UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Case No. 23 B 5260
	)	
BOBBY BINION,	)	Chapter 13
	)	
Debtor.	)	Judge David D. Cleary

MEMORANDUM ORDER GRANTING CITY OF CHICAGO'S MOTION TO DISMISS DEBTOR'S CHAPTER 13 CASE WITH THREE YEAR BAR

This matter comes before the court on the motion of the City of Chicago ("City") to dismiss this bankruptcy case and to bar Bobby Binion ("Debtor") from filing under Title 11 for three years ("Motion to Dismiss with Bar"). Debtor did not appear in court at the presentation of the Motion to Dismiss with Bar and did not file a written response. For the reasons stated below, the court will grant the Motion to Dismiss with Bar and impose a three-year bar to refiling.

I. FINDINGS OF FACT

Debtor and his wife or partner, Chiquita Mahon ("Mahon"), acquired the real property at 5404 South Drexel Avenue in Chicago ("Drexel Property") in 1994, as joint tenants by warranty deed. (https://www.cookcountyclerkil.gov/recordings ("CCRD") Doc. No. 04007489.)

In 1997, American General Finance, Inc. recorded a judgment in the amount of $3,068.28 against Mahon. (*Id.*, Doc. No. 97610691.) The next year, Debtor and Mahon transferred the Drexel Property into a trust. (*Id.*, Doc. No. 98362329.)

In 1999, the trust transferred the Drexel Property back to Debtor and Mahon. (*Id.*, Doc. No. 99353047.) Mahon then quitclaimed the Drexel Property to Debtor (*id.*, Doc. No. 99392703), which had the effect of taking Mahon off the title.

Debtor granted a mortgage on the Drexel Property on April 15, 1999, to secure a note in the amount of $233,000. (*Id.*, Doc. No. 99394169.) He then granted another mortgage to a

different lender on October 26, 2000, to secure a note in the amount of $331,500. (*Id.*, Doc. No. 00860296.) The lender filed a foreclosure case on August 9, 2001 ("First State Court Foreclosure"). (*Id.*, Doc. No. 0010732183.)

About two months after the lender filed the First State Court Foreclosure, Debtor transferred the Drexel Property to Mahon only (*id.*, Doc. No. 0011070966), and that same day she granted a mortgage in the amount of $315,000 (*id.*, Doc. No. 0011070967). This appears to have paid off and released the mortgage that was the subject of the First State Court Foreclosure, because the lender recorded a satisfaction of mortgage. (*Id.*, Doc. No. 0020770261.)

Mahon then defaulted on her mortgage, and the lender filed a foreclosure case in federal district court on June 27, 2003 ("District Court Foreclosure"). (*Id.*, Doc. No. 0318204144.) (*See* Case No. 03 C 4480 (N.D. Ill.).) Attorney Dennis Segovia represented Mahon in the District Court Foreclosure. He has now been permanently disbarred. (*See* Motion to Dismiss with Bar, Ex. A.)

In December 2004, while the District Court Foreclosure was pending, Mahon transferred the Drexel Property to the North American Receivership Caretaker Assn ("North American"). (CCRD, Doc. No. 0436412001.) On the same day as the purported transfer, a "United States Mortgage Release Deed" was recorded that attempted to release the mortgage that was the subject of the District Court Foreclosure. The release cited the "United State of America release act" [sic] and provided that "the mortgage of this lending company is acceptable to accept a lost of the mortgage claim[.]" (*Id.*, Doc. No. 0436412000.)

Essentially the same release was recorded about a month later, with a different amount owed. (*Id.*, Doc. No. 0502119133.)

The district court entered an amended judgment of foreclosure on March 15, 2005. (*See* District Court Foreclosure, EOD 38.) That same day, Mahon filed her first petition for relief under chapter 13 of the Bankruptcy Code. (*See* Case No. 05 B 9167 (Bankr. N.D. Ill.).) Mahon was represented by William R. Jackson, who has now been permanently disbarred. (*See* Motion to Dismiss with Bar, Ex. B.)

Although Mahon had purported to transfer the Drexel Property to North American, she listed a "single family home" on Schedule A in her bankruptcy case and attempted to treat the mortgage that was the subject of the District Court Foreclosure in her proposed plan. (*See* Case No. 05 B 9167, EOD 11 and 14.)

On March 17, 2005, North American transferred the Drexel Property to Binion. (CCRD, Doc. No. 0516627111.) Mahon notarized the deed. She did not disclose this transfer to the bankruptcy court.

On September 14, 2005, Debtor granted a mortgage in the amount of $280,000 on the Drexel Property. (*Id.*, Doc. No. 0601041146.)

