

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 07-02371

JUDGMENT

The relief set forth on the following pages, for a total of 2 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT**  
**06/15/2007**



Entered: 06/15/2007

  
US Bankruptcy Court Judge  
District of South Carolina

**N THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

William Chapman Bell,

Debtor.

C/A No. 07-02371-HB

Chapter 13

**JUDGMENT**

Based upon the findings of fact and conclusions of law made in the attached Order, it is hereby ordered:

That the debtor's Motion to Extend Stay is hereby denied;

That the case is hereby dismissed;

That an additional 30 days is hereby added to the 180-day period previously established by the Court's Order entered January 16, 2007, prohibiting a chapter 13 filing for a total prejudice period of 210 days from January 16, 2007. The debtor is prohibited from filing a chapter 13 case during that time.

Counsel for the debtor shall return the sum of \$850 to the debtor within thirty days from entry of this order.

**AND IT IS SO ORDERED.**

U.S. BANKRUPTCY COURT  
District of South Carolina

Case Number: 07-02371

ORDER

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT**  
**06/15/2007**



Entered: 06/15/2007

  
US Bankruptcy Court Judge  
District of South Carolina

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

William Chapman Bell,

Debtor.

C/A No. 07-02371-HB

Chapter 13

**ORDER**

This matter comes before the Court for consideration of the status of the above captioned case. After careful consideration of the testimony, record and other evidence presented, the Court enters the following ORDER:

**FINDINGS OF FACT**

1. Debtor previously filed for chapter 13 relief on April 3, 2003 by initiating Case Number 03-04065, which was dismissed for non-payment on February 11, 2005 before completion of the plan.
2. On February 24, 2005, shortly after dismissal of Case Number 03-04065, debtor filed chapter 13 Case Number 05-02168. That case was dismissed prior to completion of the chapter 13 plan by order entered on January 16, 2007, with prejudice for a period of 180 days.
3. Debtor does not dispute the fact that the prior case was justly dismissed, nor that the dismissal of the case with prejudice for a period of 180 days was warranted, since that prejudice period was imposed as a result of a consent order between debtor's counsel and the trustee entered April 6, 2005. That consent order provided that should the case be dismissed for any reason, dismissal would be with prejudice as to the filing of another chapter 13 bankruptcy for a period of 180 days.

4. The present case was filed pursuant to chapter 13 of the Bankruptcy Code on May 3, 2007, prior to the expiration of the 180-day prejudice period set forth in the January 16, 2007 Order.
5. On May 4, 2007 Debtor filed a Motion to Extend Stay pursuant to 11 U.S.C § 362(c) and a Motion to Allow Third Bankruptcy Filing.
6. W. Keenan Stephenson was appointed as chapter 13 trustee in this case. The trustee filed Objections to both of debtor's Motions on the grounds that debtor was not eligible to file the current case, based on the prejudice period established in the January 16, 2007 Order.
7. Since the case was filed in violation of a prior order of the Court, this Court issued an Order to Appear and Show Cause on May 10, 2007, requiring the debtor and counsel to appear and show cause why sanctions or other relief should not be imposed, including a possible finding of civil contempt.
8. At the hearing on these matters held May 22, 2007, the debtor appeared with his attorney and both offered testimony in support of debtor's motions and in response to the Court's May 10 Order.
9. Counsel for the debtor argued that he and the debtor were fully aware that they were filing contrary to the prejudice order when this case was filed, and that they were merely asking the Court to allow this subsequent case despite that order, rather than making any demands.
10. In support of the debtor's motion to extend the stay, the debtor testified that several medical conditions beyond his control caused him to be unable to work. As a result,

his second case was dismissed for nonpayment. Debtor alleges that his medical conditions are being treated and he is now able to work and make the plan payments.

11. The Attorney Fee disclosure in this case indicates that the debtor paid the sum of \$850 in attorney's fees for the filing of this case.

## **DISCUSSION AND CONCLUSIONS OF LAW**

### **A. Debtor's Motion to Extend Stay.**

Because the debtor's last bankruptcy case was pending within a one (1) year period preceding the filing of the current case, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) terminated thirty (30) days after the debtor filed the current case. Pursuant to § 362(c)(3)(C)(i)(II), there is a presumption as to all creditors that the debtor did not file the current case in good faith because the debtor's previous case was dismissed for failure to make timely plan payments pursuant to a confirmed plan.

The Court finds that the debtor's filing of this case in violation of a prior court order is evidence of his bad faith in this case. Therefore, the stay will not be extended and expired thirty days after the filing of this case.

