Schedules in his previous bankruptcy cases and the bankruptcy cases of his wife, Mary Anna Lucas, it is apparent that Mr. Lucas's Petition, Schedules and Plan contain false information and that this case was filed in bad faith. Accordingly, the Court will dismiss Mr. Lucas's bankruptcy case and prohibit Mr. Lucas from filing a bankruptcy petition for 180 days.

Because the chronology of this and the prior cases filed by Mr. Lucas and/or his wife, Mary Anna Lucas, is important to this Court's decision, it is set forth in detail below.

Mr. Lucas's Prior Bankruptcy Cases

Mr. Lucas has filed four bankruptcy cases within the past three and one-half years. On October 16, 2009, Mr. and Mrs.

Lucas filed a chapter 7 petition denominated Case No. 09-43952. That case was dismissed on November 6, 2009, because Mr. and Mrs. Lucas failed to obtain or request pre-petition credit counseling as required by 11 U.S.C. § 109(h) (Case No. 09-43952, Doc. # 23). Mr. and Mrs. Lucas did not receive a discharge in Case No. 09-43952.

On October 15, 2010 - less than one year after Case No. 09-43952 was dismissed - Mr. Lucas filed a chapter 7 petition denominated Case No. 10-43898. That case was closed without discharge on April 11, 2011, because Mr. Lucas failed to complete a course in personal financial management as required by 11 U.S.C. § 727(a)(11) (Case No. 10-43898, Doc. # 57). Mr. Lucas has not moved to reopen Case No. 10-43898 in order to file a certificate of completion of a course in personal financial management and receive a discharge.

On June 27, 2011 - less than three months after Case No. 10-43898 was closed - Mr. Lucas filed the 2011 Case and received a chapter 7 discharge on October 25, 2011 (Case No. 11-41938, Doc. # 21). The 2011 Case was closed on December 7, 2011 (Case No. 11-41938, Doc. # 25).

Mrs. Lucas's Bankruptcy Cases

Mrs. Lucas has filed three bankruptcy cases within the past three and one-half years. On March 16, 2012 - less than four months after Case No. 11-41938, filed by Mr. Lucas, was closed -

Mrs. Lucas filed a chapter 7 petition denominated Case No. 12-40588. In Schedule D - Creditors Holding Secured Claims, Mrs. Lucas listed Wells Fargo Real Estate as the holder of a first mortgage on the Lucas's residence and Huntington National Bank ("Huntington") as the holder of a second mortgage on the residence (Case No. 12-40588, Doc. # 1 at 13). Mrs. Lucas listed Mr. Lucas as a co-debtor on both mortgages (*Id.* at 21). Case No. 12-40588 was closed without discharge on September 13, 2012, because Mrs. Lucas failed to complete a course in personal financial management as required by § 727(a)(11) (Case No. 12-40588, Doc. # 46). Mrs. Lucas has not moved to reopen Case No. 12-40588 in order to file a certificate of completion of a course in personal financial management and receive a discharge.

In Case No. 12-40588, Wells Fargo Bank, N.A. ("Wells Fargo") filed a motion for relief from stay and abandonment (Case No. 12-40588, Doc. # 13), support document (Case No. 12-40588, Doc. # 23) and memorandum in support (Case No. 12-40588, Doc. # 42) with respect to the residence. Wells Fargo asserted that Mr. and Mrs. Lucas had not made their monthly mortgage loan payments since January 2009 and were in arrears in the amount of \$34,602.14 (Case No. 12-40588, Doc. # 13 at 6.) In the support document, Wells Fargo represented that the mortgage loan had an outstanding balance of \$95,337.10 (Case No. 12-40588, Doc. # 23

at 4-5). On August 24, 2012, the Court granted the motion for relief from stay and abandonment (Case No. 12-40588, Doc. # 44).

