U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: **23-02686-hb**

Order

The relief set forth on the following pages, for a total of 15 pages including this page, is hereby ORDERED.

FILED BY THE COURT
04/09/2024

Entered: 04/09/2024

Chief US Bankruptcy Judge
District of South Carolina

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

IN RE:	C/A No. 23-02686-HB
Michael Gavin Morgan,	Chapter 11
Debtor(s).	**ORDER**

THIS MATTER came before the Court for hearing on the Motion to Dismiss pursuant to 11 U.S.C. § 1112[1] and the Motion for Relief from Stay pursuant to 11 U.S.C. § 362(d)(1)[2] (the "Motions") filed by Wells Fargo Bank National Association ("Creditor"), and the response thereto. Michael Gavin Morgan ("Debtor") was represented by W. Harrison Penn, and Creditor was represented by Glenn E. Glover, appearing *pro hac vice*, and G. Benjamin Milan, appearing as local counsel. Debtor testified and exhibits were admitted into evidence.

FINDINGS OF FACT

On or about April 25, 2008, Wachovia Mortgage FSB ("Wachovia") made a loan (the "Loan") to Debtor as evidenced by an adjustable rate note (the "Note") executed by Debtor on the same date in the original amount of $1,300,000.00. The maturity date of the Note is May 15, 2038. The Note was secured by a mortgage (the "Mortgage") executed by Debtor in favor of Wachovia on the same date pursuant to which Debtor granted a lien on and security interest in real property located at 415 Chesterfield Street South, Aiken, South Carolina 29801 (the "Property"). The Mortgage was recorded on or about May 6, 2008, in the real property recording office in Aiken County, South Carolina at Book No. 4201, Page 1737. Creditor is the successor in interest to Wachovia.

[1] ECF No. 22, filed Jan. 11, 2024.
[2] ECF No. 23, filed Jan. 11, 2024.

Based on the Note and Mortgage, Debtor joined a class action suit against Creditor in 2010, which was settled in May of 2011, wherein borrowers were granted certain relief, but the debt is still due to Creditor and no payments have been made since 2011.

On or about December 2, 2015, Creditor filed a foreclosure action in the Court of Common Pleas for Aiken County, South Carolina (the "State Court"), Civil Action No. 2015-CP-02-2849 (the "Foreclosure Lawsuit"). Debtor filed a counterclaim. A mediation was held years later on March 31, 2023. Both parties were represented by counsel. The parties reached a resolution of their differences in principle, which was memorialized in an agreement (the "Mediation Agreement") signed by Debtor, Drew Radeker ("Radeker"), Debtor's counsel in the Foreclosure Lawsuit, Holly R. Stevens, Creditor's Senior Company Counsel, and Stacie Knight, Creditor's counsel. The key provisions were:

> 1. [Creditor] shall pay to [Debtor] . . . the sum of $200,000.00 within thirty (30) days of this agreement.
> 2. [Creditor] will proceed with the foreclosure action uncontested by [Debtor], and [Debtor] will dismiss his counterclaims with prejudice. The judicial foreclosure sale will be set no sooner than September 1, 2023, and [Creditor] waives any deficiency judgment. [Debtor] shall have the right prior to the judicial foreclosure sale to pay $1.3 million in certified funds or wired funds to [Creditor] to pay the note and mortgage in full….

On or about May 26, 2023, the parties executed a written Confidential Settlement Agreement and Release (the "Settlement Agreement"). The Settlement Agreement was signed by Debtor on May 24, 2023, and Holly Stevens (Creditor's Senior Company Counsel) on May 26, 2023.

The Settlement Agreement as well as email communications between Debtor's and Creditor's State Court counsels were admitted into evidence without objection. In the email exchange admitted as Creditor's exhibit 19, Radeker wrote on May 17, 2023, in part:

> Please see the attached draft with changes. You'll note that I change[d] the sales date from September 1 to September 5, since that's the September sales day.

