

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLUMBIA

In re )  
 )  
STANLEY CHAPPELLE, ) Case No. 99-02287  
 ) (Chapter 13)  
Debtor. )

DECISION RE U.S. TRUSTEE'S MOTION TO DISMISS

The United States Trustee has filed a Motion to Dismiss Case with Prejudice and Seeking Other Related Relief (Docket Entry No. 6). The motion seeks:

(1) dismissal of this case with prejudice for 3 years (Motion ¶ 27);

(2) an order barring the debtor from obtaining a discharge for any debts that were, or should have been listed in this case (Motion ¶ 28); and

(3) an order that "any future filing by Stanley Chappelle, MaryRose Chappelle, or any other person or entity connected to them who have now, or come to have, an interest in the real property, or real properties, in which Stanley Chappelle and/or MaryRose Chappelle have, or claim to have, an interest, shall not operate as an automatic stay against the secured creditor(s) except upon separate order of this court" (Motion ¶ 31).

The court will grant the first requested order of dismissal of the case with prejudice for 3 years. The debtor and related persons have engaged in an egregious case of seriatim filings to keep secured creditors at bay. Playing "bankruptcy tag" in this fashion threatens the integrity of the bankruptcy system. To assure that secured creditors are fully able to pursue their foreclosure remedies, the court will not permit the debtor to re-file a bankruptcy case for 3 years.

The court will grant the second order sought barring the discharge of any debts that existed on the filing of this case.

This is a severe and drastic sanction, but it is warranted by the circumstances of this case. Creditors have been held at bay for years by the debtor's egregious bad faith. The debtor's conduct has effectively produced the same result as one of the types of conduct that can lead to denial of the discharge in a chapter 7 case, namely, removal of property with intent to hinder, delay, or defraud a creditor. See 11 U.S.C. § 727(a)(2). Creditors are in a far worse position now than they were years ago when this history of seriatim filings commenced. Any creditors which were previously fully secured now face the likely prospect of being partially unsecured, taking into account accumulated interest, late fee charges, and costs of frustrated foreclosure sales. Whatever equity was available for the benefit of unsecured creditors has likely disappeared. The debtor cannot be heard to complain if he is barred from discharging those debts whose collection he so effectively has frustrated in bad faith.

The court will partially deny the requested third order without prejudice to the United States Trustee's filing an adversary proceeding to obtain the same relief. See F.R. Bankr. P. 7001. The court's order of dismissal will expressly retain jurisdiction to hear any such adversary proceeding.

Although it would go part of the way towards preventing abuse, the United States Trustee has not sought an order in MaryRose Chappelle's last-dismissed case amending the order of dismissal to extend the dismissal with prejudice to 3 years as in

the case of Stanley Chappelle.<sup>1</sup> Instead, the United States Trustee seeks to bar an automatic stay from arising with respect to property in which Stanley Chappelle or MaryRose Chappelle have or claim an interest from arising from any future bankruptcy filing by them or by any entity related to them.

Although not calling it such, the United States Trustee seeks a so-called in rem order attaching to the property in question as within the jurisdiction of the bankruptcy court, such orders having been entered in at least four reported cases. In re Yinman, 214 B.R. 463 (Bankr. D. Md. 1997); In re Snow, 201 B.R. 968 (Bankr. C.D. Cal. 1996); In re Fernandez, 212 B.R. 361 (Bankr. C.D. Cal. 1997); In re Wong, 30 B.R. 87 (Bankr. C.D. Cal. 1983). Although this court believes that it has the power to issue such in rem orders, the court believes that an adversary proceeding is necessary to accomplish such an order except with respect to the debtor's own interest in the property.

First, absent a proceeding to place property within the jurisdiction of the court, the only possible basis for holding

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<sup>1</sup> Preferably, such an order would be obtained by a motion filed in her case, not in this case. She consented to this court's jurisdiction when she filed her own case and remains before the court, despite the dismissal, for purposes of considering any amendment of the order dismissing her case. (No adversary proceeding would be necessary.) Service upon her of such a motion under F.R. Civ. P. 60(b) in her own case would unquestionably be proper service obtaining jurisdiction over her to address barring her from filing a further case. It is not as clear that a motion filed in this case seeking the same relief would have the same effect, although it might be argued that the formality of which case's caption is used ought not affect the substance of what is being accomplished: serving papers on her which seek to amend the order of dismissal in her case.

that property is already within the jurisdiction of the court is 28 U.S.C. § 1334(e). But § 1334(e) places only the debtor's property interests into the jurisdiction of the court, for § 1334(e) provides:

(e) The district court [of which the bankruptcy court is a unit] in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.

Property interests of other entities are not within the exclusive jurisdiction of the bankruptcy court under § 1334(e).

Second, a proceeding to place other entities' interests in property (in which the debtor also has an interest) in the jurisdiction of the court requires some type of notice to those other entities. So before the court will enter an in rem order binding other parties who have an interest in the property, an adversary proceeding will be necessary.

However, the court does not believe that an adversary proceeding is necessary to enter an order which precludes the automatic stay in any future case from being effective with respect to the debtor's interest in the property, whether that interest be held by the debtor in the future or by some other person. However, if the debtor were to cure the existing defaults (and any further defaults arising after entry of this order and before the cure) then the automatic stay in such future case would be effective.

An order follows.

Dated: April 3, 2000

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S. Martin Teel, Jr.  
United States Bankruptcy Judge

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