On May 3, 2006, the bankruptcy court granted Mahon's motion to voluntarily dismiss her chapter 13 case. (*See* Case No. 05 B 9167, EOD 64.)

In July 2006, Judge Ruben Castillo granted the plaintiff's motion to voluntarily dismiss the District Court Foreclosure. (*See* District Court Foreclosure, EOD 42.) The lender refiled the foreclosure proceeding against Mahon and Debtor in state court on August 30, 2006 ("Second State Court Foreclosure"). (CCRD, Doc. No. 0624310159.)

Meanwhile on August 18, 2006, Debtor granted a mortgage in the amount of $413,850. (*Id.*, Doc. No. 0623740210.) This lender filed a foreclosure proceeding against Debtor on August 7, 2007 ("Third State Court Foreclosure"). (*Id.*, Doc. No. 0721960108.)

In 2008 and 2009, the City recorded several judgments against the Debtor for violations incurred at properties that he owned. These judgments became liens against the Drexel Property. (*See* CCRD Doc Nos. 0824626079; 0824626080, 0824626081; 0824626082; 0824626083; 0934935073; 0934935074; 0934935075; 0934935076; 0934935077; 0934935078; 0934935079; 0934935080; 0934935081.)

In June 2008, Debtor filed his first petition for relief under the Bankruptcy Code. At first, he represented himself as a pro se debtor, but then Segovia filed a motion on his behalf. (*See* Case No. 08 B 15861 (Bankr. N.D. Ill.), EOD 36.) Certain Underwriters at Lloyd's, London ("Lloyd's") filed an adversary proceeding against Debtor based on alleged false representations. (*Id.*, EOD 38.) When Debtor did not provide his tax return or transcript to the chapter 13 trustee, the court granted the trustee's motion to dismiss the case. (*Id.*, EOD 48.) Lloyd's adversary proceeding was dismissed shortly afterward. (*See* Adv. No. 08 A 781, EOD 5.)

Debtor filed a second bankruptcy case, representing himself as a pro se debtor, on February 26, 2009. (Case No. 09 B 6182 (Bankr. N.D. Ill.).) About a month after the petition date, Segovia filed an appearance on behalf of Debtor. (*Id.*, EOD 21.) Debtor filed a motion to extend stay, which the court denied. (*Id.*, EOD 16 and 23.) On behalf of the Debtor, Segovia filed a motion to reconsider the denial of the motion to extend stay, and the court denied that motion as well. (*Id.*, EOD 25 and 29.) Debtor did not make any plan payments, and the court granted the chapter 13 trustee's motion to dismiss for failure to make plan payments on June 1, 2009. (*Id.*, EOD 51.)

About a week after the court dismissed his second bankruptcy case, Debtor filed a third one, represented by attorney Debra Vorhies Levine. (Case No. 09 B 20888 (Bankr. N.D. Ill.).) She filed a motion to impose automatic stay on his behalf, which was heard on an emergency

basis and denied. (*Id.*, EOD 5 and 8.) The bankruptcy court granted the chapter 13 trustee's motion to dismiss for unreasonable delay on September 24, 2009. (*Id.*, EOD 51.)

In May 2010, Binion transferred the Drexel Property to Mahon by quitclaim deed. (CCRD, Doc. No. 1016101000.) Later that year, the lender filed a Satisfaction of Mortgage in relation to the mortgage Mahon had granted in 2001, in the amount of $315,000. (*Id.*, Doc. No. 1100417007.) The Third State Court Foreclosure case remained pending against Debtor, however.

In 2014, Mahon granted a reverse mortgage against the Drexel Property in the amount of $487,500. (*Id.*, Doc. No. 1423355003.) Three years later, Mahon granted a second reverse mortgage. The cover sheet states that the loan/mortgage amount is $490,000, and the mortgage states that the maximum principal amount is $735,000. (*Id.*, Doc. No. 1736246079.)

In April 2019, the Third State Court Foreclosure proceeding went to trial. The court ruled in favor of the lender. (*See* Case No. 19 B 31685 (Bankr. N.D. Ill.), EOD 24, ¶ 27.)

Mahon then filed for relief under chapter 7. (*See id.*, EOD 1.) The lender that had just prevailed in the Third State Court Foreclosure filed a motion to modify the automatic stay *in rem* ("In Rem Motion"). (*Id.*, EOD 24.) The bankruptcy court granted the In Rem Motion on January 21, 2020. (*Id.*, EOD 30.) The same day, the court granted its own motion to dismiss for failure to file documents. (*Id.*, EOD 29.) Shortly thereafter, the COVID-19 pandemic brought proceedings to a halt.

