



ORDERED in the Southern District of Florida on March 7, 2012.


Raymond B. Ray, Judge
United States Bankruptcy Court

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

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Broward Division

In re:

GERALD SPATE,

Debtor(s).

Case No. 12-11632-BKC-RBR

Chapter 13

**ORDER GRANTING ORDER TO SHOW CAUSE, DISMISSING CASE WITH PREJUDICE
FOR TWO YEARS, AND GRANTING IN REM STAY RELIEF**

THIS MATTER came before the Court for a hearing on March 7, 2012, on this Court's Order to Show Cause [DE 15] and the Motion of Creditor Black Hawk Estates in Plantation Acres, Motion to Dismiss and for Stay Relief [DE 12]. The Debtor failed to appear at the hearing, therefore the facts contained in the court file and in the Creditor's Motion are uncontested. The Court has reviewed the case file in the instant case, along with a review of the case files in the following cases:

Gerald J. Spate, Case No. 97-16696-AJC, a bare bones chapter 13 petition filed on August 13, 1997, dismissed on September 5, 1997 for failure to file all schedules and a chapter 13 plan

Gerald J. Spate, Case No. 98-12255-RAM, a bare bones chapter 13 bankruptcy petition was filed on March 20, 1998, application to pay filing fees in installments was granted, case was dismissed on April 14, 1998 for failure to file all schedules and chapter 13 plan

Gerald Spate, Case No. 99-40927-RAM, a bare bones chapter 13 bankruptcy petition was filed on November 2, 1999, application to pay filing fee in installments was granted, schedules filed but case dismissed on January 6, 2000 for failure to make required payments and appear at the 341 meeting

Gerald J. Spate, Case No. 03-28280-PGH, a bare bones chapter 13 bankruptcy petition was filed on November 12, 2003, application to pay filing fee in installments was granted, two extensions of time to file documents were granted, all documents filed, but case dismissed on March 15, 2004 for failure to appear at the 341 meeting and make required payments

Gerald J. Spate, Case No. 04-26043-PGH, located at 100 NW 30 Avenue, Pompano Beach, FL 33064^{1 2} filed a chapter 13 bare bones petition on October 5, 2004, order granting the debtor's application to pay filing fees in installments was granted, all schedules and a chapter 13 plan were filed, case was dismissed on December 15, 2004 for failure to make required payments and failure to appear at the 341 meeting

Gerald Spate, Case No. 10-41265-JKO, located at 3316 SW 173 Way, Miramar, Florida 33029,³ filed bare bones chapter 13 bankruptcy petition on October 14, 2010, was granted leave to pay filing fee in installments, order dismissing case for failure to file all documents entered on November 3, 2010

In the instant case, the Debtor filed a bare bones chapter 13 bankruptcy petition on January 23, 2012 [DE 1]. The Debtor listed his address as: 1231 NW 115th Avenue, Plantation, Florida 33323. The Debtor failed to list his prior bankruptcy cases despite being asked, under oath, to provide "all prior bankruptcy cases filed within last 8 years" on page two of the petition. Creditor Black Hawk Estates in Plantation Acres Community Association, filed a Motion to Dismiss or alternatively for Stay Relief [DE 12] detailing the history of Gerald Spate and his now ex-spouse, Monique Spate.

¹ **James Spate, Case No. 04-25275-RBR**, was also located at 100 NW 30 Avenue, Pompano Beach, FL 33064 filed a chapter 13 bare bones petition on August 23, 2004, application to pay filing fees in installments was granted, and the case was dismissed on September 15, 2004 for failure to file schedules and a chapter 13 plan.

² **Javon Spate, Case No. 05-20387-RBR**, was also located at 100 NW 30 Avenue, Pompano Beach, FL 33064 filed a chapter 13 bare bones petition on January 26, 2005, order granting application to pay filing fee in installments entered, and case dismissed on February 15, 2005 for failure to file all required documents.

³ **Monique K. Spate, 12-13875-RBR**, located just next door to Gerald, at 3306 SW 173 Way, Miramar, Florida 33029, filed a bare bones chapter 13 bankruptcy petition on February 17, 2012 and has already requested a to pay filing fees in installments. Monique Spate also filed a bare bones chapter 13 bankruptcy petition on January 10, 2011, was granted leave to pay the filing fee in installments, filed schedules and a plan listing Steven and Lauren Gerson as secured creditors, but was ultimately dismissed on April 1, 2011 for failure to appear at the 341 meeting and failure to make required payments in Case No. 11-10470-JKO.

Pursuant to 11 U.S.C. § 362(d)(4)(B), multiple bankruptcy filings affecting a parcel of real property constitute cause to grant relief from the automatic stay if the court finds that the bankruptcy filings are part of a scheme to delay, hinder, and defraud creditors. Relief from stay under § 362(d)(4)(B) is binding in any other case which is filed within two years of the order granting relief from stay, such that the filing of the subsequent petition does not impose the automatic stay with respect to the subject property. Pursuant to 11 U.S.C. § 105(a), the court may *sua sponte* grant relief under § 362(d)(4)(B) to prevent abuse of process.

Many of these multiple bankruptcy filings affect real property located at: 1231 NW 115th Avenue, Plantation, Florida 33323. Therefore, these multiple bankruptcy filings may be part of a scheme to delay, hinder, and defraud creditors such that *sua sponte* two-year prospective *in rem* stay relief may be appropriate under 11 U.S.C. §§ 105(a) and 362(d)(4)(B).

Accordingly, it is

ORDERED as follows.

1. This Court's Order to Show Cause [DE 15] is **GRANTED** for the reasons stated in this Court's Order and on the record, and contained in Creditor's Motion to Dismiss and for Stay Relief [DE 12].
2. Creditor Black Hawk Estates in Plantation Acres is granted **two (2) year *in rem* stay relief** to proceed against real property located at: 1231 NW 115th Avenue, Plantation, Florida 33323.
3. This case is **dismissed with prejudice for two (2) years** from the date of this order. This case is also dismissed with prejudice for two (2) years to Gerald Spate's filing of any new bankruptcy petitions under any section of the bankruptcy code.

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Copies to:
All parties
Damaris D. Rosich-Schwartz