

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Bankr. Case No. 24-04322
)	
Chucky D Thomas,)	Chapter 13
)	
Debtor.)	Hon. Judge Jacqueline P. Cox
_____)	

Order Granting Alliance Funding Group’s Motion to Dismiss (Dkt. 22)

This matter comes before the court on Alliance Funding Group’s (“Alliance” or “Creditor”) Motion to Dismiss (the “Motion”) (BK Dkt. 22), which seeks to dismiss the Debtor’s bankruptcy case under 11 U.S.C. § 1307(c) with a two-year bar from refiling.¹ *See* Motion (BK Dkt. 22), pp. 1, 9. The Motion was heard in court on July 1, 2024. This bankruptcy case was filed on March 25, 2024.

Alliance Funding Groups’s unsecured claim stems from an Equipment Financing Agreement (EFA) entered into on September 22, 2021 between it and Thomas Consortium Corporation pursuant to which Alliance has a first priority purchase money security interest in equipment, specifically a 2014 Freightliner M2. *See* Proof of Claim No. 18-1, Attachment, p. 2, *In re Chucky D Thomas*, Bankr. Case No. 24-04322 (Bankr. N.D. Ill. filed Mar. 25, 2024). In addition, the Debtor, Chucky Thomas, executed a personal guaranty of this debt. *See* Proof of Claim No. 18-1, Attachment, p. 4. Thereafter, Alliance repossessed and sold the equipment for \$21,500. Motion (BK Dkt. 22), ¶ 9. The Debtor defaulted under his personal guaranty by failing to pay Alliance as provided in the guaranty. *Id.*, ¶ 10. The amount due and owing on the personal guaranty is \$72,832.74. *Id.*

I. Jurisdiction

¹ All references to the “BK Dkt.” refer to filings in the instant bankruptcy case, *In re Chucky D Thomas*, Bankr. Case No. 24-04322 (Bankr. N.D. Ill. filed Mar. 25, 2024).

The court has jurisdiction over this matter under 28 U.S.C. § 1334 and Internal Operating Procedure 15(a) of the U.S. District Court for the Northern District of Illinois. This matter is a “core” proceeding under 28 U.S.C. § 157(b)(2)(A), matters concerning the administration of the estate.

II. Background

Alliance seeks to dismiss the Debtor’s case under § 1307(c), asserting that serial filings by the Debtor create a presumption that the petition was not filed in good faith. *See* Motion (BK Dkt. 22), ¶ 14. Alliance asserts this is the Debtor’s ninth bankruptcy case. The prior history of the Debtor’s bankruptcy filings is as follows:

1. The Debtor filed his first bankruptcy case, Case No. 10-05109 under chapter 7 of the bankruptcy code on February 10, 2010. He obtained a standard chapter 7 discharge on May 25, 2010.

2. The Debtor filed his next bankruptcy case, Case No. 17-02319, on January 26, 2017 under chapter 13. On September 19, 2017, the case was dismissed upon the Chapter 13 Trustee’s motion for failure to make plan payments.

3. Less than two months later, on November 3, 2017, the Debtor filed his next bankruptcy case, Case No. 17-33067, under chapter 13. On January 16, 2018, a chapter 13 plan was confirmed. On April 10, 2018, the case was dismissed upon the Chapter 13 Trustee’s motion for failure to make plan payments.

4. Three days later, on April 13, 2018, the Debtor filed his next bankruptcy case, Case No. 18-10858, under chapter 7. The Debtor obtained a standard chapter 7 discharge on July 31, 2018.

5. On October 4, 2022, the Debtor filed his next bankruptcy case, Case No. 22-11450, under

chapter 13. In that case, Alliance filed Proof of Claim No. 4-1, asserting a \$72,832.74 unsecured claim stemming from the personal guaranty on the equipment financing agreement (EFA).