In January 2022, Mahon filed a new petition for relief under chapter 13. (*See* Case No. 22 B 365 (Bankr. N.D. Ill.).) The lender that had been pursuing the Third State Court Foreclosure and the In Rem Motion objected to confirmation, as did the chapter 13 Trustee. On

April 4, 2022, the court granted the chapter 13 Trustee's motion to dismiss for denial of confirmation. (*Id.*, EOD 25.)

Mahon then filed for relief under chapter 7 of the Bankruptcy Code on May 25, 2022. (*See* Case No. 22 B 5954 (Bankr. N.D. Ill.).) She disclosed Debtor's 2006 mortgage, which now had an outstanding balance of $1,040,203.27, as well as her own reverse mortgage with a balance of $311,563.79. (*Id.*, EOD 1.) The 2006 mortgage lender sought relief from the stay, which the court granted. (*Id.*, EOD 21.) The court granted Mahon a chapter 7 discharge on August 23, 2022. (*Id.*, EOD 25.)

About a month after Mahon received her discharge, Debtor filed his fourth bankruptcy case. (*See* Case No. 22 B 11001 (Bankr. N.D. Ill.).) He never filed schedules or a proposed plan, and the court granted the chapter 13 trustee's motion to dismiss on October 31, 2022. (*Id.*, EOD 18.)

On January 10, 2023, Debtor filed for relief under the Bankruptcy Code for a fifth time. (*See* Case No. 23 B 298 (Bankr. N.D. Ill.).) Again, he did not file schedules or a proposed plan. The court granted the chapter 13 trustee's motion to dismiss for failure to file required documents on March 1, 2023. (*Id.*, EOD 16.)

Debtor filed this case, his sixth, on April 21, 2023. (*See* Case No. 23 B 5260 (Bankr. N.D. Ill.).) On his petition, Debtor checked the box indicating that he had received credit counseling within 180 days before filing for relief under the Bankruptcy Code. (*Id.*, EOD 1.) The certificate of counseling that he filed states that he received counseling on September 26, 2022. (*Id.*, EOD 6.) This date is more than 200 days before the petition date.

In summary, Debtor filed the following cases under Title 11 of the United States Code:

Case Number	Petition Date	Dismissal Date	Reason
08 B 15861	June 20, 2008	October 2, 2008	Failure to provide tax return or transcript
09 B 6182	February 26, 2009	June 1, 2009	Failure to make plan payments
09 B 20888	June 9, 2009	September 24, 2009	Unreasonable delay
22 B 11001	September 26, 2022	October 31, 2022	Failure to file plan
23 B 298	January 10, 2023	March 1, 2023	Failure to file documents
23 B 5260	April 21, 2023	N/A	N/A

Mahon filed the following cases under Title 11 of the United States Code:

Case Number	Petition Date	Dismissal Date	Reason
05 B 9167	March 15, 2005	May 3, 2006	Voluntary dismissal
19 B 31685	November 6, 2019	January 21, 2020	Failure to file documents
22 B 365	January 12, 2022	April 4, 2022	Denial of confirmation
22 B 5954	May 25, 2022	N/A	Discharge granted

II. DISCUSSION

A. Debtor did not complete credit counseling within 180 days before the petition date

The City asserts that Debtor is ineligible to be a debtor under the Bankruptcy Code because he did not complete the prepetition credit counseling course within 180 days before the petition date.

Failure to obtain credit counseling does not require dismissal. "[T]he restrictions of … § 109(h) are not jurisdictional, but rather elements that must be established to sustain a voluntary

bankruptcy proceeding." *In re Zarnel*, 619 F.3d 156, 169 (2d Cir. 2010). Therefore, the court will consider the City's request to dismiss this case for cause and with a bar to refiling.

B. Debtor did not file this case in good faith and cause exists to dismiss it

According to 11 U.S.C. § 1307(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[.]" Although § 1307(c) includes a list of circumstances that constitute cause, that list is not exclusive.

The City argues that Debtor did not file this case in good faith, and that this lack of good faith in filing his petition constitutes cause for dismissal. Good faith in filing a chapter 13 case is determined by analyzing the totality of the circumstances. *See Matter of Love*, 957 F.2d 1350, 1355 (7th Cir. 1992). In its good faith inquiry, the court considers the totality of the circumstances to determine "whether the filing is fundamentally fair to creditors and, more generally, is the filing fundamentally fair in a manner than complies with the spirit of the Bankruptcy Code's provisions." *Id.* at 1357.

