UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	**:**	**CHAPTER 13**
	:	
ANNA DEFRANCO,	**:**	**CASE No. 16-21739 (JJT)**
DEBTOR.	**:**	
	:	RE: ECF No. 35

APPEARANCES

Patrick Crook, Esq.
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Attorney for the Chapter 13 Trustee

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Debtor, *Pro Se*

RULING ON TRUSTEE'S MOTION TO DISMISS CHAPTER 13 CASE

The Chapter 13 case and plan of Anna DeFranco (the "Debtor") present a troubling picture of a Debtor who has abused the purposes of the Bankruptcy Code. The Debtor filed for Chapter 13 relief herein on October 25, 2016. Her plan (ECF No. 10, the "Plan") has been on file since November 8, 2016. Since 1996, the Debtor has filed for bankruptcy relief three times, excluding the pending petition. *See In Re Anthony DeFranco and Anna Lis DeFranco*, No. 96-22469 (Bankr. D. Conn. Nov. 19, 1996) (granting Chapter 7 discharge); *In Re Anna Lis DeFranco*, No. 07-21638 (Bankr. D. Conn. June 3, 2008) (granting trustee's motion to dismiss case); *In Re Anna Lis DeFranco*, No. 08-21704 (Bankr. D. Conn. May 26, 2009) (dismissing Chapter 13 case with prejudice). The Trustee moved to dismiss the case (ECF No. 35), citing the Debtor's failure to provide various documentation and the Debtor's production of false financial information.

It is undisputed that the Debtor has not paid her monthly mortgage installment of approximately $2,400 for more than nine years. Nonetheless, the Debtor has retained title and possession of her mortgaged real property, located at 225 Ox Yoke Drive, Berlin CT (the "Property").

The Debtor has a purported, still yet unverified to the Chapter 13 Trustee, monthly income of $2,416. Although the Debtor's income roughly corresponds to her monthly mortgage obligations, the Debtor's Plan seeks to pay over 36 months *de minimis* creditor claims, totaling approximately $3,000, while completely ignoring her mortgage obligations. The Plan fails even to reference the foreclosure of the Property, or to treat her mortgage loan, with an original balance of $315,000, which encumbers the Property. In the intervening years, that mortgage debt has ballooned to a current balance of $566,014.41.

The good faith and intentions of this Debtor were at issue here from the start of this case. Just like the Plan, the Debtor's bankruptcy petition and schedules failed to appropriately reference the foreclosure or existence of the mortgage debt. The inevitable result of the Debtor's omissions was that the mortgage lender (or its servicer) failed to get timely notice of the bankruptcy filing. Further, the Debtor did nothing to advise the Superior Court of Connecticut, Judicial District of New Britain (the "State Court"), that had conducted a foreclosure trial on March 18, 2016, of the bankruptcy filing. Consequently, on November 17, 2016, the State Court (Wiese, J.) issued its memorandum of decision in the foreclosure proceeding finding, *inter alia*, that the plaintiff lender "has proven by a preponderance of the evidence that the defendant has defaulted on the note, and that the plaintiff is the holder of the note and the mortgage deed." *Deutsche Bank Nat'l. Trust Co., TTEE v. Anna DeFranco*, No. CV136020939S, at 9 (Conn. Super. Ct. Nov. 7, 2016). In the process of foreclosure, the various alleged defenses raised by the

Debtor were either stricken as a matter of law or otherwise rejected by the State Court as a sanction for her flagrant failure refusal to cooperate in the deposition process. *Deutsche Bank Nat'l Trust Co. As Tr. O v. DeFranco Anna Et Al.*, No. HHBCV136020939S (Conn. Super. Ct. Dec. 17, 2015).