> [Debtor] has also asked me to request that the sales date be moved to October. If [Creditor] will do that, that would be great, but you'll notice that I didn't put that proposed change in the document.

In her May 24, 2023, response, Stacie Knight wrote, "Drew, I accepted all your changes except the payment date in paragraph 8(b) - I changed it to September 4, 2023, by 11:59 p.m." The same day, Radeker responded, "Great. Thanks. That's just fine." Debtor signed that Settlement Agreement on May 24, 2023, and delivered it to his attorney. His attorney transmitted the Settlement Agreement to Creditor's counsel without any additional changes.

The final executed version of the Settlement Agreement, which includes Debtor's signature, was admitted as Creditor's exhibit 22, and states in paragraph 8:

> (a) [Creditor] agrees that a foreclosure sale of the Property will not occur before September 5, 2023.
> (b) On or before September 4, 2023 at 11:59 p.m. EST, [Creditor] will accept payment from or on behalf of [Debtor], in the form of certified funds or wire transfer, in the amount of One Million Three Hundred [sic] and No/100 Dollars ($1,300,000.00) in exchange for a release of the Mortgage and full satisfaction of the Loan.…

Debtor testified he did not dispute the language of the Mediation Agreement, but that he did not execute this version of the Settlement Agreement and denied the payoff date of September 4, 2023, was part of the agreement. He stated he had handwritten changes to the Settlement Agreement he signed on May 24, 2023, before he returned the document to his attorney. Although Debtor could not recall all his proposed changes, he testified some of those changes included altering the foreclosure sale date, striking paragraph 3 which provided his counterclaims would be dismissed with prejudice, striking paragraph 12 which provided a release to Creditor, striking paragraphs 13 and 14 regarding confidentiality and non-disparagement clauses, and adding a provision that the agreement was not binding until he received the $200,000.00 in settlement funds.[3] The Settlement

[3] Many of these alleged alterations were included in Debtor's July 12, 2023, Consumer Financial Protection Bureau Complaint admitted as Creditor's Exhibit 24.

Agreement transmitted to Creditor by Debtor's counsel and signed by Creditor on May 26, 2023, does not include the changes allegedly made by Debtor on May 24, 2023. Nothing was submitted into evidence to substantiate Debtor's claims that he made handwritten amendments to the Settlement Agreement. Debtor received the $200,000.00 payment from Creditor on June 7, 2023.[4] Debtor has not paid any amount to Creditor as a result of either the Mediation Agreement or the Settlement Agreement.

Debtor filed this Chapter 11 case on September 5, 2023. The Property serves as Debtor's residence and consists of an approximately 10,000 square-foot, 22-room house, built in 1840 situated on approximately 2 acres in downtown Aiken, South Carolina, a 17-stall barn, three paddocks, and a guest cottage.

In Schedule A, the Property's value is listed as $2,900,000.00. In his Schedule A/B, Debtor also lists $113,300.00 in deposit accounts, one of which belongs to Harbour Capital, a corporation solely owned by Debtor. In his Schedule D, Debtor listed the Loan as being in the amount of $1,300,000.00 secured by the Property and did not indicate that the Loan was contingent, unliquidated, or disputed. Schedule D indicates the Property is also encumbered by a second mortgage in favor of Margaret H. Fitch in the approximate amount of $250,000.00 (the "Second Mortgage").

Debtor's Schedule I indicates Debtor is not employed and reflects his only sources of income are Social Security in the amount of $2,257.80 per month, and $800.00 per month from "Carriage House Rental (no written lease)". In his Schedule J, Debtor lists net monthly income of negative $5,907.20 without listing any monthly payment on the Loan.

[4] Creditor's Exhibit 18.