> Keeping in mind that the focus of the inquiry is fundamental fairness, the following nonexhaustive list exemplifies some of the factors that are relevant when determining if a Chapter 13 petition was filed in good faith: the nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor's motive in filing the petition; how the debtor's actions affected creditors; the debtor's treatment of creditors both before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors.

Id. While these are among the factors that a court may consider, the key question underpinning the court's analysis is whether the Debtor's filing is fundamentally fair with respect to his creditors.

The court finds that Debtor's petition for relief under the Bankruptcy Code was not fundamentally fair with respect to his creditors, and that cause exists to dismiss this bankruptcy case for a lack of good faith. According to the chapter 13 Trustee's motion to dismiss, Debtor has not attended his scheduled § 341 meeting. Neither has he provided the chapter 13 Trustee with a copy of his federal income tax return or transcript for the four years preceding the filing of his petition.

Second, debtors are required to begin making payments "not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier[.]" 11 U.S.C. § 1326(a)(1). The commencement of Debtor's voluntary case was an order for relief, so the date on which Debtor was required to begin making plan payments was May 22, 2023. There is no evidence that Debtor has made any payments to the chapter 13 Trustee. It would be impossible to do so in compliance with his plan, because the plan that Debtor filed at EOD 17 states that his monthly payments are $0.

Third, there is no evidence that Debtor can propose a confirmable plan. According to Schedules I and J, Debtor has $827 available for a plan payment. Debtor's income on Schedule I, however, reflects no deductions for payroll or income taxes from monthly gross wages of $1,600. It includes as income $500 described only as "Sa." Schedule J includes no line item for rental or home ownership expenses, or for food.

Finally, Debtor has not made any payments toward his filing fee. The court noticed a motion to dismiss for failure to pay filing fee for July 31, 2023.

For all of these reasons, the court finds that Debtor did not file his bankruptcy case in good faith, and that there is cause to dismiss the case.

C. The court will impose a three year bar to refiling

The only remaining question is whether the court should grant the City's request to dismiss with prejudice and impose a three year bar to refiling. The City requests entry of an order dismissing the Debtor's case and "barring refiling for 3 years, pursuant to 11 U.S.C. §§ 109(g) and 1307(c)." (Motion to Dismiss with Bar, p. 1.) The City, however, also relies on 11 U.S.C. § 349 in its argument supporting the request for a three year bar. Sections 109(g) and 349(a) are separate provisions of the Bankruptcy Code, each providing separate and different powers to limit a debtor's ability to file cases subsequent to a previously dismissed case. *See In re Udell*, 454 F.3d 180, 184 (3d Cir. 2006) ("It is a well established canon of statutory construction that provisions in different statutes should, if possible, be interpreted so as to effectuate both provisions.") (quotation omitted).

Section 109(g) addresses eligibility to file a case. An individual (or family farmer) is not eligible to file a case for 180 days after the dismissal of a prior case if such case was dismissed because of: a) a voluntary request by the debtor after the filing of a motion to modify the automatic stay; or b) willful failure to abide by court orders or appear and properly prosecute the case. 11 U.S.C. § 109(g). While Section 109 sets forth the limitations of eligibility to file under certain circumstances, section 349 governs the effect of dismissal of a case, including the circumstances upon which a court may prejudice a debtor's ability to file a subsequent case.

Section § 349(a) provides that the court may dismiss a bankruptcy case with prejudice:

> *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(a) (emphasis added). Thus, dismissal that is not subject to findings pursuant to section 109(g), does not prejudice a debtor's ability to discharge eligible debts in a subsequent case or file a subsequent case, unless the court finds cause to do so.

Courts differ in their interpretation of section 349. *Compare In re Casse*, 198 F.3d 327, 341 (2d Cir. 1999) ("[I]n company with most courts that have considered the question, we find nothing in § 109(g) of the present Bankruptcy Code that prescribes limits upon the bankruptcy courts' power to dismiss bad faith filings 'for cause' under § 349(a)[.]"), *with In re Frieouf*, 938 F.2d 1099, 1103 (10th Cir. 1991) ("Section 349(a) does not deny a debtor all future access to bankruptcy court, *except as provided in section 109(g)*."). For our purposes, however, the Seventh Circuit has aligned with the majority rather than with *Frieouf*, and ruled that under section 349, for cause, a court may dismiss a case with a bar to "the later dischargeability of debts … or it may preclude the debtor from filing a subsequent petition related to those debts." *In re Hall*, 304 F.3d 743, 746 (7th Cir. 2002). Dismissal with a bar only is appropriate in "extreme situations, such as when a debtor conceals information from the court, violates injunctions, files unauthorized petitions, or acts in bad faith." *Id.*[1]