### **B. Debtor's Motion to Allow Third Bankruptcy Filing and the Court's Order to Appear and Show Cause.**

The debtor does not challenge the appropriateness of the Order dismissing the prior case with prejudice as to chapter 13 for a period of 180 days. Further, debtor and counsel acknowledge that they knowingly violated the prior order. This Court has dealt with similar facts in the past. In the case of In re Johnson, No. 06-0192-jw (Bankr. D.S.C. June 16, 2006), Judge Waites stated:

[F]iling of this third case during an existing prejudice period is a violation of this Court's local rules and a sanctionable act of contempt. S.C. Local Bankruptcy Rules 9010-3(a) & (d) provide as follows:

(a) A debtor and attorney for the debtor shall have the duty to ascertain that no previous court order, statute or rule makes the debtor ineligible to file or bars the applicable filing of a petition in bankruptcy before this Court. The signing and filing of a petition by a debtor and/or attorney for the debtor is deemed a certification to the Court that the debtor is eligible to file another petition and is not in violation of previous order of dismissal with prejudice, statute, or rule.

\* \* \* \*

(d) Violation of subsection (a) of this rule may subject parties to sanctions.

Furthermore, to protect the integrity of orders dismissing a case with prejudice, this Court has consistently sanctioned debtors' counsel when they improperly file a case during an existing prejudice period. See In re Hook, C/A No. 05-06225-W, slip op. (Bankr. D.S.C. June 20, 2005) (requiring disgorgement of fees and payment of \$400.00 for improperly re-filing a bankruptcy case during an existing prejudice period); In re Meggett, C/A No. 03-09345-W, slip op. (Bankr. D.S.C. Aug. 20, 2003) (sanctioning debtor's counsel \$1,000.00 for improperly re-filing a bankruptcy case during an existing prejudice period); In re Craigo, C/A No. 03-02444-W, slip op. (Bankr. D.S.C. Apr. 7, 2003) ([same]); In re Garner, C/A No. 02-02058, slip op. (Bankr. D.S.C. Mar. 11, 2002) (sanctioning debtor's counsel \$985.00 for improperly re-filing a bankruptcy case during an existing prejudice period).

In re Johnson, slip op. at 4.

Counsel argues, however, that he is merely asking leave of the Court to file this case despite the terms of the prior order. Counsel argues that the only way such a request can be made is by the filing of a new case. While it is true that counsel could not ask the intended question of the Court without an existing case, the question simply should not be asked. The debtor *agreed* not to file another chapter 13 case for 180 days should the prior case be dismissed in an arrangement reached with the chapter 13 trustee and in conjunction with the confirmation of the prior plan. The trustee and parties to that case have the right to rely on that agreement and the final order resulting from it. Regardless of any sympathies that may be due to the debtor as a result of his circumstances, there are no grounds in this matter for relieving the debtor from the prejudice order pursuant to Fed. R. Civ. P. 59 or 60 or any other authority. Therefore, the prejudice period stands and

this debtor may not be a debtor in a chapter 13 case before this Court at this time.

However, the prejudice does not extend to any other chapter under the Bankruptcy Code.

As set forth above, there is ample authority for sanctioning both the debtor and his attorney for violation of the prior court order. However, as the issue presented was somewhat novel and the facts varied from prior cases, the Court will instead endeavor to place the parties back in the position they would have been but for the improper filing of this case. First, as the debtor filed the case in violation of the prior order, the case cannot continue and must be dismissed. However, the debtor has received the benefit of the automatic stay for the first 30 days of this case. As a result, the Court will add an additional 30 days to the prior 180-day order prohibiting a chapter 13 filing, for a total prejudice period of 210 days from the entry of the prior dismissal order on January 16, 2007. Finally, the record indicates that the debtor's attorney was paid \$850 in attorney's fees to file this third case in violation of the prior order. While the debtor proceeded with the case understanding that he may not succeed, his actions were undoubtedly influenced by the advice of counsel. Therefore, the Court will require the return of the sum of \$850 from counsel to the debtor as this case should not have been filed in clear violation of the Court's prior order, the local rules and the parties' prior agreement.

**IT IS THEREFORE, ORDERED:**

That the debtor's Motion to Extend Stay is hereby denied;

That the case is hereby dismissed;

That an additional 30 days is hereby added to the 180-day period previously established by the Court's Order entered January 16, 2007, prohibiting a chapter 13 filing



for a total prejudice period of 210 days from January 16, 2007. The debtor is prohibited from filing a chapter 13 case during that time.

Counsel for the debtor shall return the sum of \$850 to the debtor within thirty days from entry of this order.

**AND IT IS SO ORDERED.**