On January 4, 2024, Creditor filed a Proof of Claim in the amount of $2,176,448.70, secured by the Property with a pre-petition arrearage of $1,169,802.80 and a variable interest rate of 6.91%. Debtor filed an Objection to Creditor's Claim on March 18, 2024, the day before this hearing, arguing:

> to the extent that the claim is overstated and not representative of the Mediation Settlement Agreement reached between Claimant and the Debtor. The Debtor submits that Claimant's claim should be reduced and allowed as a first priority mortgage claim in the amount of $1,300,000.

Based on Debtor's responses to the Motions and his testimony at the hearing, the Court understands that he believes that the $1.3 million dollar figure from the Settlement Agreement did not expire on September 4, 2023 as stated, and that amount should be enforced until the time the foreclosure sale occurs, whenever that may be.

On March 4, 2024, six months after the case was filed staying the foreclosure proceeding, Debtor filed a Proposed Plan of Reorganization (the "Plan") and a Disclosure Statement. The overview of the means for effectuating Debtor's proposed plan in article IV provides:

> The success of the Plan, and any significant recovery to the Creditors of the estate, is dependent upon the successful closing of a reverse mortgage on the Debtor's Residence, marketing and consummation of sales of the Debtor's assets and the Debtor's continued receipt of revenues shown in Exhibit 6 to the Disclosure Statement in this matter. The Debtor has begun marketing its assets and has received a commitment from two (2) insider family businesses for the continued payments of consulting fees so long as such insider businesses remain going concerns. Additionally, the Debtor currently holds in excess of $33,350 in his DIP Banking account that will allow the Debtor to make the first Bi-Annual Plan Payment called for in this Plan. For the next three (3) years (2025 through 202026 [sic]), the Debtor's company Harbour Capital Corporation ("Harbour Capital") will also be receiving future advances, which will be the primary source of Bi-Annual Plan Payments called for in this Plan.

The Plan states: "Debtor is simultaneously working towards an agreement with Nationwide Equities and Longbridge Capital, LLC for a restructuring of the loan in the form of a reverse

mortgage on his Residence (as set forth in more detail hereinbelow)." The Plan proposes to address the Loan as follows:

> Class 1. Wells Fargo Bank, N.A. ("Wells Fargo") Secured, impaired.
>
> Wells Fargo asserts a claim against the Debtor in the approximate amount of $2,176,488.70, secured a [sic] first mortgage lien on the Debtor's Residence. The Debtor disputes this claim and asserts that Wells Fargo has agreed to accept $1,300,000 in full satisfaction of the mortgage claim at any time until just prior to the foreclosure of the Residence, as detailed in the Mediation Settlement Agreement.
>
> Based upon the foregoing, Wells Fargo will receive payment of its allowed claim in full from the collateral upon the closing of the reverse mortgage. Upon confirmation of the Plan, and payment of the $1,300,000 settlement price, Wells Fargo shall be deemed to have no remaining claims against the Debtor or his estate. The Debtor will close the reverse mortgage on the residence and pay Wells Fargo $1,300,000, as soon as practicable during the course of this Plan.

At the hearing, two letters from reverse mortgage lenders Debtor had contacted were admitted into evidence. However, neither indicated Debtor had successfully obtained funding. The letter from Nationwide Equities stated Debtor had an active application for a reverse mortgage and that application was in the underwriting phase. Debtor testified he thought that application would be accepted and close within 30 days.

A letter from Longbridge Financial LLC merely reflected that Debtor had submitted an application but gave no indication as to the likelihood it would be approved. The letter included many notations about obvious issues that would need to be resolved before entering the underwriting process, many that appear insurmountable. Among the many conditions to funding listed, the letter states: "Platinum Exception by Sr. Management will be required to proceed with no FICO scores, Active Chapter 11 BK& current foreclosure"; "[a]ppraisal to be ordered within 20 days. . . [i]f not ordered the loan is to be adversed as a denial"; "[p]rovide satisfactory 24 month mortgage payment history for [Creditor Mortgage]"; provide evidence the 3 lis pendens have been discontinued, cancelled, and any judgment vacated by court order. It also included the impediment

of the Second Mortgage on the Property noting "[t]his is not currently reflected in RV as being paid at closing. Provide clarification if we will be paying off this lien or subordinating it at closing. If paying off, we will need current payoff. If subordinating it, we will need a copy of the subordination agreement along with the current loan agreement" and "[b]orrower to provide satisfactory as to who Margaret Fitch [Second Mortgage creditor] is and where she currently resides."

The Plan addresses the Second Mortgage as follows:

> Class 2. Margaret Fitch, MD ("Peggy Fitch"). Secured, impaired.
>
> Peggy Fitch has not filed a proof of claim in this chapter 11 case. The Debtor has scheduled a claim for Dr. Fitch based upon her recorded mortgage in the amount of $250,000. Accepting the Wells Fargo valuation for the Residence at $1,480,000, the Debtor proposes to value the Dr. Fitch's mortgage at $180,000.
>
> Class 2 will be paid $180,000 in equal monthly installments from the Bi-annual Plan Payments. The Debtor will fund recovery for Class 2 from future advances paid to Harbour Capital by its long-term business investor/partners, or as necessary to fund repayment and liquidation of other assets.
>
> To any extent Dr. Fitch asserts any deficiency claim against the Debtor, such claims will be treated as general unsecured claims (as set forth in more detail hereinbelow).

Note that Debtor values the Property in the plan at $1,480,000.00, about half the $2,900,000.00 value he listed for the Property in his schedules. In addition to seeking a reverse mortgage, Debtor testified he has considered selling the Property, and he showed it to potential buyers on two occasions in the last month. Debtor testified he obtained two appraisals of the Property in the last year, one of which valued it at approximately $2.9 million and another at approximately $3.1 million. However, Debtor further testified he has taken no action to list the Property because he believes that, due to its size, price, and location, it would not sell quickly.

Regarding funding to be received from Harbour Capital, the Plan provides:

> The Debtor is in poor health, having long suffered from a degenerative spinal condition. Due to his physical condition, the Debtor is unable to find full time employment for the foreseeable future. However, Debtor continues to

generate modest revenue through his company Harbour Capital, Inc. ("Harbour Capital"). Harbour Capital continues to receive future advances for continued efforts to identify investment opportunities for long term clients in affordable housing. Though the original Schedules I and J filed in this matter indicated the Debtor had no significant disposable income to contribute to a plan of reorganization, the Debtor asserts that Harbour Capital will have future advances over the term of the Debtor's Plan that will pay approximately $200,000 as shown in **Exhibit 6** to the Disclosure Statement.

Exhibit 6 to the Disclosure Statement shows:

Exhibit 6 - Plan Implementation Budget

		Monthly	Annual
Income			
	Monthly Social Security Benefit	$ 2,257.80	$27,093.60
	Rental of Guest Cottage	$ 800.00	$9,600.00
	Future Advances Harbour Capital / Liquidation	$ 10,416.67	$125,000.00
		$ 13,474.47	**$161,693.60**
Expenses			
	Property Tax	$ 701.00	$8,412.00
	Property Insurance	$ 766.00	$9,192.00
	Home maintenance, repair, and upkeep	$ 1,600.00	$19,200.00
	Electrical	$ 1,200.00	$14,400.00
	Water	$ 250.00	$3,000.00
	Telephone / Internet	$ 300.00	$3,600.00
	Food and houskeeping	$ 600.00	$7,200.00
	Clothing/Laundry	$ 75.00	$900.00
	Personal care	$ 80.00	$960.00
	Medical and Dental	$ 450.00	$5,400.00
	Transportation / Gas	$ 250.00	$3,000.00
	Entertainment / Clubs	$ 500.00	$6,000.00
	Chairity	$ 25.00	$300.00
	Life Insurance	$ 650.00	$7,800.00
	Vehicle Insurance	$ 300.00	$3,600.00
		$ 7,747.00	**$92,964.00**
	Avaliable Funds		$68,729.60
	Bi-Annual Plan Payment		**$66,700.00**