In finding that cause exists to dismiss this bankruptcy case, the court found that Debtor did not file this case in good faith. In addition to the bases supporting a lack of good faith, the Debtor's serial filings and history of property transfers with Mahon further support a finding of *bad faith*. Debtor and Mahon have transferred the Drexel Property between themselves and other entities for more than two decades. They have used each other's bankruptcy cases to pause

[1] Section 349 stands on its own, providing a court the authority to restrict the ability of a debtor to file a subsequent case after dismissal with prejudice based on cause. Some courts, however, also support a bar with application of section 105 to the facts. Here, section 105 is not needed. The Debtor's bad faith establishes cause.

enforcement efforts by their creditors, to delay state court proceedings and to frustrate their creditors' collection efforts.

Although serial filings are not bad faith per se, "a debtor's history of filings and dismissals may be evidence of bad faith." *In re Rios*, No. 13-11076, 2016 WL 8461532, at *3 (Bankr. D. Kan. Dec. 9, 2016) (footnote omitted). Moreover, filing a bankruptcy case without any ability or intent to reorganize is an abuse. *See In re Traylor*, 628 B.R. 1, 7 (Bankr. D. Conn. 2021). *See also In re King*, 126 B.R. 777, 781 (Bankr. N.D. Ill. 1991) ("Strategic use of serial filings, particularly when coupled with failure to carry out debtor's duties in bankruptcy, shows lack of good faith justifying dismissal.").

Filing multiple bankruptcy cases without the intent to reorganize supports the imposition of a three year bar to refiling a subsequent case. In *In re Nixon*, the court described the Debtor's history of five bankruptcy cases within three years.

> It is clear from the number of filings as well as from the accelerated pace of the filings that the instant case was not filed in good faith. The Debtor has offered no reason for her multiple filings and has presented no evidence of a change in circumstances. Her multiple filings are prejudicial to her creditors and is a waste of judicial resources. It is also clear that the 180 day bar would be ineffective against this Debtor.

In re Nixon, No. 05-12169, 2005 WL 4041163, at *1 (Bankr. S.D. Ohio May 18, 2005). Noting that an individual with the same last name who resides at the same address had filed seven cases of her own, the *Nixon* court imposed a three year bar to refiling. *See also In re Wilcoxon*, No. 18-62228-RK, 2018 WL 6016540, at *3 (Bankr. N.D. Ohio Nov. 15, 2018) (finding that if the case were to be dismissed for any reason, debtor would be barred from refiling for five years); *In re Jones*, 289 B.R. 436, 440 (Bankr. M.D. Ala. 2003) (imposing a five year bar order after considering "the Debtor's pattern of conduct, repeated instances of bad faith and lack of meaningful participation in the prosecution of any of her five cases"); *In re McCoy*, 237 B.R.

419, 423 (Bankr. S.D. Ohio 1999) (imposing a permanent bar to refiling on a debtor who filed eight bankruptcy cases in eight years and successfully completed only one case; his behavior "appears to be motivated by a desire to delay foreclosure and other collection efforts of his creditors").

This is Debtor's sixth bankruptcy case, and his third case in less than a year. His two most recent prior cases were dismissed for failure to file a plan and failure to file required documents. His partner and sometime property co-owner filed three bankruptcy cases in the past four years. Lenders have filed four foreclosure proceedings against the Drexel Property that the Debtor and his partner acquired in 1994, and on which they have been granting mortgages for nearly 25 years. Shortly before the COVID-19 pandemic halted most court proceedings, a lender obtained *in rem* stay relief against the property, then listed in the bankruptcy case of the Debtor's partner.

As in the cases cited above, this Debtor's lack of good faith, pattern of conduct and failure to comply with the statutory requirements imposed on those who seek relief under the Bankruptcy Code constitute bad faith and warrant dismissal with prejudice and a three year bar to refiling. Without a bar that remains in place for a meaningful period of time, Debtor and his partner will continue their manipulation of the court system. For all of the reasons stated above, the court will impose a three year bar to refiling.

III. CONCLUSION

Having made findings of fact and considered the applicable law, the court concludes that there is cause to dismiss this case with prejudice. Since Debtor filed this case in bad faith and because of the extreme situation presented by these particular circumstances, **IT IS ORDERED THAT**:

1. The Motion to Dismiss with Bar is **GRANTED**; and
2. Bobby Binion is barred from filing a petition under any chapter of title 11 of the United States Code for three years from the date of the entry of this Order, pursuant to 11 U.S.C. § 349.

ENTERED:

Date: July 26, 2023

DAVID D. CLEARY
United States Bankruptcy Judge