UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT

IN RE:	)	Case No. 19-51263 (JAM)
ATHINA SAVVIDIS, Debtor.	)	Chapter 13
	)	ECF No. 19

APPEARANCES

Athina Savvidis	*Pro Se* Debtor
Daniel B. Glass, Esq. Glass & Braus, LLC 25 Lindbergh Street Fairfield, CT 06824	*Attorney for Bank of New York as Trustee For Certificateholders of CHL Mortgage Pass Through Trust 2003-15 c/o Countrywide Home Loans, Inc.*

MEMORANDUM OF DECISION DISMISSING CASE WITH PREJUDICE

Julie A. Manning, Chief United States Bankruptcy Judge

I. Introduction

A. The Petition and Emergency Motion.

On September 23, 2019, at 9:06 a.m., a Chapter 13 petition was filed on behalf of the Debtor. Also on September 23, 2019, at 2:00 p.m., a Motion for Order for Emergency Relief was filed on behalf of the Debtor (the "Emergency Motion," ECF No. 6). The Emergency Motion alleged that a State Court Marshal and Bank of New York as Trustee for the Certificate holders of CHL Mortgage Pass-Through Trust 2003-15 c/o Countrywide Home Loans, Inc. ("BNY"), committed violations of the automatic stay on September 23, 2019, by commencing and continuing an eviction at the Debtor's residence located at 106B Comstock Hill Road, Norwalk, Connecticut (the "Debtor's residence"), even after the Debtor's Chapter 13 petition was filed with the Court. At 5:34 p.m. on September 23, 2019, a Notice of Hearing on the

Emergency Motion was issued, which scheduled a hearing on the Emergency Motion to be held on September 24, 2019, at 1:00 p.m. (the "Notice of Emergency Hearing," ECF No. 7). At 9:11 p.m. on September 23, 2019, BNY filed an Objection the Emergency Motion (the "Objection," ECF No. 9).

B. The September 24th Hearing on the Emergency Motion.

The Debtor, the Debtor's brother-in-law, counsel for BNY, and the State Court Marshal who conducted the eviction at the Debtor's residence appeared at the hearing. Although the Debtor and her brother-in-law appeared at hearing, they did not present any evidence or testimony in support of the Emergency Motion. When questioned about the relief sought in the Emergency Motion, the Debtor was asked if she spoke English. Her brother-in-law stated "she doesn't understand it at all" and that he was attending the hearing to help the Debtor because she does not speak English. The Debtor's brother-in-law also stated that Attorney David Scalzi provided advice to the Debtor and her family in connection with the filing of the Debtor's Chapter 13 case.

In response to the alleged violations of the automatic stay contained in the Emergency Motion, the State Court Marshal testified that when he was carrying out the court-ordered eviction at the Debtor's residence on September 23, 2019, he was handed a cell phone and spoke to an individual who identified himself as Attorney David Scalzi. The State Marshal further testified that Attorney Scalzi told him that he was stayed from continuing with the eviction because the Debtor filed a Chapter 13 petition that morning. Counsel for BNY also stated that he received a message that Attorney Scalzi called him on September 23, 2019, and that he returned the call and spoke to Attorney David Scalzi the afternoon of September 23, 2019. Counsel

further stated that when he spoke with Attorney Scalzi, Attorney Scalzi told him that the Debtor had filed a Chapter 13 petition that morning and therefore the eviction was stayed.

Counsel for BNY correctly noted in the Objection and during the hearing that the Debtor and her husband have filed multiple bankruptcy cases since a foreclosure action was commenced against them in Connecticut Superior Court in 2006 (the "State Court Foreclosure Action"). The evidence attached to the Objection demonstrates that no fewer than 19 judgments of foreclosure entered in the State Court Foreclosure action, an action in which Attorney David Scalzi filed an appearance on behalf of the Debtor's husband on December 14, 2017, and an appearance on behalf of the Debtor on December 7, 2018. The evidence attached to the Objection further demonstrates that Connecticut Superior Court Housing Session at Norwalk entered an order on August 29, 2019, finding, among other things, that the Debtor, her husband, and their counsel (Attorney David Scalzi) engaged in "dilatory practices employed …in the 13 year foreclosure that preceded..." the eviction action (the "August 2019 Housing Court Order"). *See* Objection at p. 22-23. The August 2019 Housing Court Order also found that with regard to the State Court Foreclosure Action, "…all appellate options have expired with our Appellate Court taking the unusual step of barring the Defendants from any further filings with it in that matter."