While omitting reference to the foreclosure in her petition, schedules and Plan, the Debtor recently brought an adversary proceeding (ECF No. 59) seeking to relitigate the very same issues she advanced and lost in the State Court foreclosure proceeding. The Debtor has also moved to sanction counsel for mortgage lender for failing to redact identifying information (an oversight that was corrected within hours) and belatedly filed legal memoranda, at times within hours after scheduled hearings. When admonished by the Court for last-minute filings, the Debtor claimed not to be aware that such actions were improper. She did not deny, however, that she had previously been admonished by the State Court for repeated last-minute filings, in an apparent attempt to ambush opposing counsel.[1] Viewed in this context, the adversary proceeding is, at best, duplicative of the improvident defenses that the Debtor raised in State Court and, more likely, presents yet another delay tactic.[2]

Unlike the vigor she has sustained with her many court filings, the Debtor has evaded the Trustee's repeated requests for essential documentation. Critically, she has failed to produce complete bank statements (omitting every other page) and State of Connecticut tax returns. Though the Debtor produced profit and loss statements, those statements, which assert a gross monthly income of $2,100, are contradicted by the Debtor's bank statements, which disclose

[1] Nor has the Debtor denied that the lender continues to pay taxes and insurance premiums related to the Property.
[2] Regardless, this Court is bound by the ruling of the State Court under recognized and well-developed principles of res judicata, collateral estoppel and the Rooker Feldman Doctrine. Thus, even absent dismissal, the Court would readily grant relief from stay under 11 U.S.C. 362(d)(1) pursuant to the *Sonnax* Factors, *see In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990), so the foreclosure (which was pending for three years prior to the instant petition) might proceed as is fair, efficient and appropriate, to conclusion, appeal or the resetting of law dates.

deposits of less than $1,300 per month on average. The Debtor also provided the Trustee with documents purporting to be federal tax returns, which the Trustee later discovered had never actually been filed with the Internal Revenue Service.

The Debtor has proven similarly evasive in response to this Court's questioning. When surveying the Debtor's arguments regarding the mortgage lender's standing to foreclose on the Property, the Court repeatedly asked the Debtor whether she had borrowed money from any institution in connection with her purchase of the Property. This straightforward inquiry was met with a flurry of non-answers before the Debtor reluctantly acknowledged that she had, in fact, obtained a loan to finance her purchase of the Property.

In light of the Debtor's lack of notice of her filing, a pattern of serial filings, the nonpayment of any mortgage debt for nine years, a proliferation of duplicative litigation and dilatory motions calculated to avoid a day of reckoning and lack of disclosure to the Trustee concerning the nature, reliability and source of any income to support her Plan, which addresses *de minimis* debts in a thinly-veiled ruse to invoke and extend the automatic stay, and her evasiveness before this Court, the "totality of the circumstances" make clear that the Debtor has filed and advanced her petition and Plan in bad faith.

Accordingly, the Debtor's Chapter 13 case is, hereby, dismissed for cause under 11 U.S.C. § 1307(c) as well as §§ 1325(a)(3) and (a)(7). *See In re Lin*, 499 B.R. 430, 438 (Bankr. S.D.N.Y. 2013) (Courts may dismiss a Chapter 13 case filed in bad faith "based on the totality of the circumstances under 11 U.S.C. § 1307(c)."); *In re Adams*, No. 5:09-bk-70242 (Bankr. W.D. Ark., May 13, 2011) (totality of circumstances test governs determination of good faith under §§ 1325(a)(3) and (a)(7)); *In re Armstrong*, 409 B.R. 629, 632–33 (Bankr. E.D.N.Y. 2009) ("[A] debtor's bad faith is considered "cause" to convert or dismiss under section 1307(c)".); see *also*

In re Tornheim, 239 B.R. 677, 685 (Bankr. E.D.N.Y. 1999) ("A debtor who does not produce credible evidence of the existence of a regular income, . . . does not qualify for Chapter 13 relief under 11 U.S.C. § 109(e).") (internal quotation omitted).

Further, after extensive review of the docket, the Plan and the record of these proceedings, including the representations, demeanor and credibility of the Debtor, this Court, accordingly, finds good and sufficient cause to dismiss the Chapter 13 case with prejudice and to impose a 180-day bar to any further relief so as to prevent further abuse of the bankruptcy process, and to afford appropriate deference to the decisions of the State Court.

IT IS SO ORDERED at Hartford, Connecticut this 7th day of April 2017.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut