UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION

IN RE:	)	CASE No.	19-21989 (JJT)
	)		
DOUGLAS KEITH YEOMANS,	)	CHAPTER	13
Debtor.	)		
	)	RE: ECF Nos.	119, 129
	)		

ORDER DISMISSING CHAPTER 13 CASE WITH A TWO-YEAR BAR

I. INTRODUCTION

Roberta Napolitano, the Chapter 13 Trustee ("Trustee"), filed the instant Motion to Dismiss (ECF No. 119, "Trustee's Motion") pursuant to 11 U.S.C. §§ 349(a) and 1307(c)(1) seeking dismissal of the Debtor's Chapter 13 case with prejudice for, among other things, the unreasonable and prejudicial delay to creditors caused by multiple filings. In support of her Motion, the Trustee cites to the Debtor's three prior unavailing bankruptcy cases filed on the eve of foreclosure, the filing of *twelve* unconfirmable plans in the present case wherein the Debtor refused to appropriately treat the priority and secured claims of state and federal taxing authorities, the Debtor's failure to make post-petition mortgage payments, and the Debtor's ostensible inability to both fund a plan and make post-petition mortgage payments while also paying for life's other necessities.

On February 25, 2021, the Court held a combined hearing on the Trustee's Motion and the Debtor's Eleventh Amended Chapter 13 Plan (ECF No. 129), whereat the Trustee and the Debtor were fully heard. The Court took the Trustee's Motion under advisement and, based on statements made on the record evidencing the Eleventh Amended Plan's infirmities, continued the confirmation hearing to a later date in the event the plan survived a ruling on the instant

Motion. For the reasons provided herein, the Trustee's Motion to Dismiss is GRANTED and, in accordance with 11 U.S.C. § 349(a), the dismissal is with prejudice and the Debtor is barred from filing for relief under any chapter of the Bankruptcy Code, in any bankruptcy court, for a period of not less than two (2) years from the date of entry of this Order. Further, the Court need not address the Debtor's Eleventh Amended Plan as it is effectively moot in light of the dismissal of the Debtor's case.

II. BACKGROUND

On November 11, 2019 ("Petition Date"), the Debtor, proceeding *pro se,* filed his fourth voluntary Chapter 13 petition since April 2017 (ECF No. 1).[1] In the present case, the Debtor has filed twelve iterations of a plan, wherein he seeks to address a mortgage arrearage due to Wilmington Savings Fund Society ("Wilmington"), while failing to appropriately treat the priority and secured claims of state and federal taxing authorities.[2] Throughout the pendency of this case, the Trustee has worked patiently with the Debtor and has provided detailed instructions on how to file a confirmable plan, yet it appears from the repeated, unconfirmable filings that the Debtor has wholly disregarded or otherwise failed to address any issues raised by the Trustee.

In the present case, there have been a multiplicity of objections to the Debtor's proposed plans raised by both Wilmington and the Trustee. Throughout, Wilmington has consistently argued that its treatment under the plans is not appropriate or consistent with the law (*see* ECF Nos. 17, 60, 86, and 112), whereas the Trustee's objections have spanned a variety of grounds,

[1] *See* Case No. 17-20510 (JJT) filed on April 7, 2017 and dismissed on October 30, 2017 for failure to make plan payments; Case No. 18-20933 (JJT) filed on June 4, 2018 and dismissed on November 14, 2018 for failure to file a second amended plan; and Case No. 19-20890 (JJT) filed on May 24, 2019 and dismissed on October 2, 2019 for failure to make plan payments.

[2] The Court notes that it was only in the Debtor's eleventh iteration of a plan, filed more than a year after the Petition Date, that the Debtor heeded the Trustee's advice and attempted to address both his state and federal tax debt through the plan. *See* ECF No. 126.

which include the failure to provide documentation, make plan payments, conform the plan to match the proof of claims filed, and pay priority claims in full. Additionally, the Trustee has raised issues concerning plan feasibility, as well as a pattern of delay that would justify an inference that there is a possible abuse of the bankruptcy process afoot (*see* ECF Nos. 52, 62, 87, 94, 118, 132, and 138).

