

UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
NEW HAVEN DIVISION

In re:	:	Case No.: 19-31605 (AMN)
JOSEPH M. GURZ	:	Chapter 13
Debtor.	:	
<hr/>		Re: ECF No. 14

ORDER DISMISSING CHAPTER 13 CASE
WITH PREJUDICE, WITH A TWO-(2) YEAR BAR TO REFILING

Before the court is the Chapter 13 Trustee's motion seeking dismissal with prejudice of the debtor's – Joseph M. Cruz ("Debtor") – Chapter 13 case pursuant to 11 U.S.C. §§ 105(a), 349, 1307. ECF No. 14. The Chapter 13 Trustee asserts the Debtor engaged in an improper scheme by filing multiple bankruptcy cases for the sole purpose of delaying and frustrating a state court foreclosure action. ECF No. 14. The court agrees and for the reasons stated herein, the Debtor's Chapter 13 case is dismissed with prejudice and the Debtor is barred from refiling any bankruptcy case in any jurisdiction for a period of two (2) years.

FACTUAL BACKGROUND

On September 30, 2019, the Debtor, proceeding *pro se*, filed the instant Chapter 13 petition. ECF No. 1. The filing of this case marked the Debtor's seventh (7th) bankruptcy filing since 2008. Besides a 2012 Chapter 7 case in which the Debtor received a Chapter 7 discharge, all cases were filed under Chapter 13 and dismissed prior to confirmation of a Chapter 13 plan. The following chart details the Debtor's bankruptcy cases, including the various filing dates, dispositions, and bases for dismissal (where relevant).

Case No.	Date Filed	Date Dismissed	Reason for Dismissal/Disposition
08-31136	4/11/2008	6/30/2008	Dismissed for failure to make plan payments.
08-33374	10/17/2008	12/19/2008	Dismissed for failure to make plan payments.
10-30851	3/26/2010	6/1/2010	Dismissed for failure to make plan payments; Dismissed with prejudice with a 1-year bar.
12-31793	8/3/2012	Not applicable	Debtor received a Chapter 7 discharge on 11/14/2012. The debtor may not receive another Chapter 7 discharge until after 11/14/2020.
16-30358	3/11/2016	10/6/2016	Dismissed for failure to provide information to Chapter 13 Trustee and to make plan payments.
17-31753	11/20/2017	2/16/2018	Dismissed for failure to make plan payments and provide documents; Dismissed with prejudice with a 6-month bar.
19-31605	9/20/2019	Pending	Pending

In the Debtor's five (5) prior Chapter 13 cases, he never confirmed a Chapter 13 plan, never made any Chapter 13 plan payments, and in at least 3 of the 5 prior cases failed to appear at scheduled Meetings of Creditors pursuant to 11 U.S.C. § 341.¹ In two of the Debtor's prior cases, Case Nos. 10-30851 and 17-31753, the court dismissed the cases with prejudice instituting a one (1) year and six (6) month bar, respectively. See, Case No. 10-30851, ECF No. 22; Case No. 17-31753, ECF No. 19.

¹ The court notes that in all five (5) prior Chapter 13 cases, the Debtor filed all required statements and schedules and paid the required filing fee.

A review of the state court docket² reveals the Debtor, along with another individual who has been a debtor in this court, Donna Gurz, are defendants in a foreclosure proceeding by Wells Fargo Bank involving property located at 293 North Valley Road, North Branford, Connecticut (“State Foreclosure Action”).³

The following chart compares dates of the bankruptcy filings by the Debtor and his co-defendant, Donna Gurz, with the judgments of strict foreclosure and law days entered in the State Foreclosure Action.

Foreclosure Judgment Entered	Law Day	Bankruptcy Filed	Case No.	Debtor	Disposition of Case
2/11/2008	4/14/2008	4/11/2008	08-31136	Joseph M. Gurz	6/30/2008 Dismissed
9/2/2008	10/20/2008	10/17/2008	08-33374	Joseph M. Gurz	12/19/2008 Dismissed
2/9/2009	4/6/2009	4/3/2009	09-30841	Donna Gurz	5/18/2009 Dismissed
2/1/2010	3/29/2010	3/26/2010	10-30851	Joseph M. Gurz	6/1/2010 Dismissed
7/19/2010	9/13/2010	9/10/2010	10-32718	Donna Gurz	11/10/2010 Dismissed
10/11/2011	11/28/2011	11/22/2011	11-32933	Donna Gurz	2/23/2012 Dismissed
7/9/2012	8/6/2012	8/3/2012	12-31793	Joseph M. Gurz	12/5/2012 Chapter 7 Discharge
6/23/2014	8/11/2014	8/8/2014	14-31490	Donna Gurz	12/10/2014 Chapter 7 Discharge
2/8/2016	3/28/2016	3/11/2016	16-30358	Joseph M. Gurz	10/6/2016 Dismissed
10/2/2017	11/20/2017	11/20/2017	17-31753	Joseph M. Gurz	2/16/2018 Dismissed
12/3/2018	2/19/2019	2/19/2019	19-30239	Donna Gurz	6/21/2019 Dismissed

² The court may take judicial notice of the state court docket and the foreclosure proceedings pursuant to Fed.R.Evid. 201. The state court docket is publicly available at: <http://civilinquiry.jud.ct.gov/>.

³ The docket number for the State Foreclosure Action is NNH-CV-07-5011944-S.

7/29/2019	9/30/2019	9/30/2019	19-31605	Joseph M. Gurz	Instant Case
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On January 30, 2020, the court held a hearing regarding the Chapter 13 Trustee's motion to dismiss with prejudice. The Debtor did not file an objection to the motion or appear at the hearing. During the hearing, the Chapter 13 Trustee noted that the Debtor had failed to make plan payments, that his Schedules I and J showed a negative net income suggesting a Chapter 13 plan would not be feasible, and that he had engaged in a pattern of abusive filings.

STANDARD OF REVIEW

Upon motion by a party in interest – here the Chapter 13 Trustee – a court may dismiss a case for cause, including, among other things, lack of good faith or unreasonable delay by the debtor that is prejudicial to creditors, pursuant to §§ 1307(c). 11 U.S.C. § 1307(c). While dismissal of a case is generally without prejudice, § 349(a) “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 bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title 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. Thus, if cause exists, a court is authorized, pursuant to § 349(a), to dismiss a bankruptcy case with prejudice to refiling. *See, In re Casse*, 198 F.3d 327, 339 (2d Cir. 1999). Additionally, dismissal with prejudice is appropriate

pursuant to 11 U.S.C. § 105(a) to prevent an abuse of the bankruptcy process. See 8 Collier on Bankruptcy, ¶1307.04, p. 1307-11 – 1307-12.

CONCLUSION

The pattern of so many bankruptcy case filings – by the Debtor or his co-Defendant, Donna Gurz -- within days of or on the scheduled law days in the State Foreclosure Action compels the conclusion that the Debtor's cases were filed to delay and frustrate the foreclosure proceedings. This pattern alone is sufficient cause to dismiss the case with prejudice. The court finds other cause also exists, including a lack of good faith and unreasonable delay that is prejudicial to creditors, demonstrated by the Debtor's repeated failure to make plan payments and failure to propose a feasible or confirmable Chapter 13 plan. Therefore, a review of the totality of the circumstances establishes that cause exists pursuant to 11 U.S.C. §§ 1307(c), 349(a), and 105(a) to dismiss the Debtor's case with prejudice with a bar to refiling.

ACCORDINGLY, it is hereby

ORDERED: That, the Motion to Dismiss, ECF No. 14, is GRANTED; and it is further

ORDERED: That, the Debtor's Chapter 13 case is DISMISSED WITH PREJUDICE with a bar to filing a bankruptcy petition under any chapter of the Bankruptcy Code through and including February 6, 2022.

Dated this 7th day of February, 2020, at New Haven, Connecticut.

Ann M. Nevins
United States Bankruptcy Judge
District of Connecticut