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K.R.W.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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BRENDA K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (5)

IN RE:

Clay O. Brown and Claudia M. Brown,

Debtors.

C/A No. 03-09534-W

JUDGMENT

Chapter 13

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Trustee's Petition to Dismiss is granted and Debtors' case is dismissed with prejudice to bar a refiling under any chapter of the Bankruptcy Code for a period of one (1) year from entry of this Order.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 19, 2003.

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ORDER

Chapter 13

THIS MATTER comes before the Court upon the Chapter 13 Trustee's ("Trustee") Petition to Dismiss which asserts that Clay O. Brown ("Mr. Brown") and Claudia M. Brown ("Mrs. Brown") (collectively, "Debtors") filed this case as the seventh bankruptcy case filed by one or more of Debtors in bad faith. Based upon the record developed in this case and Debtors' history of bankruptcy filings, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Since 1992, Debtors have filed six bankruptcy cases prior to the current case now before the Court. The record indicates that Debtors filed the following cases jointly or in their individual capacity in this District as follows:

1. In 1992, Debtors filed a joint Chapter 13 case (C/A No. 92-75522), that the Court later dismissed on April 15, 1994.
2. On July 3, 1997, Debtors filed their second joint Chapter 13 case (C/A No. 97-05604). On November 23, 1999, the Court dismissed this case because Debtors failed to make payments pursuant to their Chapter 13 Plan.
3. On November 6, 2000, Debtors filed their third joint Chapter 13 case (C/A No. 00-10029). On September 5, 2001 and upon a Motion to Dismiss for non-payment submitted by the Trustee, the Court dismissed Debtors' case with prejudice for a period of 180 days for failure to make payments

pursuant to their Chapter 13 Plan.

4. On January 4, 2002, Mrs. Brown filed an individual Chapter 13 case (C/A No. 02-00089). On January 14, 2002, Mrs. Brown voluntarily converted her Chapter 13 case to Chapter 7. On January 18, 2002, the Court dismissed Mrs. Brown's case because Mrs. Brown filed her individual bankruptcy case during the bar period established by the Court's September 5, 2001 Order. The Court subsequently entered an Order on January 31, 2002 admonishing Debtor and her counsel for filing a Chapter 13 case in violation of the Court's September 5, 2001 Order. In re Brown, No. 02-00089, 2002 WL 368443 (Bankr. D.S.C. Jan. 31, 2002). Furthermore, the Court continued the existing bar period established by the September 5, 2001 Order, and noted that its ruling was "conditioned upon the Court's understanding that Debtor will refile a Chapter 7 case and not convert it to Chapter 13 at any time, nor does Debtor plan to refile a Chapter 13 case after the prohibition period." Id. at *1, n.2 (emphasis added).

5. On February 1, 2002, Mrs. Brown filed an individual Chapter 7 case (C/A No. 02-01256). On May 5, 2002, Mrs. Brown received a Discharge Order.

6. On September 3, 2002, Mr. Brown filed an individual Chapter 13 case (C/A No. 02-10401). On December 13, 2002 and upon a Motion to Dismiss for non-payment submitted by the Trustee, the Court dismissed Mr. Brown's case with prejudice for 180 days for failure to comply with the terms of his Chapter 13 Plan.

7. On August 8, 2003, Debtors filed the above-captioned joint Chapter 13 case (C/A No. 03-09534).

The Court notes that since the year 2000 and including the current case, Debtors have filed for bankruptcy five times. Furthermore, Debtors have filed their last four bankruptcy cases in a time

period spanning from January 4, 2002 to August 8, 2003. During that period, Debtors filed three bankruptcy cases within the same year (C/A No. 02-00089 on January 4, 2002, C/A No. 02-01256 on February 1, 2002, and C/A No. 02-10401 on September 3, 2002). Mrs. Brown's individual Chapter 7 case (C/A No. 02-01256) is the only case that was not dismissed.

Upon the dismissal of Mr. Brown's September 2002 bankruptcy case (C/A No. 02-10401), Debtors jointly filed for bankruptcy relief under Chapter 13 (the above-captioned case), a method of bankruptcy relief that they have a history of failing to complete. Debtors claim they have experienced a change in circumstances because Mr. Brown is now a full-time employee of the trucking company where he formerly served as an independent contractor. The Court also notes that in every case Debtors filed, Debtors were obligated to pay some amount of mortgage arrearage in order to keep their house which is located at 8968 Charleston Highway, Bowman, SC 29018 (the "Bowman Property"). According to the proof of claim filed by Security National Servicing in Mr. Brown's September 2002 case (C/A No. 02-10401), the mortgage indebtedness was incurred in 1996. The current mortgage arrearage is now in excess of \$35,000.