On December 14, 2022, that case was dismissed upon the Chapter 13 Trustee's Motion to Dismiss Case For Unreasonable Delay (Dkt. 20) after the Debtor missed a § 341(a) meeting, failed to begin payments within thirty days of filing the plan as required by 11 U.S.C. § 1326(a)(1), failed to maintain payments under 11 U.S.C. § 1326, failed to amend the plan to treat all secured claims, failed to provide proof of income, failed to amend schedule D to correctly list the truck's value, and failed to confirm a plan in a timely manner, among other issues. *See* Motion to Dismiss Case For Unreasonable Delay (Dkt. 20), ¶¶ 2-5, 7, 9-10 and Order (Dkt. 21), *In re Chucky Thomas*, Bankr. Case No. 22-11450 (Bankr. N.D. Ill. filed Oct. 4, 2022).

6. On April 5, 2023, the Debtor filed his next chapter 13 bankruptcy case, Case No. 23-04574. In that case, Alliance filed Proof of Claim No. 2-1, asserting a \$72,832.74 unsecured claim stemming from a personal guaranty on an EFA. Before confirmation, the case was dismissed on July 13, 2023 upon the Chapter 13 Trustee's motion for failure to make plan payments.

7. Ten days later, on July 23, 2023, the Debtor filed his fifth chapter 13 bankruptcy case, Case No. 23-09549. Alliance filed Proof of Claim No. 4-1, asserting a \$72,832.74 unsecured claim stemming from the personal guaranty on the EFA. Before confirmation, the case was dismissed on October 16, 2023 upon the Chapter 13 Trustee's motion for failure to make plan payments.

8. A little over two weeks later, on November 2, 2023, the Debtor filed his next bankruptcy case under chapter 13 and his eighth bankruptcy case in total, Case No. 23-14805. Alliance filed Proof of Claim No. 9-1 therein, asserting a \$72,832.74 unsecured claim stemming from the personal guaranty on the EFA.

Before confirmation, on March 18, 2024, that case was dismissed upon the Chapter 13 Trustee's Motion to Dismiss Case For Unreasonable Delay after the Debtor failed to maintain payments to the Trustee's office as required by 11 U.S.C. § 1326, failed to file a feasible plan (as the plan was running 65 months), and failed to confirm a plan in a timely manner, among other issues. See Motion to Dismiss Case For Unreasonable Delay (Dkt. 24), ¶¶ 3-5 and March 18, 2024 Dismissal Order (Dkt. 32), *In re Chucky Thomas*, Bankr. Case No. 23-14805 (Bankr. N.D. Ill. filed Nov. 2, 2024).

9. One week later, on March 25, 2024, the Debtor filed the instant chapter 13 bankruptcy case. In Schedule E/F, the Debtor scheduled a \$72,832.74 general unsecured claim of Alliance Funding, LLC for a repossessed truck. See Petition (Dkt. 1), Schedule E/F: Creditors Who Have Unsecured Claims, p. 26, *In re Chucky D Thomas*, Bankr. Case No. 24-04322 (Bankr. N.D. Ill. filed Mar. 25, 2024). Alliance filed Proof of Claim No. 18-1 therein, asserting a \$72,832.74 unsecured claim stemming from the EFA.

III. Analysis

On June 21, 2024, Alliance filed the instant motion, seeking dismissal of Debtor's bankruptcy case for "cause" under § 1307, asserting that the serial filings by the Debtor create a presumption that the petition was not filed in good faith. See Motion (BK Dkt. 22), ¶ 14.

A. Standards Applicable to Motions under 11 U.S.C. § 1307

In civil actions, generally the movant bears the initial burden of proof and that burden is by a preponderance of the evidence. See *In re Tabor*, 583 B.R. 155, 179-80 (Bankr. N.D. Ill. 2018) (citing *In re KMart Corp.*, 381 F.3d 709, 714 (7th Cir. 2004); *Boone Cnty. Utils., LLC v. The Branham Corp. (In re Boone Cnty. Utils., LLC)*, Case No. 03-16707-RLM-11, 2015 WL 2233951,

at *14 (Bankr. S.D. Ind. May 8, 2015); *Grogan v. Garner*, 498 U.S. 279, 286, 111 S. Ct. 654, 659, 112 L. Ed. 2d 755 (1991)). The party moving for dismissal under § 1307(c) must demonstrate “cause” for dismissal exists. See *In re Love*, 957 F.2d at 1355 (citing *In re Klein*, 100 B.R. 1004, 1008 (N.D. Ill. 1989)). Thus, the burden is on the movant to prove a lack of good faith in filing by a preponderance of the evidence. See *In re Tabor*, 583 B.R. at 179-80 (citations omitted); *Garner*, 498 U.S. at 286, 111 S. Ct. at 659; *In re Standfield*, 152 B.R. 528, 533-34 (Bankr. N.D. Ill. 1993) (finding the preponderance of the evidence standard applied to challenges under § 362(d) and (g) where the movant argued the case was not filed in good faith).