On October 22, 2012 - less than two months after Case No. 12-40588 was closed without discharge - Mrs. Lucas filed a chapter 7 petition denominated Case No. 12-42576. That case was dismissed on January 23, 2013, because Mrs. Lucas failed to timely pay the final filing fee installment in the amount of \$86.00 (Case No. 12-42576, Doc. # 26). The Order of Dismissal ordered Mrs. Lucas to pay the balance of the filing fee on or before February 6, 2013. To date, Mrs. Lucas has not paid the balance of the filing fee.

The Present Case

Mr. Lucas filed the present case less than three months after Case No. 12-42576, filed by his wife, was dismissed. Mr. Lucas's Schedules indicate the following information:

1. Schedule D - Creditors Holding Secured Claims: Wells Fargo Real Estate holds the only mortgage against the residence (Doc. # 1 at 7).
2. Mrs. Lucas is a co-debtor on the first mortgage (Doc. # 15 at 12).
3. Schedule B - Personal Property: Mr. Lucas does not own a vehicle (*id.* at 3-5).
4. Schedule E - Creditors Holding Unsecured Priority Claims and Schedule F - Creditors Holding Unsecured Nonpriority Claims: Mr. Lucas does not have any unsecured creditors (*id.* at 9-10).
5. Schedule I - Current Income of Individual Debtor(s) and Schedule J - Current Expenditures of Individual

Debtor(s): Mr. Lucas has gross monthly income of \$2,600.00 and Mr. and Mrs. Lucas, collectively, have monthly net income of \$2,113.91.

6. Statement of Financial Affairs: a sheriff's sale initiated by Wells Fargo in Columbiana County with respect to the residence was scheduled for April 16, 2013 – four days after the Petition Date (*id.* at 18).
7. Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("Means Test"): Santander has a secured claim against Mr. Lucas's 2005 GMC Envoy and Mr. and Mrs. Lucas have monthly disposable income under 11 U.S.C. § 1325(b)(2) of \$2,789.40 (*id.* at 32, 34).
8. Creditor Matrix: Mr. Lucas's only creditors are Wells Fargo, Wells Fargo Real Estate and Santander Consumer USA.

On April 19, 2013, Santander Consumer USA Inc. ("Santander") filed a proof of claim denominated Claim No. 1. Santander asserts a claim secured by Mr. Lucas's 2005 GMC Envoy in the amount of \$6,403.48, which includes an arrearage of \$980.05.

On April 26, 2013, Mr. Lucas filed Chapter 13 Plan ("Plan") (Doc. # 16). Mr. Lucas proposes to pay \$504.29 per month for 60 months to fund the Plan. In Art. 2E of the Plan, which is entitled Secured Claims – Residence/Real Property, Mr. Lucas lists Wells Fargo and indicates an arrearage in the amount of \$504.29. The Plan does not include any other creditors or claims.

On May 9, 2013, at 10:33 a.m. – three minutes after the Show Cause Hearing was scheduled to begin – Mr. Lucas filed

Amended Petition (Doc. # 22), which disclosed the 2011 Case as a prior bankruptcy case. Mr. Lucas appeared at the Show Cause Hearing and represented to the Court that he mistakenly failed to include the 2011 Case in his Petition, but that he had filed the Amended Petition. Because he had received a discharge in the 2011 Case and was thus ineligible for a discharge in the present case pursuant to 11 U.S.C. § 1328(f)(1), the Court asked Mr. Lucas to explain why he had filed this case. Mr. Lucas indicated that he was unaware he could not receive a discharge in the present case. He stated that he had filed the current case because he wished to stop the April 16, 2013 foreclosure sale of the residence pending receipt of compensation from the Independent Foreclosure Review. Mr. Lucas further represented that he calculates he will receive \$62,000.00 from the Independent Foreclosure Review, which he anticipates receiving in July 2013.