CONCLUSIONS OF LAW

The Court has the inherent authority to dismiss a case for cause when a debtor files a Chapter 13 petition for relief in bad faith. See e.g., In re Hartley, 187 B.R. 506 (Bankr. D.S.C. 1995) (factors of 11 U.S.C. § 1307(c) are not exhaustive; bad faith constitutes sufficient cause to dismiss case); In re Brown, C/A No. 03-7515, slip op. at 3-4 (Bankr. D.S.C. Sep. 26, 2003) (same). A review of the record indicates that Debtors' prime motive for the filings is to stop foreclosure proceedings on the Bowman Property. It is uncontroverted that Debtors consistently have not paid their mortgage obligation, resulting in a significantly greater arrearage claim in each case, and have filed bankruptcy

to delay collection action by the creditor that holds the secured mortgage interest in Debtors' home (in this case, "Security National Servicing"). Considering the time periods between filings, the manner and cause for dismissal of Debtors' prior bankruptcy cases, and the fact that Mrs. Brown has recently received a Chapter 7 discharge following filing a Chapter 13 case in contravention of a prior Court Order, the cases filed by Debtors jointly and in their individual capacities should be viewed as a concentrated effort to thwart foreclosure. Therefore, the collective joint and individual filings by Debtors should be viewed as filings by a single entity because Debtors jointly enjoyed the benefits of the bankruptcy cases that protected a common asset throughout their numerous filings. See In re Brown, C/A No. 01-12506, slip op. at 7-8 (Bankr. D.S.C. June 3, 2002); In re Hartley, 187 B.R. at 507.

Considering their history, it appears that Debtors have failed to meet their prior case obligations and have been unable to properly address the mortgage indebtedness (and/or other debts) through Chapter 13 reorganization. In such instances of failed serial filings, Debtors have a burden of demonstrating to the Court that a change in circumstances has occurred between the prior cases and the current case now before the Court so that the new case would appear to be feasible and likely to fulfill the goals of reorganization, as opposed to being merely a device to delay creditors. See, e.g., Brown, C/A 03-07515-W, slip op. at 4-5; In re Marett, , No. 96-75003, 1996 WL 33340790, at * 8 (Bankr. D.S.C. Nov. 13, 1996); In re Hartley, 187 B.R. at 507; In re Pryor, 54 B.R. 679, 681 (Bankr. D.S.C. 1995); In re McElveen, 78 B.R. 1005, 1007 (Bankr. D.S.C. 1987). See also Johnson v. Vanguard Holding Corp. (In re Johnson), 708 F.2d 865, 868 (2d Cir. 1983) (court should determine whether debtor had a bona fide change in circumstances that justified second filing); In re Green, 214 B.R. 503, 506, n.9 (Bankr. N.D. Ala. 1997) (in instances of serial filings, debtor

should show change of circumstance to avoid dismissal on bad faith grounds).

To meet this burden, Debtors proffered evidence that Mr. Brown is now employed on a full-time basis by the same company for which he served as an independent contractor for the fourteen (14) years prior to the current case filing. In In re Hartley, the Court required detailed testimony and convincing evidence in order to demonstrate an entitlement to another opportunity for relief under the Bankruptcy Code. 187 B.R. at 507. Debtors did not present sufficient or convincing testimony or other evidence to the Court. The Court is not persuaded that a change of “hats” by Mr. Brown with his employer of 14 years will render this case likely to succeed where others have not. See In re Brown, C/A No. 03-07515, slip op. at 5 (without more detailed testimony and convincing evidence, debtor’s argument that his business is now profitable does not meet burden of showing change in circumstances).

Finally, Debtors rely upon the fact that Security National Servicing did not object or appear before this Court to oppose confirmation of their Plan. However, the Trustee’s Petition properly raised the issue of bad faith and noted Debtors’ high arrearage owed to Security National Servicing. As reported by the Trustee, the creditors’ lack of participation indicates that they have been exhausted by delay and Debtors’ repeated filings. Considering the history of Debtors’ case filings, including the number of filings, the time periods between filing, the reasons for dismissal of the previous cases, and the Chapter 7 discharge already received by Mrs. Brown, as well as the previous Orders entered by the Court in Debtors’ cases, including the Court’s Order declining to sanction Mrs. Brown but admonishing her for filing in violation of the Court’s previous Order prohibiting her from filing Chapter 13 for 180 days and the Court’s specific reliance in that Order on its understanding that Mrs. Brown would not file another Chapter 13 case, the Trustee’s Petition for Dismissal is

granted.

It is clear to the Court that Debtors' repeated filing of bankruptcy after several failed attempts to perform under their plans and comply with Orders of this Court is an abuse of the bankruptcy process which indicates bad faith and causes an unreasonable delay that is prejudicial to creditors. Since previous Orders of dismissal, including those with an 180 day bar to refiling, have not been effective, it appears necessary to dismiss this case with prejudice to bar a refiling under any chapter of the Bankruptcy Code for a period of one (1) year from entry of this Order.¹

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
November 19, 2003.

¹ The Court further notes that the refiling of a bankruptcy case of Mrs. Brown by counsel was in contravention of this Court's Order entered January 31, 2002, 2002 WL 368443, at *1, n.2, and cautions counsel to insure compliance with Operating Order 02-01.