The Objection and the arguments advanced by counsel for BNY during the hearing also correctly noted that the Debtor failed to inform the Court that an Order for *In Rem* Relief from the Automatic Stay regarding the Debtor's residence (the "Order for *In Rem* Relief") entered in the Debtor's husband's bankruptcy case on September 18, 2018, Case No. 18-50975. The Debtor knew, or at the very least should have known, that the Order for *In Rem* Relief entered in her husband's bankruptcy case in 2018.

The Order for *In Rem* Relief was issued pursuant to 11 U.S.C. § 362(d)(4), which provides that such an order "shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order…". 11 U.S.C. § 362(d)(4). Because this Chapter 13 case was filed in attempt to stay the eviction "affecting" the Debtor's residence, and the Debtor's case was filed not later than 2 years after the Order for *In Rem* Relief entered in her husband's bankruptcy case, the Order for *In Rem* Relief was still in effect on September 23, 2019, the date the Debtor's Chapter 13 case was filed. Therefore, the State Court Marshal and BNY did not violate the automatic stay in carrying out the eviction at the Debtor's residence on September 23, 2019, because there was no automatic stay in effect with regard to the Debtor's residence. At the conclusion of the hearing, the Emergency Motion was denied due to the Debtor's failure to show cause why the relief requested should be granted.

C. The issuance of the Order to Appear and Show Cause and the October 15th hearing on the Order to Appear and Show Cause.

On October 7, 2019, an Order to Appear and Show Cause why the Debtor's Chapter 13 case should not be dismissed as a bad faith filing was issued, which scheduled a hearing on the Order to Appear and Show Cause to be held on October 15, 2019 at 10:00 a.m., ECF No. 19. The Debtor and her brother-in-law appeared at the October 15th hearing. Neither the Debtor nor her brother-in-law presented any evidence or testimony in response to the Order to Appear and Show Cause at the October 15th hearing. The Debtor's brother-in-law informed the Court that he filed a response to the Order to Appear and Show Cause before the hearing. The response, entitled "The Petitioner's Motion for Extension," ECF No. 24, was filed at 9:46 a.m. on October 15, 2019. When questioned about the representations and information in the Petitioner's Motion for Extension, the Debtor responded she "did not understand" and the Debtor's brother-in-law

stated that a gentleman by the name of Richard Hall, who is not a lawyer but a customer at his restaurant, prepared the Petitioner's Motion for Extension. The Debtor's brother-in-law also stated that he did not understand the representations and information in the Petitioner's Motion for Extension. When specifically questioned about the Petitioner's Motion for Extension, including the statements contained in paragraph 7 on page 2, he stated he did not know about or understand the information in the document.

II. Jurisdiction

The United States District Court for the District of Connecticut has jurisdiction over the instant proceedings pursuant to 28 U.S.C. § 1334(b), and the Bankruptcy Court derives its authority to hear and determine this matter pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A) and the District Court's General Order of Reference dated September 21, 1984.

III. Discussion

A. Dismissal of a bankruptcy case with prejudice.

Section 349(a) of the Bankruptcy Code establishes a general rule that dismissal of a bankruptcy case is *without* prejudice, but 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 as follows: "Unless 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. Therefore, "if 'cause' warrants, a

court is authorized, pursuant to § 349(a), to dismiss a bankruptcy case with prejudice to refiling." *Casse* at 662.

