

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

In re:

ELEANOR WATSON,

DEBTOR.

CASE NO. 06-14407-BKC-JKO

CHAPTER 13

**ORDER TO SHOW CAUSE WHY (1) THIS CASE SHOULD NOT BE
DISMISSED, (2) PROSPECTIVE *IN REM* STAY RELIEF SHOULD
NOT BE GRANTED, AND (3) THE DEBTOR'S PETITION HEREIN
DOES NOT VIOLATE BANKRUPTCY RULE 9011(b) SUCH THAT
SANCTIONS SHOULD BE IMPOSED UPON THE DEBTOR AND HER COUNSEL**

This case is the fourth chapter 13 filing in less than two years by this Debtor or her spouse, James Edward Watson. Each of the previous cases was filed to thwart a foreclosure sale of the Watsons' residence; each was dismissed within a matter of weeks because the Debtor(s) failed to make pre-confirmation chapter 13 plan payments and, in one case, failed to appear at the scheduled creditors' meeting. In this case, the Debtor has failed to file her schedules and statement of financial affairs, her chapter 13 plan, her payment advices, and her statement of monthly income within the extended deadline fixed by prior Court order [CP 15]. Meanwhile, the holder of the Debtor's mortgage has filed

a motion for stay relief [CP 18] which suggests bad faith on the Debtor's part and seeks present and prospective *in rem* stay relief.

The Debtor and her husband have filed the following prior cases:

- Case No. 04-27251-BKC-RBR (joint), filed December 4, 2004, and dismissed February 15, 2005, for failure to make pre-confirmation plan payments;
- Case No. 05-22732-BKC-RBR (joint), filed May 6, 2005, and dismissed July 12, 2005, for failure to appear and failure to make pre-confirmation plan payments;
- Case No. 06-11539-BKC-JKO (James Edward Watson only), filed April 26, 2006, and dismissed July 14, 2006, for failure to make pre-confirmation plan payments.

Each of these cases, and this case, were filed a few days prior to the scheduled sale of the Debtor's and her husband's residence in the state court foreclosure action brought by JP Morgan Chase Bank, as Trustee for certificate holders of Bear Stearns Asset Backed Securities, Inc., Asset-Backed Certificates, Series 2003-1 (the "Secured Creditor"). The Secured Creditor suggests that the prior filings give rise to a strong negative inference under the Eleventh Circuit's "totality of the circumstances" approach to chapter 13 confirmation issues arising under § 1325(a)(3), *In re Kitchens*, 702 F.2d 885 (11th Cir. 1983), such that the Debtor here could never satisfy the good faith requirement for confirmation of a chapter 13 plan.

One significant issue before the Court is whether the Debtor's and her occasional co-debtor husband's conduct over the last two years has been "part of a scheme to delay, hinder, and defraud creditors" through their multiple bankruptcy filings within the meaning of 11 U.S.C. § 362(d)(4)(B), such that prospective *in rem* stay relief should be granted. One of the effects of such a finding would

be that no automatic stay would come into effect with respect to the property at issue upon any subsequent bankruptcy filing made during the two years following the entry of that order.

On the face of it, the Debtor's pattern of conduct suggests that the Debtor is not sincere in attempting to restructure her debts under chapter 13, and that she (and her husband) lack either the ability or the intention to perform the duties imposed by the Bankruptcy Code. In order to give the Debtor and the Secured Creditor a full opportunity to present these issues, the Court will conduct a **preliminary (non-evidentiary) hearing** on the motion for stay relief [CP 18] and an **evidentiary hearing** at which the Debtor is directed to show cause why this case should not be dismissed with prejudice and why prospective *in rem* stay relief should not be granted.

In addition, the Court notes that in each of the four chapter 13 filings by the Debtor and/or her spouse, the Debtor(s) in each case was represented by the same counsel, Robert J. Bigge, Jr., Esquire. Mr. Bigge's disclosure of compensation filed in three of the cases¹ discloses the following:

Case No.	Total fees + costs	Fees + costs paid pre-filing
05-22732 (joint)	\$2,500 + \$150	\$300 + \$150
05-27251 (James only)	\$3,500 + \$150	\$1,426 + \$150
06-14407 (Eleanor only)	\$3,500 + \$150	\$2,000 + \$150

Each of the prior cases aborted early (and this one appears to be headed in the same direction), and it is unclear what real services Mr. Bigge provided, other than blocking each of the then-scheduled foreclosure sales. The Court will accordingly require Mr. Bigge to advise the Court as to the total fees and costs paid to him in each of these four cases and to show cause why the fees charged and collected were appropriate for the services provided and why some portion of the fees paid should not be

¹The file for Case No. 04-27251 is in court records storage and currently unavailable.

disgorged. In the event that some fees are directed to be disgorged, the Court will consider the arguments of the parties as to the person(s) to whom such disgorged fees should be paid.

The pattern of filings by the Debtor also raises the very serious question as to whether the petition in this case was “presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation” within the meaning of Federal Rule of Bankruptcy Procedure 9011(b)(1). The Debtor’s (and her husband’s) pattern of serial chapter 13 filings which promptly abort suggests that the filing here does violate the inherent representation of good faith made under Rule 9011(b)(1), and that Mr. Bigge’s and the Debtor’s signatures constitute false representations to the Court. Accordingly, pursuant to Rule 9011(c)(1)(B), the Court will direct Mr. Bigge and the Debtor to show cause why they have not violated Rule 9011(b).

Based upon the foregoing, it is ORDERED:

1. The Court will conduct a preliminary non-evidentiary hearing on the Secured Creditor’s motion for stay relief [CP 18] on **Monday, November 6, 2006 at 1:30 p.m.** at the U.S. Bankruptcy Court, Courtroom 308, 299 E. Broward Blvd., Ft. Lauderdale, FL 33301 (the “Hearing”).

2. At the Hearing, the Debtor shall show cause why this case should not be dismissed with prejudice. The parties may present such evidence on this point as they deem appropriate.

3. At the Hearing, the Debtor shall show cause why prospective *in rem* stay relief should not be granted under 11 U.S.C. § 362(d)(4). The parties may present such evidence on this point as they deem appropriate.

4. At the Hearing, Mr. Bigge shall account for all fees and costs paid to him in connection with the Debtor’s and her husband’s four chapter 13 cases, and shall show cause why some portion of

those fees should not be disgorged. Parties in interest are invited to advise the Court as to the person(s) to whom any disgorged fees should be paid.

5. At the Hearing, **the Debtor and Mr. Bigge shall each appear in person** and show cause why the Debtor's petition does not constitute a violation of the provisions of Federal Rule of Bankruptcy Procedure 9011(b)(1) such that sanctions should be imposed pursuant to Rule 9011(c) on the Debtor, Mr. Bigge, or both. The parties may present such evidence on this point as they deem appropriate. Parties in interest are invited to advise the Court as to the proper amount of such sanctions should the Court conclude that sanctions are appropriate.

6. The Court requests that the chapter 13 trustee and counsel for the United States Trustee attend the Hearing and advise the Court of their positions with respect to the matters set forth herein.

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The Clerk shall provide copies to:

Robert J. Bigge, Jr., Esquire
Frederic J. DiSpigna, Esquire
Robin R. Weiner, Chapter 13 Trustee
US Trustee
All parties in interest