On the surface, the Debtor's Schedules I and J (ECF No. 11) indicate a monthly net income of $3,823 and an ability to fund a plan. It is also noteworthy that over the course of this case, the Debtor has paid approximately $25,000 to the Trustee. However, as the Trustee's Motion notes, "to the extent the Debtor has been able to make Trustee payments over the life of the most recent plan it has been at the expense of making post-petition mortgage payments." Trustee's Motion, p. 3. At the hearing on the instant Motion, the Trustee further noted that the significant amount the Debtor paid into the plan initially seemed to indicate plan feasibility, but that it later became apparent that the reason plan payments were so high was because the Debtor had not been making any post-petition mortgage payments.

Even given the total amount of plan payments made by the Debtor, the Trustee's earlier objections to confirmation, in addition to the Response to the Debtor's Motion for Reconsideration (ECF No. 39), indicate that the Debtor consistently remained anywhere between $2,500–$3,000 behind on payments due to the Trustee (*see* ECF No. 39, overdue in the amount of $2,680 on 2/24/20; ECF No. 52, overdue in the amount of $2,680 on 3/4/20; ECF No. 62, overdue in the amount of $2,929.30 on 4/9/20; and ECF No. 94, overdue in the amount of $2,568.81 on 9/24/20). What's more, after entering into a stipulation with Wilmington (*see* ECF No. 116), whereby the Debtor agreed to pay $1,888.05 per month towards his post-petition

mortgage arrearage starting on November 1, 2020,[3] the Debtor began to fall significantly farther behind on plan payments. On November 11, 2020, following the first payment due to Wilmington under the stipulation, the Trustee's Objection to Confirmation indicated the Debtor was overdue in the amount of $6,382.59 (ECF No. 118). By January 14, 2021, that amount increased to $9,815.79 (ECF No. 132). In her final objection, and at the February 25 hearing, the Trustee indicated that the Debtor was overdue in the amount of $16,199.19 (ECF No. 138).

In an attempt to quell the Trustee's concerns surrounding confirmability and the outstanding plan payments, the Debtor filed a written response addressing the Trustee's objections to his Eleventh Amended Plan (ECF No. 133). Therein, the Debtor indicated that plan payments "can and will be made up with funds earned through the debtor's work as a realtor, specifically a transaction which will close 2/12/21." *Id*. In response to the proper interest rate to be applied to the IRS claim and the Trustee's claims that the current plan is underfunded, the Debtor indicated that those issues could be "easily remedied" by the filing of a *twelfth* amended plan. Lastly, in response to the Trustee's feasibility concerns, but without actually addressing feasibility, the Debtor pointed to the significant amount of money he has heretofore paid into the plan, adding that he had resumed regular mortgage payments.

At the hearing on the Trustee's Motion held on February 25, 2021, the Debtor reported that the transaction upon which he relied to bring plan payments current did not, in fact, occur, but that he nevertheless had two new remedies that would potentially cure his plan deficiencies: 1) employment with an airline that provided an annual salary of $43,000 (provided that he was

[3] The stipulation indicates that the post-petition arrearage accrued from February 1, 2020 through October 1, 2020. ECF No. 116, ¶ 3. Critically, this was a time frame in which the Debtor managed to pay a significant amount of money directly to the Trustee. *See* Trustee's Objection to Confirmation at ECF No. 94 (As of September 24, 2020, the Debtor had paid a total of $22,492.80 to the Trustee). The Court notes that from September 24, 2020 to February 24, 2021—when the Debtor was ostensibly making payments to Wilmington under the stipulation—the Debtor only paid an additional $3,191 to the Trustee. *See* ECF No. 138 (indicating that as of February 24, 2021, the Debtor has paid $25,683.80 into the plan).

offered the position after his final interview); and 2) the potential to refinance a mortgage that the Debtor holds. The Debtor argued that either remedy would fund his plan, but that he needed a "brief continuance" to see how these options panned out. In response to these speculative remedies, the Trustee raised concerns that the Debtor failed to provide any specific date by which either resolution was to occur—underscoring the fact that there is no final word on the hiring process or the possible start date for the purported airline employment, as well as the fact that no closing has been scheduled on any mortgage refinancing to date.

