

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

IN RE:

Jesse E. Caughman and  
Carolyn R. Caughman,

Debtor(s).

C/A No. 06-01347-JW

Chapter 13

ORDER

**FILED**  
at \_\_\_ O'clock & \_\_\_ min. \_\_\_ M

JUN 12 2006

United States Bankruptcy Court  
Columbia, South Carolina (20)

**ENTERED**

JUN 12 2006]

**L.O.**

This matter comes before the Court upon a Rule to Show Cause and Notice ("Rule") issued to Jesse E. Caughman and Carolyn R. Caughman ("Debtors"). The Court issued the Rule because Court records indicated that Debtors filed this current case ("Case no. 06-01347-jw") while Debtors were involved with another ongoing Chapter 13 case ("Case no. 01-03401-jw"). The Court conducted a hearing on the Rule, and in light of the record developed, the Court makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. On February 4, 2000, Debtors filed their first Chapter 13 bankruptcy petition. However, on November 16, 2000, the Court dismissed Debtors' first case ("Case no. 00-01001-wb") for failure to comply with the terms of their confirmed Chapter 13 plan of reorganization.
2. On April 2, 2001, Debtors filed a second Chapter 13 bankruptcy petition, Case no. 01-03401-jw.
3. During the course of Case no. 01-03401-jw, GMAC Mortgage Corporation ("GMAC") filed a Motion for Relief from Stay on May 31, 2002. GMAC is Debtors' mortgage creditor, and it filed the Motion for Relief from Stay to foreclose its secured interests in Debtors' home.

4. Debtors objected to GMAC's Motion for Relief from Stay, but they settled their dispute with GMAC by agreeing to the terms of a settlement order entered on June 24, 2002.
5. The settlement order provided Debtors with a payment plan to bring their account current. The settlement order also provided GMAC with the ability to obtain *ex parte* relief from the automatic stay by filing an affidavit of default if Debtors failed to comply with any terms of the settlement order.
6. On April 4, 2003, GMAC filed an affidavit of default and an order granting GMAC relief from the automatic stay was entered on April 7, 2003.
7. Pursuant to the terms of Debtors' Chapter 13 plan, after GMAC obtained relief from the automatic stay, the Chapter 13 Trustee stopped distributing plan payments to GMAC. Certain plan payments, which would have gone to GMAC if GMAC had not obtained relief from the automatic stay, were distributed to unsecured creditors. The additional payments to unsecured creditors provided a 100% dividend for the unsecured claims.
8. Debtors negotiated with GMAC, and prevented foreclosure by paying GMAC outside of their bankruptcy case.
9. However, upon debtors' subsequent failure to make certain payments to GMAC, GMAC resumed foreclosure proceedings.
10. Debtors contend they defaulted because the only GMAC employee authorized to work with them was unavailable due to that employee's absence caused by her work with Hurricane Katrina relief efforts.

11. On April 2, 2006, Debtors filed a third Chapter 13 bankruptcy to prevent foreclosure.

12. Apparently, by the time Debtors filed their third Chapter 13 bankruptcy, they had completed their plan payments pursuant to the terms of the Chapter 13 plan that the Court confirmed in second case. Accordingly, Debtors obtained a discharge in their second Chapter 13 case on May 8, 2006.

### CONCLUSIONS OF LAW

This Court has previously dismissed a Chapter 13 petition that a debtor filed during an ongoing bankruptcy as an improper tactic to delay a creditor who received relief from stay and circumvent the prohibitions of § 109(g)(2). In re Garner, C/A No. 02-02058-jw, slip op. (Bankr. D.S.C. Mar. 11, 2002). The Court has also dismissed a Chapter 13 petition that a debtor filed during an ongoing Chapter 13 case in order to circumvent a consent agreement that provided for dismissal of the ongoing case with prejudice for 180 days. In re Steadman, C/A No. 03-02362-jw, slip op. (Bankr. D.S.C. Apr. 7, 2003). More recently, this Court dismissed a subsequent Chapter 13 petition that debtors filed during their ongoing Chapter 7 case<sup>1</sup> in an attempt to prevent foreclosure of property listed on the debtors' statement of intent after they defaulted on payments. In re Scruggs, 320 B.R. 94 (Bankr. D.S.C. 2004).

In this case, Debtors filed a new Chapter 13 petition during a pending Chapter 13 case. Debtors filed the third Chapter 13 case after they completed their plan payments in the second case but before they received a discharge. During the course of the pending second case, Debtors' mortgage creditor received relief from the automatic stay because

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<sup>1</sup> The serial filing of a Chapter 13 bankruptcy after a Chapter 7 bankruptcy is phenomenon known as a "Chapter 20 filing." In re Bridges, 326 B.R. 345, 348 n.4 (Bankr. D.S.C. 2005).

Debtors failed to comply with a settlement order entered by the Court. As a result of the relief from stay the Chapter 13 Trustee redirected disbursements from Debtors' mortgage creditor to unsecured creditors. The additional payments to unsecured creditors allowed Debtors to pay their unsecured creditors in full.

Debtors assert that their present case was filed in good faith in order to address new medical expenses and because they do not seek to discharge their mortgage creditor's lien, but merely to cure their mortgage arrearage.

The record of this case indicates that Debtors' mortgage arrearage did not significantly increase during the course of the previous case because Debtors made certain payments to their mortgage creditor outside of bankruptcy. After completing their plan payments in April, 2006, Debtors were effectively dormant in their second Chapter 13 case because they had no further obligations under their Chapter 13 plan.

Furthermore, Debtors' simultaneous filing does not appear to be an attempt to discharge the same debts existing in their pending case. Therefore, unlike the debtors in Scruggs, it appears that the unsecured debts scheduled by Debtors in their third Chapter 13 filing appear to be new debts that were not addressed or discharged during the previous case.<sup>2</sup> Unlike the debtors in Garner and Steadman, it appears that Debtors have not attempted to circumvent the requirements of the Bankruptcy Code or materially failed to complete their obligations under a confirmed Chapter 13 plan.

Finally, the third case filed by Debtors does not appear to have any affect on the administration of their previous case. The subsequent filing is intended to allow Debtors to continue their arrearage payments under the auspices of a confirmed plan. Under the

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<sup>2</sup> To the extent any of the unsecured claims listed on Debtors' schedules for this case are similar to claims filed in the previous case, those claims have been discharged pursuant to the Discharge Order entered by the Court during Debtors' first case on May 8, 2006.

circumstances of this case, the Court is not inclined to dismiss Debtors' simultaneously filed third case *sua sponte*. See In re Transamerica Credit Corp. v. Bullock (In re Bullock), 206 B.R. 389, 393 (Bankr. E.D. Va. 1997) (permitting a simultaneously filed case to continue because the administration of the subsequent case did not interfere with the administration of the prior case). In the Court's view, the secured creditor is better able to protect its interests in Debtors' subsequent case.

Accordingly, the Court declines to dismiss this case at this time pursuant to the Rule. Therefore, the Rule is dissolved.

**AND IT IS SO ORDERED.**

  
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,  
June 12, 2006