

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

In re,

Salon Proz, LLC,

Debtor.

Case No. 21-00820-DD

Chapter 11

**ORDER DISMISSING CASE WITHOUT PREJUDICE**

This matter comes before the Court on the motion of South Carolina Community Bank d/b/a Optus Bank (“Optus”) filed May 4, 2021, for an order dismissing Debtor’s case with prejudice (the “Motion”). Debtor filed an objection to the Motion on May 24, 2021, and the Court held hearings on June 2 and August 19, 2021. Present at the hearings were counsel for Debtor and Optus, along with a principal of Debtor. Based on the following, the Motion is granted in part, and the case is dismissed without prejudice.

At the August 19, 2021, hearing, counsel for Debtor consented to dismissal of the bankruptcy case. The issue before the Court and the argument was limited to whether to dismiss the case with prejudice. Ordinarily, dismissal of a bankruptcy case is without prejudice to the filing of a subsequent case. *In re Edgefield Inn, LLC*, 521 B.R. 116, 123 (Bankr. D.S.C. 2014), 11 U.S.C. § 349(a). However, the Fourth Circuit allows for dismissal of bankruptcy cases with prejudice to re-filing when there is evidence of bad faith. *Id.* (citing *Colonial Auto Ctr. v. Tomlin* (*In re Tomlin*), 105 F.3d 933, 937 (4th Cir.1997)). A party arguing that a chapter 11 filing was in bad faith must show that it was filed with objective futility and subjective bad faith. *In re Premier Automotive Services, Inc.*, 492 F.3d 274, 280 (4th Cir. 2007). Further, “[w]hen considering whether to dismiss a case with prejudice, the court must find the bad faith amounts

to some “egregious behavior” that prejudices creditors. *Edgefield Inn*, at 123 (citing *Tomlin* at 937).

In this case, Optus was unable to establish the predicates for dismissal with prejudice. It is true that the litigation between the parties has been ongoing for ten years and that the bankruptcy petition was filed on the eve of a rule to show cause hearing alleging a failure to cooperate with the receiver in the foreclosure action. However, this is Debtor’s first bankruptcy filing, issues of fact contested in the foreclosure action were colorable and remain for a determination, and efforts to reorganize, though daunting, are not futile. Therefore, the Motion is granted in part and Debtor’s case is dismissed without prejudice.

AND IT IS SO ORDERED.

**FILED BY THE COURT**  
**08/20/2021**



Entered: 08/20/2021

A handwritten signature in black ink, appearing to read "D. R. Duncan", written over a horizontal line.

David R. Duncan  
US Bankruptcy Judge  
District of South Carolina