The Court shares the Trustee's concerns and further agrees that dismissal with prejudice is warranted, finding that cause exists to dismiss the Debtor's case based on the unreasonable and prejudicial delay in this case, in addition to the Debtor's lack of good faith demonstrated by the repeated filing of twelve unconfirmable plans throughout this case.

III. DISCUSSION

Section 1307 of the Bankruptcy Code, which governs dismissal of Chapter 13 cases, provides that the court, on request of a party in interest and after notice and a hearing, may dismiss a case for cause, and further provides a non-exhaustive list of circumstances that constitute "cause." 11 U.S.C. § 1307(c). Under subsection (c)(1), the court may dismiss a Chapter 13 case where there has been "unreasonable delay by the debtor that is prejudicial to creditors." 11 U.S.C. § 1307(c)(1). Additionally, while not expressly enumerated under Section 1307, "it is well established that lack of good faith may also be cause for dismissal under § 1307(c)." *In re Ciarcia*, 578 B.R. 495, 499 (Bankr. D. Conn. 2017) (*quoting In re Prisco*, 2012 WL 4364311, at *4 (N.D.N.Y. 2012).

With respect to dismissal under subsection (c)(1), courts have found the "debtor's inability to confirm a Chapter 13 plan for an extended period of time" to be the type of

unreasonable and prejudicial delay that warrants dismissal under section 1307(c). *See In re Elwell*, 2020 WL 762214, at *1 (Bankr. D. Conn. 2020); *see also In re Addams*, 564 B.R. 458, 466–67 (Bankr. E.D.N.Y. 2017) (finding unreasonable delay where a debtor had not confirmed a Chapter 13 plan within 15 months). Here, the Debtor's case has been pending for 16 months, and in that time the Debtor has failed, on twelve separate occasions, to file a confirmable plan, even after the Trustee has provided clear and specific instructions on what would have needed to be done in order to do so. The docket shows that the Debtor has continuously failed to address the Trustee's repeated objections to confirmation. The Debtor's request for the Court and the Trustee to now wait and see what comes from these newly proposed "remedies," especially after patiently waiting for more than a year for the Debtor to address his plans' deficiencies, is unconvincing and unavailing. In light of the number and duration of the delays during these proceedings, and the significant defaults under the plan that do not have a clear or reliable horizon for being remedied, the Court finds sufficient cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

In addition to the findings warranting dismissal on account of prejudicial delay, dismissal is also warranted because the Court finds that the Debtor did not conduct himself in good faith during the pendency of this case. A finding of a lack of good faith is based on the totality of the circumstances. *Ciarcia*, *supra,* 578 B.R. at 499–500. "The totality of the circumstances should take into consideration whether the debtor has abused the 'provision, purpose or spirit' of the Bankruptcy Code and whether the filing is 'fundamentally fair' to creditors." *In re Armstrong*, 409 B.R. 629, 634 (Bankr. E.D.N.Y. 2009) (citation omitted). "The determination of whether a debtor filed a petition or plan in bad faith so as to justify dismissal for cause is left to the sound discretion of the bankruptcy court." *In re Prisco*, *supra,* 2012 WL 4364311, at *4.

"A number of factors may be indicative of a bad faith filing, including [whether] (1) the debtor's filing demonstrates an intent to delay or otherwise frustrate the legitimate efforts of secured creditors to pursue their rights, (2) the debtor has filed multiple bankruptcy petitions, and (3) the debtor filed his bankruptcy petition on the eve of a foreclosure." *In re Buhl*, 453 F. Supp. 3d 529, 535 (D. Conn. 2020) (citation omitted). Under the facts of this case, each factor weighs heavily toward a finding of bad faith.