A significant portion of funding for Debtor's plan comes from the proposed future advances from Harbour Capital, but no evidence before the Court gives any insight into Harbour Capital or its financial situation. At the hearing, Debtor failed to offer clear or credible testimony, and offered no documentation, convincing the Court that Harbour Capital can generate any income after being essentially defunct for nearly 10 years. Debtor retired a number of years ago, as he

stated at the hearing, in part because the majority of his business partners had either retired or died. He further failed to offer sufficient information regarding how the company operates, who the clients/investors are, or any other information lending credibility to the proposed income value. Debtor testified that any income he has received from Harbour Capital since 2016 has been an "advance" to shareholders, with Debtor being the sole shareholder. No advances were reflected on Debtor's Schedules or Statements.

DISCUSSION AND CONCLUSIONS OF LAW

I. The Settlement Agreement is Enforceable.

"Acts of an attorney are directly attributable to and binding upon the client. Absent fraud or mistake, where attorneys of record for a party agree to settle a case, the party cannot later repudiate the agreement." *Shelton v. Bressant*, 312 S.C. 183, 184-85, 439 S.E.2d 833, 834 (1993) (quoting *Arnold v. Yarborough*, 281 S.C. 570, 572, 316 S.E.2d 416, 417 (Ct. App. 1984)) (holding that a litigant's "contention that the suit was not settled according to his instructions [did] not entitle him to rescind the agreement."). Any communication failure or mistake on the part of an attorney is directly attributable to his client. *See Kirkland v. Moseley*, 109 S.C. 477, 96 S.E. 608 (1918) (a party cannot set aside settlement agreement signed pursuant to attorney's erroneous legal advice); *see also Graham v. Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d 594, 598 (1978) ("The general rule in this jurisdiction is that the neglect of the attorney is attributable to the client.").

> When a litigant voluntarily accepts an offer of settlement, either directly or indirectly through the duly authorized actions of his attorney, the integrity of the settlement cannot be attacked on the basis of inadequate representation by the litigant's attorney. In such cases, any remaining dispute is purely between the party and his attorney.

Shelton at 185, 439 S.E.2d at 834 (quoting *Petty v. The Timken Corp*., 849 F.2d 130, 133 (4th Cir. 1988)).

There is no dispute that Debtor's attorney in the Foreclosure Lawsuit transmitted the Settlement Agreement to opposing counsel bearing Debtor's signature and the opposition relied on that Settlement Agreement, Creditor made the $200,000.00 payment that Debtor accepted in exchange for the releases set forth therein, and otherwise relied on the agreement. There is nothing in the record sufficient to convince the Court that there was a mistake or fraud sufficient to repudiate the agreement. Debtor is bound by the Settlement Agreement. The Settlement Agreement provides that the opportunity to settle the debt for $1.3 million expired on September 4, 2023, at 11:59 p.m., and therefore, Debtor's reliance on the $1.3 million payoff figure after that date is misplaced.

II. Relief From the Automatic Stay — 11 U.S.C. § 362(d)(1)

Under § 362(d)(1), relief from the automatic stay may be granted by the Court upon a showing of "cause." "Because the Code provides no definition of what constitutes 'cause,' courts must determine when discretionary relief is appropriate on a case-by-case basis." *In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992). Bankruptcy judges have broad discretion in determining what constitutes sufficient cause to grant relief from stay under section 362(d)(1). *In re Lee*, 428 B.R. 667, 669-70 (Bankr. D.S.C. 2009) (citing *In re Breibart*, No. 03–07440–W, slip op. at 2 (Bankr. D.S.C. Feb. 17, 2004)); *see also Robbins*, 964 F.2d at 345.

