

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

IN RE:)		
)	CASE NO.	20-50193 (JAM)
KATSUHIKO YOKOI,)		
)	CHAPTER	13
DEBTOR.)		
)	RE: ECF No.	8

Appearances

Katsuhiko Yokoi

Pro se Debtor

Roberta Napolitano
10 Columbus Boulevard
6th Floor
Hartford, CT 06106

Chapter 13 Trustee

**MEMORANDUM OF DECISION AND ORDER
GRANTING MOTION TO DISMISS CASE WITH PREJUDICE**

Julie A. Manning, Chief United States Bankruptcy Judge

I. Introduction

On February 13, 2020, Katsuhiko Yokoi (the “Debtor”) filed a Chapter 13 petition. On February 19, 2020, the Chapter 13 Trustee filed a Motion to Dismiss Case with Prejudice seeking to bar the Debtor from filing a case under any chapter of the Bankruptcy Code for a period of two years (the “Motion to Dismiss with Prejudice”). ECF No. 8. The Debtor did not file a response to the Motion to Dismiss with Prejudice. On April 8, 2020, a Notice of Hearing was issued scheduling a hearing on the Motion to Dismiss with Prejudice to be held on April 28, 2020 at 11:00 a.m. The Debtor was served with the Notice of Hearing via first class mail. *See* ECF No. 23. The Court held the hearing on the Motion to Dismiss with Prejudice on April 28, 2020. The Debtor did not appear at the hearing. At the conclusion of the hearing, the Motion to Dismiss with Prejudice was taken under advisement. For the reasons that follow, the Motion to Dismiss with Prejudice is granted.

Background¹

1. On April 26, 2016, U.S. Bank National Association (“U.S. Bank”) commenced a foreclosure action against the Debtor and Teresa Yokoi in Connecticut Superior Court (the “State Court Foreclosure Action”). *See Wells Fargo Bank v. Katsuhiko Yokoi and Teresa Yokoi*, Case FBT-CV- 16-6056448-S².

2. On March 6, 2017, a Judgment of Foreclosure by Sale entered in the State Court Foreclosure Action which scheduled a Foreclosure by Sale to be conducted on July 15, 2017.

3. On July 11, 2017, the Debtor filed his first Chapter 13 case, which was dismissed on July 26, 2017 for failure to file required information. *See* Case No. 17-50826.

4. On October 10, 2017, the Judgment of Foreclosure by Sale was reopened and modified to set a new sale date of January 13, 2018.

5. On January 3, 2018, Teresa Yokoi filed her first Chapter 13 case, which was dismissed on January 22, 2018 for failure to file required information. *See* Case No. 18-50004.

6. On August 27, 2018, the Judgment of Foreclosure by Sale was reopened, modified, and reentered as a Judgment of Strict Foreclosure, setting a law day of January 8, 2019.

7. On January 2, 2019, Teresa Yokoi filed a second Chapter 13 case, which was dismissed on January 18, 2019 for failure to file required information. *See* Case No. 19-50005.

8. On April 1, 2019, the Judgment of Strict Foreclosure was reopened and modified to set a new law day of June 18, 2019.

¹ The facts set forth herein are contained in the Motion to Dismiss with Prejudice and exhibits attached thereto, unless otherwise indicated.

² After U.S. Bank was assigned the mortgage, it was substituted as the plaintiff in the State Court Foreclosure Action.

9. Thereafter, the Superior Court granted two motions filed by the Debtor to open judgment and extend the law day, extending the law day to December 17, 2019 and then to February 18, 2020.

10. The Debtor filed the instant case, his third Chapter 13 case, on February 13, 2020.

II. Discussion

The Motion to Dismiss with Prejudice seeks dismissal of the Debtor's case under 11 U.S.C. §§ 1307 and 349(a). Section 1307, which governs dismissal of Chapter 13 cases, provides, in part, as follows:

(c) Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause...

11 U.S.C. § 1307(c). Subsection (c) further provides "a non-exhaustive list of events that would be considered 'for cause.' Although not expressly enumerated in the statute, 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) (internal quotation marks and citations omitted). A court must review the totality of the circumstances to determine whether a case should be dismissed for lack of good faith. *Id.* at 499-500. The totality of the circumstances analysis "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) (quoting *In re Love*, 957 F.2d 1350, 1357 (7th Cir. 1992)).

While dismissal of a case is generally without prejudice, section 349(a) "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 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’ exists, a court is authorized, pursuant to § 349(a), to dismiss a bankruptcy case with prejudice to refiling.” *Casse*, 219 B.R. at 662.

The facts and circumstances surrounding the Debtor’s case support the conclusion that cause exists to grant the Motion to Dismiss with Prejudice. The record establishes that the case was not filed in good faith. The case was filed to hinder, delay, or frustrate creditors, which is an abuse of the bankruptcy process. In this case and in the Debtor’s two prior Chapter 13 cases, the Debtor failed to file required schedules or make required payments to the Chapter 13 Trustee in accordance with 11 U.S.C. § 1326. Likewise, Teresa Yokoi did not file required schedules or make required payments to the Chapter 13 Trustee in either of her two Chapter 13 cases. The sole purpose of this case, as well as the Debtor’s prior filings and Teresa Yokoi’s prior filings, is to hinder, delay, and frustrate the State Court Foreclosure Action. The timing of the bankruptcy filings supports the finding of bad faith—all five bankruptcy cases were filed just before scheduled sale or law days. The pattern and timing of the filing of the Debtor’s bankruptcy cases and Teresa Yokoi’s bankruptcy cases enables the Court to conclude the bankruptcy cases were filed to stay proceedings in the State Court Foreclosure Action and not for a proper bankruptcy purpose. *See In re Bolling*, 609 B.R. 454, 456-57 (Bankr. D. Conn. 2019) (dismissing a chapter 13 case with prejudice when facts showed the debtor’s multiple bankruptcy

filings were solely for frustrating foreclosure proceedings and without genuine bankruptcy purpose).

Because the Court concludes that the instant case was filed to hinder, delay, and frustrate creditors from exercising their applicable non-bankruptcy law rights to foreclose and not for a proper bankruptcy purpose, a two-year bar to refiling is appropriate under the circumstances of this case. Accordingly, it is hereby

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

ORDERED: At or before 5:00 p.m. on May 12, 2020, the Clerk's Office shall serve this Order upon the Debtor on the address listed on the petition.

Dated at Bridgeport, Connecticut this 12th day of May, 2020.

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