As the Trustee's Motion indicates, "three of the [Debtor's] four Chapter 13 filings were within days of the law day, including one filed on the law day." Trustee's Motion, p.3.[4] The Trustee further argues that these facts, in addition to each of the Debtor's previous cases being dismissed prior to confirmation, evidences a pattern of filing for bankruptcy in order to delay or otherwise frustrate the foreclosure action. This Court agrees.

The timing of the Debtor's various bankruptcies, most of which preceded critical dates in the foreclosure action, is a genuine indicator of bad faith. *See In re Pellechia*, 617 B.R. 750, 759 (Bankr. D. Conn. 2020). Moreover, it is noteworthy that the Court declined to extend the automatic stay on the Debtor's motion (*see* ECF Nos. 34 and 41), and, as a result, this case has been pending for more than a year without the benefit of the automatic stay.[5] The Debtor has enjoyed the protection of the automatic stay over the course of his prior filings and the protection

[4] The Trustee's Motion includes the following table, illustrating the pattern of bankruptcy filings in relation to the foreclosure law days set by the Connecticut Superior Court in the foreclosure action known as *Wells Fargo Bank, N.A. v. Yeomans*, HHD-CV-15-6064564-S. While the table indicates that the Debtor filed his first bankruptcy petition approximately three moths prior to the law day, that filing was made only three weeks after the entry of a judgment of strict foreclosure. Trustee's Motion, p.3.

Date of Law or Sale Day	Bankruptcy Case Number	Bankruptcy Filing Date
July 17, 2017	17-20510	April 7, 2017
June 4, 2018	18-20933	June 4, 2018
May 28, 2019	19-20890	May 24, 2019
December 2, 2019	19-21989	November 21, 2019

[5] The Court is aware, however, that the state court moratoriums have effectively stayed the foreclosure process in Connecticut.

from the foreclosure moratoriums in the present case, and yet has still failed to make either post-petition mortgage payments or plan payments to the Trustee, notwithstanding the Debtor's insistence that he has the purported means to do so. Beyond the unsubstantiated claims of his ability to fund a plan, the Debtor has critically failed to provide any credible evidence demonstrating his ability to make both plan payments and payments to Wilmington under their stipulation, while still being able to pay living expenses. *See In re Felberman*, 196 B.R. 678, 681 (Bankr. S.D.N.Y. 1995) ("The filing of a bankruptcy petition merely to prevent foreclosure, without the ability or the intention to reorganize, is an abuse of the Bankruptcy Code.").

Here, the totality of the circumstances supports the finding that the Debtor's serial bankruptcy filings, including the maintenance of the present case, were not made in good faith. Accordingly, the Court finds that good and sufficient cause exists to dismiss the Debtor's case under § 1307(c). When viewed together with the unreasonable and prejudicial delays in this case, the Debtor's lack of good faith provides sufficient cause to dismiss the case pursuant to 11 U.S.C. §§ 1307(c)(1). The Court now turns to whether cause exists to impose conditions on the dismissal to prevent an abuse of the process.

While "there is no provision in section 1307 that provides for dismissal of a Chapter 13 case with prejudice. . . . '[t]he legal effects of the dismissal of a chapter 13 case are [instead] governed by section 349.'" *In re Heidel*, 2020 WL 6809805, at *3 (Bankr. D. Conn. 2020) (*quoting* 8 COLLIER ON BANKRUPTCY ¶ 1307.09 (16th ed. 2020)). "Section 349(a) of the Bankruptcy Code establishes a general rule that dismissal of a bankruptcy case is without prejudice, but at the same time expressly grants a bankruptcy court the authority to dismiss a case with prejudice to a subsequent filing of any bankruptcy petition." *In re Casse*, 219 B.R. 657, 662 (Bankr. E.D.N.Y. 1998), *subsequently aff'd*, 198 F.3d 327 (2d Cir. 1999). Section 349(a)

provides that "[u]nless the court, for cause, orders otherwise . . . the dismissal of a case under this title [does not] prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title." 11 U.S.C. § 349(a). Therefore, "if 'cause' warrants, a court is authorized, pursuant to § 349(a), to dismiss a bankruptcy case with prejudice to refiling." *Casse*, *supra*, 219 B.R. at 662.

