

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT

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| IN RE:               | ) | CASE NO.      | 04-31944 (LMW) |
|                      | ) |               |                |
| FABIO RODRIQUEZ and  | ) | CHAPTER       | 13             |
| CARMEN L. RODRIQUEZ, | ) |               |                |
|                      | ) | DOC. I.D. NO. | 12             |
| DEBTORS.             | ) |               |                |
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**APPEARANCES**

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| Marjorie R. Gruskiewicz, Esq.<br>Law Offices of Frederick A. Dlugokecki<br>175 Church Street<br>Naugatuck, CT 06770 | Counsel for the Debtors |
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| Roger Lee Crossland, Esq.<br>Shepro & Blake, LLC<br>2051 Main Street<br>Stratford, CT 06615 | Counsel for Global Air Parts, LLC<br>and The LFP Limited Partnership |
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| Molly T. Whiton, Esq.<br>10 Columbus Boulevard<br>Hartford, CT 06106 | Chapter 13 Trustee |
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**BRIEF MEMORANDUM AND ORDER RE:  
REQUEST FOR DISMISSAL WITH PREJUDICE**

Lorraine Murphy Weil, United States Bankruptcy Judge

**WHEREAS**, section I (i.e., “Facts”) of that certain Memorandum of Decision Re: Motion To Avoid Judicial Liens Impairing Exemption (Doc. I.D. No. 71, the “Decision”) is hereby incorporated as if fully set forth herein;

**WHEREAS**, on June 3, 2004 the Chapter 13 trustee (the “Trustee”) filed that certain Request for Confirmation Hearin [sic] and Motion To Dismiss (Doc. I.D. No. 12, the “Dismissal Motion”);

**WHEREAS**, the initial hearing on the Dismissal Motion was scheduled for August 19, 2004 and was continued from time to time;

**WHEREAS**, the Dismissal Motion came on for a hearing on July 14, 2005. At that hearing the Trustee pressed her motion but did not seek a dismissal with prejudice. Counsel for Global Air Parts, LLC and The LFP Limited Partnership (the “Creditors”) also appeared at that hearing and orally requested the court to dismiss this case with prejudice (the “Request”) on the grounds that this case (and the earlier chapter 7 case) was filed in bad faith. Pursuant to an order of the court (Doc. I.D. No. 74), the hearing was continued to August 4, 2005 (the “Continued Hearing”);

**WHEREAS**, at the Continued Hearing the court denied the Request for the reasons set forth on the record;

**WHEREAS**, the court deems it appropriate to further explain those reasons;

**WHEREAS**, it is hereby found and/or concluded as follows:

**A.** Sequential (and closely proximate) filing first of a chapter 7 case and then a chapter 13 case by the same debtor is not necessarily an abuse of the Bankruptcy Code. *See, e.g., In re Bridges*, 326 B.R. 345 (Bankr. D. S.C. 2005).

**B.** As previously decided by this court (*see* Doc. I.D. No. 28), the fact that this case was filed while the chapter 7 case still was pending does not render this case *per se* invalid.

**C.** Neither the earlier chapter 7 case nor this chapter 13 case was filed for the sole reason of dealing with the Creditors’ judgment lien (the “Judicial Lien”). There were two other liens extant

with respect to the above-referenced debtors' (the "Debtors") residence including a mortgage. The mortgage was in default and the mortgagee obtained relief from stay in the chapter 7 case (and recently in this case as well, *see* Doc. I.D. No. 69).

**D.** That the court determined that the Creditors' debt was nondischargeable in the chapter 7 case does not itself render the filing of this case in bad faith. *See* 8 Alan N. Resnick and Henry J. Sommer, *Collier on Bankruptcy* ¶ 1325.04[1], at 1325-13 (15<sup>th</sup> ed. rev. 2005) ("[I]t is not automatically bad faith to seek to discharge in chapter 13 debts which were not discharged in a prior chapter 7 case . . .").

**E.** The Debtors' First Amended Chapter 13 Plan (Doc. I.D. No. 36, the "Amended Plan") could be confirmed only if: (1) the Debtors successfully avoided the Judicial Lien pursuant to 11 U.S.C. § 522(f)(1) and (2) the Amended Plan's proposed forty (40%) percent dividend on the Creditors' unsecured claims were deemed in good faith and otherwise in accordance with law.<sup>1</sup>

**F.** After the commencement of this case, the Debtors attempted to avoid the Judicial Lien in the chapter 7 case but failed to prevail (the "Adverse Ruling") because of technical proof problems. The Debtors then attempted to avoid the Judicial Lien in this case but their motion was denied on the grounds of *res judicata*. (*See* Decision.) Had the Debtors successfully avoided the Judicial Lien, there is at least some likelihood that the Amended Plan would have been confirmed in this case;

**WHEREAS**, the court concludes that the Debtors' filing of this case and the earlier chapter 7 case was not in bad faith and did not constitute an abuse of the Bankruptcy Code, and it is accordingly concluded that it is not appropriate to dismiss this case with prejudice.

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<sup>1</sup> The Amended Plan also proposed to cure and reinstate the mortgage.

**NOW, THEREFORE**, it is hereby **ORDERED** that the Request is denied.

BY THE COURT

Dated: August 9, 2005

  
**Lorraine Murphy Weil**  
**United States Bankruptcy Judge**