

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

IN RE:

RONALD LEE FRAZIER,

Debtor.

---

CASE NO. 01-35128-BKC-SHF  
CHAPTER 13 Proceeding

**ORDER DENYING MOTION TO RECONSIDER  
AND SHORTEN PREJUDICE TIME**

THIS CAUSE came on to be considered upon the Debtor's Emergency Motion to Reconsider and Shorten Prejudice Time, filed *pro se* on October 3, 2001. The Court, having carefully considered the motion and for the reasons set forth below, **denies** the motion.

**I. The Debtor's Bankruptcy History**

Mr. Frazier has acquired substantial experience in filing bankruptcy petitions with this Court over the course of the last three years. He has filed four Chapter 13 petitions and one Chapter 7 petition. Additionally, his wife, Terry B. Frazier, filed her own Chapter 13 petition which was converted to a Chapter 7.

**First Bankruptcy Case**

Mr. Frazier filed his first Chapter 13 petition May 19, 1998, Case Number 98-32677-BKC-SHF. This case was commenced with the filing of a joint chapter 13 petition with the Debtor's wife, Terry B. Frazier. The case was subsequently split when Terry B. Frazier sought to proceed under chapter 7, and her case thereafter was administered as a separate case under chapter 7, designated Case Number 98-35926-BKC-SHF. Mrs. Frazier received a chapter 7 discharge in her split case on April 29, 1999. Mr. Frazier remained a Debtor in Case Number 98-32677-BKC-SHF, and that case

ultimately was dismissed on November 4, 1998, with prejudice to the filing of another bankruptcy case within the ensuing 180 days.

### **Second Bankruptcy Case**

Mr. Frazier waited 184 days to file his second Chapter 13 petition, which he filed on May 7, 1999, Case Number 99-32246-BKC-SHF. The required schedules and chapter 13 plan were not submitted with the petition. Rather, the Court granted Mr. Frazier **two** extensions of time to submit the required schedules and Chapter 13 plan. Although Mr. Frazier did finally submitted the required documents, he failed to appear at the Section 341 Meeting of Creditors, and the case was dismissed on September 27, 1999 with prejudice to Mr. Frazier filing any subsequent voluntary bankruptcy proceeding for six months.

At this point, the Fraziers had enjoyed the protection afforded debtors, by way of the automatic stay imposed under 11 U.S.C. § 362(a), for seventeen months, from May 19, 1998 to September 27, 1999 (less the six days between Mrs. Frazier's discharge and Mr. Frazier's filing of his second Chapter 13 petition). After the dismissal, Mr. Frazier filed a motion to reopen this second case. In the Order Denying Motion to Reopen Chapter 13 Case, the Court found no justification to grant this request. The Court noted that, during the period prior to the filing of the Motion to Reopen Chapter 13 Case, Mr. Frazier had two opportunities, in chapter 13 cases, to propose confirmable chapter 13 plans, but was unable to do so. The Court suspected that Mr. Frazier was simply attempting to buy more time to forestall his creditors by seeking to reopen his second chapter 13 case.

### **Third Bankruptcy Case**

The six month prejudice period provided in this Court's order dismissing Case Number 99-32246-BKC-SHF expired March 28, 2000. Mr. Frazier filed his third Chapter 13 petition on March 31, 2001, Case Number 00-31417-BKC-SHF. After several hearings and two revised chapter 13

plans, Mr. Frazier's Second Amended Chapter 13 Plan was confirmed on October 24, 2000. However, Mr. Frazier failed to remain current under his confirmed chapter 13 plan, and the case was dismissed on January 26, 2001, again with prejudice to Mr. Frazier's filing any voluntary bankruptcy proceeding for a period of six months.

#### **Fourth Bankruptcy Case**

Mr. Frazier filed his fourth bankruptcy petition, under Chapter 7, Case Number 01-32730-BKC-SHF, on May 22, 2001<sup>1</sup>. This petition was not accompanied by the required service matrix or filing fee. The Court allowed Mr. Frazier to pay the filing fee in installments. Additionally, the Court gave Mr. Frazier until May 25, 2001 to file the required service matrix, which Mr. Frazier failed to do. Therefore, the case was dismissed on June 13, 2001.

Mr. Frazier moved for reconsideration of the dismissal order. The Court granted the motion, noting that Mr. Frazier's failure to file the service matrix was due to excusable neglect. However, the case subsequently was dismissed because Mr. Frazier failed to pay the second filing fee installment.

In this case, the Court gave Mr. Frazier numerous opportunities. Mr. Frazier was granted additional time to file his mailing matrix. The Court also allowed Mr. Frazier to pay the filing fee in installments. However, Mr. Frazier squandered this opportunity and failed to pay the second fee installment. On August 7, 2001, the Court dismissed this case with prejudice to Mr. Frazier's filing of any bankruptcy petition within 180 days.

---

<sup>1</sup>This fourth case should have been dismissed immediately upon filing, since it was filed within the six-month prejudice period provided in the January 26, 2001 dismissal order in Case Number 00-31417-BKC-SHF.

## **The Instant Bankruptcy Case**

Mr. Frazier filed the instant bankruptcy case under Chapter 13 on September 28, 2001 in violation of a prior order by the Court. The prior dismissal order, entered in Case Number 01-32730-BKC-SHF, provides that “[t]his case is dismissed with prejudice to the filing of **any** bankruptcy case . . . by the above-named debtor(s) [Ronald Lee Frazier] earlier than 180 days from entry of this order.” [emphasis added.] Despite that clear restriction, Mr. Frazier filed his fourth Chapter 13 and fifth Bankruptcy petition on September 28, 2001, a mere 52 days after the Court’s prior dismissal order.

Mr. Frazier contends in the motion under consideration that he did not know that the filing of a prior chapter 7 case would preclude the filing of a subsequent chapter 13 case. The Court’s order entered August 7, 2001 entered in Case Number 01-32730-BKC-SHF is clear that **no** bankruptcy case could be filed within 180 days of the entry of the order. Further, in addition to the instant Chapter 13 filing, Mr. Frazier has filed three Chapter 13 petitions and one Chapter 7 petition in less than four years. Mr. Frazier’s pattern of filing successive bankruptcy petitions over the past four years illustrates his familiarity with general bankruptcy procedure, and his understanding of how best to use bankruptcy filings to frustrate legitimate collection efforts of his creditors.

## **II. Discussion**

Once again, Mr. Frazier wishes to avail himself of the protections afforded under the Bankruptcy Code. In each of Mr. Frazier’s bankruptcy cases, the Court has given him many second and third chances to file required documents, to pay filing fees, and to make payments to the Chapter 13 Trustee.

Throughout Mr. Frazier's many bankruptcy cases, his creditors have been required to incur legal fees and costs to protect their respective interests. Several secured creditors have filed motions for relief from the automatic stay to proceed *in rem* against property of the Debtor or for adequate protection. It is true that *In re Saylor*, 869 F.2d 1434 (11<sup>th</sup> Cir. 1989), approved a so called *Chapter 20* - a Chapter 7 discharge followed by a Chapter 13 filing. However, by filing the instant case, the Debtor seeks a measure of relief not contemplated by *In re Saylor*. Further, due to Mr. Frazier's serial filings, his creditors have been required to file the same motions in several bankruptcy cases.

Mr. Frazier may not be consciously employing the automatic stay to frustrate the efforts of his creditors. However, the effect of his serial filings is to perpetuate the automatic stay to protect his property. As stated by the court in *In re Jackson*, 91 B.R. 473, 475 (Bankr. N.D.Ill. 1988), "Good faith is not synonymous with honesty and bad faith is not synonymous with dishonesty. But if the good faith requirement of Section 1322 means anything, it means that the proposed plan cannot be a device to avoid the limitations imposed by the Bankruptcy Code itself." The Court finds that Mr. Frazier has used the automatic stay in conjunction with serial filings of Chapter 13 petitions to frustrate the legitimate collection efforts of secured creditors in perpetuity, which contradicts the limitations imposed by the Bankruptcy Code and various orders by the Court granting secured creditors relief from the automatic stay. Even if Mr. Frazier in good faith could propose a confirmable Chapter 13 plan, that would not cure the bad faith evidenced by his previous serial petitions. *See Phoenix Piccadilly, Ltd. v. Life Insurance Co. of Virginia (In re Phoenix Piccadilly, Ltd.)* 849 F.2d 1393, 1395 (11<sup>th</sup> Cir. 1988) (case under Chapter 11 dismissed based on lack of good faith in filing petition even though potential for successful reorganization); *In re Janet D. Steely*, 243 B.R. 421, 438

(Bankr. N.D. AL 1999) (held that Chapter 13 petition filed in bad faith and debtor could not later cure such bad faith filing).

Bankruptcy protection is reserved for the “honest, but unfortunate debtor” and is not to be used as a vehicle by debtors to avoid or delay “the legitimate efforts of creditors to enforce their rights.” *In re Baird*, 234 B.R. 546, 551 & 553 (Bankr. M.D. Fla. 1999). In the instant case, the Debtor has not made payments to secured creditors, specifically the mortgage holders on homes owned by Mr. Frazier and his wife, since April 1998. The Court will not abet the Debtor in his continuing efforts to thwart the efforts of his creditors. Accordingly, it is hereby

**ORDERED** that -

1. Ronald Lee Frazier’s Motion to Reconsider and Shorten Prejudice Time is **DENIED**.
2. This denial is with prejudice to Ronald Lee Frazier filing **ANY** bankruptcy proceeding for a period of one (1) year from the entry of this order.
3. This denial is also with prejudice to Terry B. Frazier, the Debtor’s wife, filing **ANY** bankruptcy proceeding for a period of one (1) year from the entry of this order.

**ORDERED** in the Southern District of Florida this 24<sup>th</sup> day of October, 2001

**STEVEN H. FRIEDMAN**  
**U.S. BANKRUPTCY JUDGE**