B. Dismissal of a Chapter 13 case.

11 U.S.C. §1307 governs conversion or dismissal of a Chapter 13 case. Although a motion to dismiss the Debtor's case had not yet been filed by a party in interest or the United States Trustee when the Order to Appear and Show Cause was issued, the Court deems the Objection to the Emergency Motion filed before the issuance of the Order to Appear and Show Cause as a Motion to Dismiss under section 1307(c). Furthermore, section 105(a) of the Bankruptcy Code gives the Court the power to take any action necessary to prevent an abuse of the process. *See* 8 Collier on Bankruptcy, ¶1307.04, p. 1307–11 - 1307–12 (Alan N. Resnick & Henry J. Sommers eds., 16th ed.). The Debtor's filing of this Chapter 13 case, her third case since 2015, is an abuse of the bankruptcy process for several reasons, including the fact that the Debtor has no ability to propose a confirmable Chapter 13 Plan. The Order to Appear and Show Cause provided the Debtor with notice of the possibility of dismissal of her case as a bad faith filing, scheduled a hearing on the possible dismissal of her case, and provided her with the opportunity to demonstrate that she filed this Chapter 13 case in good faith. The Debtor failed to make any showing that this Chapter 13 case was filed in good faith.

Section 1307(c) provides a non-exhaustive list of events that are considered "for cause." 11 U.S.C. §1307(c); *In re Ciarcia*, 578 B.R. 495 (Bankr. D. Conn. 2017); *See also* 8 *Collier on Bankruptcy* ¶ 1307.04, p. 1307–20 (Alan N. Resnick & Henry J. Sommers eds., 16th ed.). In addition, "it is well established that lack of good faith may also be cause for dismissal under § 1307(c)." *In re Prisco*, 2012 WL 4364311, at *4 (N.D.N.Y. 2012); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S.365, 379, 127 S.Ct. 1105, 166 L.Ed. 2d 956 (2007). In determining

whether a debtor has pursued actions in a case that would warrant conversion or dismissal for lack of good faith, a court must review the totality of the circumstances. *In re Lin*, 499 B.R. 430, 435 (Bankr. S.D.N.Y. 2013); *see also In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). "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) (citing *In re Love*, 957 F.2d 1350, 1357 (7th Cir.1992)).

C. Under the totality of the circumstances surrounding the Debtor's case, cause exists to dismiss the case with prejudice.

The record in the Debtor's Chapter 13 case, the record in her prior bankruptcy cases, and the record in the prior bankruptcy cases filed by her husband, establish that all of the prior bankruptcy cases were dismissed for failure to comply with the requirements of the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court's Local Rules of Bankruptcy Procedure. In addition, the record in this Chapter 13 case establishes that the Debtor was not able to present any evidence to support a finding that her Chapter 13 case was filed in good faith and that there was any bankruptcy purpose for filing the multiple bankruptcy cases. Furthermore, the records in the Debtor's bankruptcy cases and her husband's bankruptcy cases also establish that the "multiple bankruptcy filings affecting" the Debtor's residence were prejudicial because each filing delayed, hindered, or defrauded creditors and parties in in interest, including BNY, from attempting to exercise rights under applicable non-bankruptcy law with respect to the Debtor's residence.

The record before this Court, the record of the actions in the Connecticut Superior Court attached to the Objection, and the fact that the *In Rem* Order for Relief was in effect when the Debtor filed her Chapter 13 case establish that the Debtor's case was not filed in good faith.

Therefore, cause exists to dismiss the Debtor's case with prejudice with a 2 year bar to filing a case under any chapter of the United States Bankruptcy Code.

IV. CONCLUSION

For the reasons set forth above, it is hereby

ORDERED: Pursuant to 11 U.S.C. §§ 105(a), 349, and 1307(c), cause exists to dismiss the Debtor's case with prejudice; and it is further

ORDERED: The Debtor is barred from filing a petition for relief under any section of Title 11 of the United States Code for a period of two years from the date of the entry of this Order; and it is further

ORDERED: The Debtor's case shall remain open and the Court shall retain jurisdiction to address the issue of the possible imposition of sanctions against Attorney David Scalzi.

Dated at Bridgeport, Connecticut this 24th day of October, 2019.

Julie A. Manning
Chief United States Bankruptcy Judge
District of Connecticut