Debtor has made no payment toward Creditor's debt since this case was filed on September 5, 2023. A confirmation hearing has not yet been held for the plan filed on March 4, 2024. However, the Court need not wait until a confirmation hearing before considering whether Debtor has or can propose a feasible Chapter 11 plan. The failure or inability to do so may constitute

"cause" to lift the automatic stay under § 362(d)(1). *In re Smith*, 333 B.R. 94, 102 (Bankr. M.D.N.C. 2005) (citing *In re Brown*, No. 97-5302, 1998 WL 734701, at *5-6 (E.D. Pa. Oct. 19, 1998); *Centofante v. CBJ Dev. (In re CBJ Dev.)*, 202 B.R. 467, 473 (9th Cir. BAP 1996); *In re Gulph Woods Corp*., 84 B.R. 961, 974-75 (Bankr. E.D. Pa. 1988)).

"Confirmation of a Chapter 11 plan of reorganization requires that the plan satisfy all of the confirmation criteria set forth in 11 U.S.C. § 1129(a)." *Behrmann v. Nat'l Heritage Found.*, 663 F.3d 704, 709 (4th Cir. 2011) (citation omitted). One of the requirements in § 1129(a) is that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11). In other words, the plan must be *feasible*. *In re A.H. Robins Co., Inc*., 880 F.2d 694, 698 (4th Cir. 1989). For a Chapter 11 plan to be feasible, "[i]t is not necessary that success be guaranteed, but only that the plan present a workable scheme of organization and operation from which there may be a reasonable expectation of success." *In re Walker*, 165 B.R. 994, 1004 (E.D. Va. 1994) (quoting *In re Drexel Burnham Lambert Group, Inc*., 138 B.R. 723, 762 (Bankr. S.D.N.Y. 1992)). "The test is whether the things which are to be done after confirmation can be done as a practical matter under the facts." *Id*. (quoting *In re Hoffman*, 52 B.R. 212, 215 (Bankr. D.N.D. 1985)).

The Court in *In re Smith*, 333 B.R. 94 (Bankr. M.D.N.C. 2005) found the plan, which relied on the success of the debtors' business, was not feasible under § 1129(a)(11) and relief from the automatic stay was appropriate, noting that the plan proposed was overly optimistic regarding future revenue and the ability to pay, and that compliance with the proposed plan was highly unlikely. The same is evident here. The Court finds little to no evidence that this Debtor's Plan is feasible, or that Debtor could propose a feasible plan. The evidence provided to the Court fails

to offer any indication that Debtor will be able to effectively reorganize through the methods set forth in the plan. Debtor is bound by the Settlement Agreement and not entitled to the $1.3 million payoff figure he claims, but if he was, there is no reason to believe he can pay even this lesser amount. Debtor's sources of income listed in his schedules—Social Security and rental income—are clearly inadequate to fund the plan, as his schedules reflect significantly negative net monthly income without even accounting for payments on the Loan. As noted above, there is no indication that Harbour Capital can provide sufficient, or any, funding for the plan proposed. Further, there is no evidence Debtor is likely to obtain a reverse mortgage. The letters from the potential reverse mortgage lenders produced at the hearing do not indicate that Debtor's financing is likely to be approved. The letter from Nationstar is simply insufficient to indicate anything other than that Debtor filed an application, and the myriad issues listed in Longbridge's application appear to pose an insurmountable obstacle to obtaining approval. As Debtor has failed to demonstrate any viable reorganization in prospect, relief from stay is warranted pursuant to § 362(d).

III. Motion to Dismiss — 11 U.S.C. § 1112(b)(1)

11 U.S.C. § 1112(b)(1) provides:

> Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

Though not explicitly listed in the statute, bad faith in filing the petition may constitute "cause" for purposes of § 1112(b). *Carolin Corp. v. Miller*, 886 F.2d 693, 699 (4th Cir. 1989). "The right to file a Chapter 11 bankruptcy petition is conditioned upon the debtor's good faith—the absence of which is cause for summary dismissal." *In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 279 (4th Cir. 2007) (citing *Carolin*, 886 F.2d at 698). "[A] good faith requirement prevents

abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes." *Id.* (internal quotations omitted) (quoting *Carolin*, 886 F.2d at 698). "The good faith standard also 'protects the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons (*i.e.*, avoidance of liens, discharge of debts, marshaling and turnover of assets) available only to those debtors and creditors with clean hands.'" *Id.* (quoting *Carolin*, 886 F.2d at 698).