Section 1307(c) of the Bankruptcy Code provides that upon a party in interest’s request, “the court may convert or 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). The Seventh Circuit has upheld a bankruptcy court’s power to dismiss a chapter 13 bankruptcy petition upon a finding, under § 1307(c), that the petition was not filed in good faith. *In re Love*, 957 F.2d 1350, 1353-54 (7th Cir. 1992) (citing *In re Smith*, 848 F.2d 813, 816 n.3 (7th Cir. 1988)). The Seventh Circuit has directed bankruptcy courts “to look at the totality of circumstances and, thereby, make good faith determinations on a case-by-case basis.” *Id.* at 1355 (citing *In re Schaitz*, 913 F.2d 452, 453 (7th Cir. 1990); *In re Smith*, 848 F.2d at 817).

The Seventh Circuit identified a non-exhaustive list of factors that are relevant to a court’s determination of whether the petition was filed in good faith:

[t]he 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.

In re Love, 957 F.2d at 1357 (citing *In re King*, 126 B.R. 777, 781 (Bankr. N.D. Ill. 1991); *In re McKissie*, 103 B.R. 189, 192 (Bankr. N.D. Ill. 1989); *In re Schaitz*, 913 F.2d at 455-56; *In re Smith*, 848 F.2d at 817-18; *In re Rimgale*, 669 F.2d 426, 432 (7th Cir. 1982)).

IV. Discussion

Here, consideration of the totality of the circumstances shows the petition was not filed in good faith. Many of the *Love* factors show that the petition was not filed in good faith. *See In re Love*, 957 F.2d at 1357 (citations omitted). The “timing of the petition” weighs in favor of conversion or dismissal, as this petition was filed only one week after the Debtor’s prior chapter 13 case was dismissed. *Id.* Alliance asserts that the Debtor’s motive in filing his case (and possibly for filing prior cases) may be to delay a foreclosure action brought by another creditor in state court in Cook County in which the Debtor is a guarantor and lists himself as an owner. *See Motion (BK Dkt. 22)*, ¶ 17 (citing *RCN Capital, LLC v. Chucky Thomas, et al.*, Case No. 2022 CH 09076 (Cir. Ct. Cook Cnty. 2022)). Additionally, regarding the debtor’s treatment of creditors both before and after the petition was filed, at the July 1, 2024 hearing, the Chapter 13 Trustee confirmed that no payments were made in the Debtor’s prior chapter 13 bankruptcy cases, including the instant case. Regarding how the debtor’s actions affected creditors, Alliance asserts it “has been required to spend time and money in five of the cases,” and has not received any payment on its claim in this case or in prior cases. *Motion (BK Dkt. 22)*, ¶ 16.

The Debtor has filed five cases in the past two years. At the July 1, 2024 hearing, the Debtor did not present any evidence of changed circumstances or other evidence that would suggest the petition was filed in good faith. In addition, the Debtor’s counsel did not ask to file a written

response to the motion to dismiss.

V. Conclusion and Order

Thus, for the reasons stated herein and the reasons stated on the record, it is HEREBY ORDERED that:

1. The Movant has shown by a preponderance of the evidence that this case was not filed in good faith.


2. Alliance Funding Group's Motion to Dismiss (BK Dkt. 22) is GRANTED.

3. Bankruptcy Case No. Case No. 24-04322 is hereby DISMISSED with prejudice under 11 U.S.C. § 1307(c).

4. The Debtor is enjoined, barred, and prohibited from commencing any bankruptcy petition in any U.S. Bankruptcy Court for three (3) years from the date that this Order is entered, on or before July 1, 2027.

Date: July 2, 2024

ENTER:



Hon. Jacqueline P. Cox
Chief U.S. Bankruptcy Judge
Northern District of Illinois