The Court advised Mr. Lucas that his Petition and Schedules were filed under penalty of perjury and inquired whether any creditors and claims were omitted from his Schedules. Mr. Lucas represented that all creditors and claims were included. Upon the Court's questioning, Mr. Lucas conceded numerous errors in his Schedules, including that Santander has a secured claim based on money loaned to purchase a vehicle, but that he had not scheduled the claim. Mr. Lucas also stated that neither he nor

Mrs. Lucas had paid any amount of the arrearage owed to Wells Fargo, which was \$34,602.14 as of the filing of the March 22, 2012 motion for relief from stay and abandonment in Case No. 12-40588. However, Mr. Lucas's Plan falsely indicated that Wells Fargo was owed an arrearage of only \$504.29. Regarding the second mortgage of Huntington in the amount of \$9,500.00, which was scheduled by Mrs. Lucas in Case No. 12-40588 less than thirteen months prior to the filing of the present case, Mr. Lucas indicated that the second mortgage was "dropped" and that "it's no longer viable." (Show Cause Hr'g Tr. at 11:19:00.) Mr. Lucas offered no explanation as to why Huntington would have "dropped" its second mortgage on the residence.

Mr. Lucas's Petition, Schedules and Plan are rife with inconsistencies and false information. In fact, Mr. Lucas's Schedules and Plan indicate Wells Fargo is his only creditor. However, at the Show Cause Hearing, Mr. Lucas conceded that Santander is a creditor of Mr. Lucas and that the arrearage owed to Wells Fargo was grossly understated. Based upon the false representations made by Mr. Lucas in his Petition, Schedules and Plan, the Court finds that cause exists to dismiss the present bankruptcy case.

The Court also finds that Mr. Lucas's Plan was not filed in good faith, as required by 11 U.S.C. § 1325(a)(3). Despite having conceded that Wells Fargo is owed an arrearage of at

least \$34,602.14, the Plan states that Wells Fargo is owed an arrearage of only \$504.29. The Plan also fails to include Santander as a creditor or provide a cure for the arrearage asserted by Santander in Claim No. 1. Finally, despite the Means Test indicating that Mr. and Mrs. Lucas have monthly disposable income of \$2,789.40 (and Schedule J, which lists a monthly net income of \$2,113.91), Mr. Lucas proposes to pay only \$504.29 per month to fund the Plan.

The repeated filings by Mr. and Mrs. Lucas are also suggestive of bad faith. Together, Mr. and Mrs. Lucas have filed six bankruptcy cases within the past three and one-half years, but only once has Mr. Lucas pursued a bankruptcy case to receive a discharge. Mr. Lucas is ineligible for a discharge in the present case. As Mr. Lucas indicated, he filed the present case to stop the foreclosure sale of his residence, which was scheduled to take place four days after the Petition Date. Yet, Mr. Lucas's admissions, together with this Court's August 24, 2012 order granting relief from stay and abandonment to Wells Fargo with respect to the residence, establish that Mr. and Mrs. Lucas have not made the required monthly payments on their mortgage loan since January 2009. The Bankruptcy Code does not allow debtors to fail to make required payments on secured debt in perpetuity in the hope that an anticipated future windfall will allow them to repay such debt.

For the reasons set forth herein, the Court finds that (i) Mr. Lucas belatedly made full disclosure of all of his prior bankruptcy cases, but only after being instructed to do so by the Court; (ii) Mr. Lucas had no credible reason for omitting the 2011 Case from his original Petition in this case; (iii) although Mr. Lucas stated that he did not know that he was ineligible to receive a discharge in this case based upon the chapter 7 discharge in the 2011 Case, the omission by Mr. Lucas of the 2011 Case is circumstantial evidence that he knew of and attempted to conceal the prior discharge; (iv) Mr. Lucas has made false representations to this Court at the Show Cause Hearing and in his Petition and Schedules; and (v) Mr. Lucas's Plan and bankruptcy case were filed in bad faith. As a consequence, the Court hereby dismisses Case No. 13-40798 filed by Debtor Daniel Paul Lucas. Moreover, the Court hereby prohibits Daniel Paul Lucas from filing another bankruptcy petition for a period of 180 days after the Show Cause Hearing - *i.e.*, on or before November 5, 2013.

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