In the Fourth Circuit, "a lack of good faith in filing a Chapter 11 petition traditionally requires a showing of 'objective futility' and 'subjective bad faith.'" *Id.* at 279-80 (citing *Carolin*, 886 F.2d at 700-01). "The objective test focuses on whether there exists the realistic possibility of an effective reorganization." *In re Auto Money N. LLC*, 650 B.R. 245, 257 (Bankr. D.S.C. 2023) (quoting *Premier*, 492 F.3d at 280) (internal quotation marks omitted). Put another way, the objective test "concentrate[s] on assessing whether 'there is no going concern to preserve…and…no hope of rehabilitation, except according to the debtor's terminal euphoria.'" *Carolin*, 886 F.2d at 701-02 (internal quotation marks omitted) (quoting *Little Creek Dev. Co. v. Commonwealth Mortg. Corp. (In the Matter of Little Creek Dev. Co.)*, 779 F.2d 1068, 1073 (5th Cir. 1986)). "The objective futility requirement is designed to further the statutory objective of reviving the debtor[.]" *Minority Equity S'holders of Yachting Connections, Inc. v. Resol. Tr. Corp. (In re Yachting Connections, Inc.)*, No. 92-1493, 1992 WL 372947, at *1 (4th Cir. Dec. 18, 1992) (citation omitted). On the other hand, "[t]he subjective test asks whether a Chapter 11 petition is motivated by an honest intent to effectuate reorganization or is instead motivated by some improper purpose." *Premier*, 492 F.3d at 280 (citation omitted). "Subjective bad faith is shown where a petition is filed to abuse the reorganization process, or to cause hardship or to delay creditors by resort to the Chapter 11 device merely for the purpose of invoking the automatic stay."

Id. (internal quotation marks and citations omitted). "The power to dismiss a bankruptcy petition at the outset of a case 'is obviously one to be exercised with great care and caution. Decisions denying access at the very portals of bankruptcy, before an ongoing proceeding has even begun to develop the total shape of the debtor's situation, are inherently drastic and not lightly to be made.'" *In re Bestwall LLC*, 605 B.R. 43, 48 (Bankr. W.D.N.C. 2019) (quoting *Carolin*, 886 F.2d at 700).

For the same reasons the Court finds the Plan is not feasible, the Court concludes the Plan is objectively futile.

Regarding subjective bad faith, there is some evidence Debtor's bankruptcy filing was motivated by the improper purpose of delaying the seemingly inevitable foreclosure on his residence. Debtor has failed to make any payments on the Loan since 2011 and accepted $200,000.00 in settlement funds shortly before filing in return for execution of the Settlement Agreement, which provided that "[Creditor] will proceed with the foreclosure action uncontested by [Debtor]," and then filed this bankruptcy case on the eve of foreclosure. However, on the evidence currently before the Court, it appears the objective futility and lack of feasibility of Debtor's proposed plan may be more the result of Debtor's failure to deal with reality and "terminal euphoria"[5] than of bad faith, and therefore dismissal pursuant to § 1112 is denied.

IT IS, THEREFORE, ORDERED:

1. Wells Fargo's Motion for Relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) is granted, and Wells Fargo may pursue any remedies it has under state law, including foreclosure, with respect to the property located at 415 Chesterfield Street South, Aiken, South Carolina 29801; and
2. Wells Fargo's Motion to Dismiss pursuant to 11 U.S.C. § 1112 is denied.

[5] *Carolin*, 886 F.2d at 701-02 (internal quotation marks omitted) (quoting *Little Creek Dev. Co.*, 779 F.2d at 1073).