In addition to the express authority to dismiss a case for cause provided under Section 349, Section 105(a) provides that "[n]o provision of this title shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105; *see also In re Oi Brasil Holdings Cooperatief U.A.*, 578 B.R. 169, 201 (Bankr. S.D.N.Y. 2017) ("Section 105(a) is understood as providing courts with discretion to accommodate the unique facts of a case consistent with policies and directives set by the other applicable substantive provisions of the Bankruptcy Code."). Thus, Section 105(a) empowers the Court to act as necessary to prevent an abuse of the bankruptcy process.

"The filing of multiple bankruptcy cases without a genuine bankruptcy purpose solely to frustrate foreclosure proceedings may establish cause warranting dismissal with prejudice." *In re Heidel*, 2020 WL 6809805, at *3 (Bankr. D. Conn. 2020) (*citing In re Bolling*, 609 B.R. 454 (Bankr. D. Conn. 2019)). Additionally, "[a] finding of bad faith can justify dismissal with prejudice." *In re Feldman*, 597 B.R. 448, 461 (Bankr. E.D.N.Y. 2019) (collecting cases). "Where there exists a multiplicity of factors which would be sufficient to meet the cause requirement of § 1307, the cumulative effect will be considered in determining whether there exists sufficient cause for a dismissal with prejudice." *In re Burgos*, 476 B.R. 107, 112 (Bankr. S.D.N.Y. 2012) (citation omitted).

The facts of this case demonstrate that the Debtor has not, and is unable to, propose a confirmable Chapter 13 Plan; that he has wholly disregarded the Trustee's multiple requests to appropriately treat the priority and secured claims of state and federal taxing authorities; that his serial filings keyed off of critical dates in a pending foreclosure (demonstrating a lack of good faith); that he has failed to make post-petition mortgage payments and payments to the Trustee; and, because of the agreement with Wilmington to address his mortgage payments as well as the state moratoriums, there is ostensibly nothing to achieve in the current Chapter 13 case that cannot be achieved outside of bankruptcy. In the present case—and in the years prior during the Debtor's previous bankruptcies—the Debtor has had innumerable opportunities to put forth a confirmable plan, yet he still relies on a speculative path to cure his plan deficiencies. Twelve attempts during the pendency of this case has given enough deference to the Debtor's efforts and has placed an undue burden on a patient Trustee and a forgiving Chapter 13 process. The time to look toward some future expectancy of something happening to render this case feasible has run out.

Given the timing and unavailing nature of the Debtor's filings, his patent inability to file a confirmable plan over the course of 16 months in the present case, and the prejudicial and unreasonable delay that has resulted, the Court finds sufficient cause to dismiss the Debtor's case with prejudice to the refiling of a subsequent petition. Accordingly, for the reasons stated above, and for cause shown, the Debtor's case is DISMISSED with prejudice.

IV. CONCLUSION

After a thorough review of the record in this case, in addition to the arguments advanced in the pleadings and at hearings before this Court, and for the reasons stated above, the Court finds that, pursuant to 11 U.S.C. §§ 105(a), 349(a), and 1307(c), cause exists to dismiss the Debtor's case with a two-year bar to refiling. Accordingly, it is hereby

ORDERED: The Trustee's Motion to Dismiss is hereby GRANTED; and it is further

ORDERED: Pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1307(c), the Debtor's case is dismissed with prejudice and the Debtor is barred from filing for relief under any chapter of the Bankruptcy Code, in any bankruptcy court, for a period of not less than two (2) years from the date of entry of this Order.

IT IS SO ORDERED at Hartford, Connecticut this 22nd day of March 2021.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut