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<i>In re:</i>	:	
	:	Chapter 13
Christopher Mongiello,	:	Case No. 23-22732
	:	
<i>Debtor</i>	:	
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MEMORANDUM DECISION DISMISSING DEBTOR’S CASE

A P P E A R A N C E S :

Debtor, Pro Se

Standing Chapter 13 Trustee
399 Knollwood Road, Suite 102
White Plains, NY 10603
By: Thomas Frost

Tiffany Brook Eastman
REICH REICH & REICH, P.C.
235 Main Street, Suite 450
White Plains, NY 10601
By: Jeffrey A. Reich

CECELIA G. MORRIS
UNITED STATES BANKRUPTCY JUDGE

Pending before the Court is the Standing Chapter 13 Trustee’s (the “Trustee”) Motion to Dismiss. The standing chapter 13 Trustee (the “Trustee”) asserts that Debtor has failed to provide basic information and such deficiencies impede the Trustee’s ability to administer the case. Tiffany Brook Eastman (the “Creditor”), joins the Trustee’s motion to dismiss stating that Debtor has failed to meet the basic obligations of a Chapter 13 debtor, is using the bankruptcy court to relitigate state court issues, and to pursue a personal vendetta against Ms. Eastman. For the reasons set forth below, the case is dismissed under §1307(c) for unreasonable delay prejudicial to creditors for lack of good faith.

Jurisdiction

This Court has jurisdiction over this contested matter under 28 U.S.C. § 157, 28 U.S.C. § 1334 and the Amended Standing Order of Reference signed by Chief Judge Loretta A. Preska dated January 31, 2012. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and one over which this Court has authority to enter a final judgment.

Background

Christopher Mongiello (“Debtor”) filed a Chapter 13 petition with this Court on October 5, 2023 by and through his counsel, Todd Cushner. Voluntary Pet., ECF No. 1. On November 14, 2023, Tiffany Brook Eastman, Debtor’s ex-wife and creditor, filed a motion to lift stay with respect to 25 Leroy Place, Penthouse #7, New Rochelle, New York 10805 (the “Property”). Mot. Relief, ECF No. 14. Ms. Eastman and Debtor were married in 2005 and divorced in 2010. Eastman Decl. ¶ 1, ECF No. 14. The Property was their marital home. The stipulation entered into by Debtor and Ms. Eastman at the time of their divorce (“First Stipulation”) provided that Debtor would maintain occupancy of the condo and would be given the opportunity to procure a loan modification or refinancing of the loan that would put the mortgage in Debtor’s sole name. *Id.* ¶ 2. The First Stipulation provided that if Debtor were to fail to procure such a modification, the Property would be sold and the net profit or loss would be split equally. *Id.*

In 2013 Ms. Eastman discovered that Debtor had stopped paying the mortgage on the Property and in 2014 discovered that her credit score had dropped to 582 as a result of the non-payment of the mortgage. *Id.* ¶ 5–6. In 2016 Debtor informed Ms. Eastman that her name had been removed from the mortgage. *Id.* ¶ 7. In 2020 Debtor discovered that she had not been removed from the mortgage and that Debtor had not made any payments since 2019. *Id.* ¶ 8. In December of 2021, Ms. Eastman filed an order to show cause seeking an order holding Debtor in contempt for his failure to abide by the terms of the First Stipulation. *Id.* ¶ 10. The motion was

resolved at a court conference where Debtor agreed to sell the condo. *Id.* The Debtor shortly thereafter reneged on the agreement. *Id.*

Ms. Eastman filed a second order to show cause in April of 2022 seeking an order directing the sale of the condo and an order appointing her as receiver and attorney-in-fact for the Debtor with respect to the sale. *Id.* ¶ 11. The state court issued an order holding the Debtor in contempt for violating the provisions of the First Stipulation and appointing Ms. Eastman temporary receiver with limited power-of-attorney to effectuate the sale. *Id.* ¶ 12. Debtor refused to cooperate with the sale.

Ms. Eastman filed another motion in state court seeking an order granting Ms. Eastman all powers necessary to carry out the sale in September of 2022. *Id.* ¶ 15. The state Court issued an order directing the Debtor to comply with the sale. *Id.* ¶ 14. Debtor's refusal to cooperate continued. *Id.* ¶ 15. In March of 2023 Ms. Eastman filed another motion in state court seeking to enforce the prior orders. The Debtor and Ms. Eastman reached a settlement on that motion (the "Settlement"), that was so ordered by the state court, providing that (a) Ms. Eastman's temporary receivership of the Condo would be suspended, but not vacated or terminated, for a period of 180 days to allow the Debtor to make a final attempt to refinance or pay off both mortgages on the Condo; (b) in the event the mortgages were not refinanced or paid off by 5:00 pm on the 180th day, the receivership would automatically be reinstated and Ms. Eastman would be entitled to market the Condo for sale and sell it without any further objection or interference of the Debtor; (c) that in the event the Debtor failed to refinance by 5:00 pm on the 180th day, he shall be required to vacate the Condo and leave it broom clean on or before 5:00 pm on the 181st day; and (d) if the Debtor failed to vacate by 5:00 pm on the 181st day, then Ms. Eastman would have the right to have him removed by law enforcement without the need for motion practice or

further court order. *Id.* Mot Relief, Ex. D, ECF No. 14. In July 2023 Debtor sought to have the Settlement vacated and filed for Chapter 13 relief in this Court on the “181st day” referred to in the Settlement.

This Court entered an order granting Ms. Eastman relief from the automatic stay on January 19, 2024 (the “January 19 Order”). Order, ECF No. 43. On January 22, Debtor filed a motion to vacate the January 19 Order, by and through his attorney Mr. Cushner. Mot., ECF No. 44. The next day, Debtor, on his own volition and not through his attorney, filed a notice of appeal to the district court concerning the January 19 Order. ECF No. 47. Along with the appeal, the Debtor filed a motion for stay pending appeal in this Court. ECF No. 48. On February 15, 2024 this Court entered an order denying the motion for stay pending appeal. Order, ECF No. 61. Shortly thereafter, the district court entered an order denying the stay pending appeal, stating “Appellant’s arguments that his appeal has merit are little more than *ad hominem* attacks on Appellee and New York state courts.” Order, *Mongiello v. Tiffany Brook Eastman (In re Mongiello)*, 24-cv-00694 (CS) (Feb. 22, 2024). On March 1, 2024 the Debtor, on his own volition and not through his attorney, filed an emergency motion to reconsider the motion for stay pending appeal. Mot., ECF No. 67. The same day, the Court entered an order denying the emergency motion to reconsider the motion for stay pending appeal. Order, ECF No. 68.

On February 7, shortly after learning of the appeal to the district court and the emergency motion to reconsider the motion for stay pending appeal, Debtor’s attorney filed a motion to withdraw as attorney. Mot. to Withdraw, ECF No. 55. Months earlier, on December 18, 2023, the Trustee filed a motion to dismiss Debtor’s case. Mot. to Dismiss, ECF No. 28. Between March 11 and March 13, 2024, Debtor filed a request for admissions, interrogatories, and

demand for production of documents directed at Ms. Eastman, an objection to Ms. Eastman's claim, and a motion for contempt against Ms. Eastman.

On March 12, 2024, Ms. Eastman filed opposition to Debtor's motion to vacate the January 19 Order stating that Debtor has, to date, failed to amend schedules I/J of his petition to reflect the taxes he pays on his income and the \$1,900.00 per month he pays on account of his parents home equity loan. The opposition joins in the Trustee's motion to dismiss stating that Debtor has attempted to use this Court to relitigate state court issues and pursue his personal vendetta against Ms. Eastman. Statement, ECF No. 73.

On March 13, 2024 the Court held a hearing during which the motion to vacate the January 19 Order, the motion to withdraw as attorney, and the motion to dismiss.

Discussion

Dismissal for Cause

Section 1307 of the bankruptcy code provides that, on "request of a party in interest . . . the court may dismiss a case [under chapter 13] for cause" 11 U.S.C. § 1307. The statute provides an enumerated list of occurrences which constitute sufficient cause, including "unreasonable delay by the debtor that is prejudicial to creditors", but that list is not exhaustive. U.S.C. 1307(c)(1). *In re Grasso*, 497 B.R. 448, 455 (Bankr. E.D. Pa. 2013). Most Circuits have held that a chapter 13 case can be dismissed if it is not filed in good faith. *Alt v. United States* (*In re Alt*), 305 F.3d 413 (6th Cir. 2002); *In re Lilley*, 91 F.3d 491 (3d. Cir. 1996); *In re Eisen*, 14 F.3d 469 (9th Cir. 1994); *In re Love*, 957 F.2d 1350 (7th Cir. 1992); *Cabral v. Shamban* (*In re Cabral*), 285 B.R. 563 (B.A.P. 1st Cir. 2002).

To determine whether the filings were made in bad faith, the Court must review the totality of the circumstances. *In re Eatman*, 182 B.R. 389, 392 (Bankr. S.D.N.Y 1995).

Dismissal based on lack of good faith is made only in the most egregious cases entailing concealed or misrepresented assets and income, excessive expenditures, and lavish lifestyles. *In re Lin*, 499 B.R. 430, 435 (Bankr. S.D.N.Y. 2013). The moving party bears the burden of proof to show lack of good faith. *In re Love*, 957 F.2d 1350, 1355 (7th Cir. 1992).

The determination of bad faith is highly factual and sweeps broadly. *Lin*, 199 B.R. at 436 (citing *C-TC 9th Ave. P'ship. v. Norton Co. (In re C-TC 9th Ave. P'ship)*, 113 F.3d 1304, 1312 (2d Cir. 1997)). Courts look to a variety of factors to determine whether there is a lack of good faith, most commonly focusing on how accurate and forthcoming the debtor was with the Court in representing facts concerning debts, income, expenses. *See, e.g., Lin*, 499 B.R. at 436 (citing *In re Klevorn*, 181 B.R. 8, 11 (Bankr. N.D.N.Y. 1995)); *In re Prisco*, No. 1:11-CV-00474 (LEK), 2012 U.S. Dist. LEXIS 136079, at *11 (N.D.N.Y. Sep. 24, 2012); *In re Ajunwa*, No. 11-11363 (ALG), 2012 Bankr. LEXIS 4096, at *11 (Bankr. S.D.N.Y. Sep. 4, 2012); *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 917 (9th Cir. B.A.P. 2011). Courts also look to whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the code, or otherwise filed his petition or plan in an inequitable manner, debtor's history of filings and dismissals, whether the debtor intended to defeat a state court litigation, and whether the debtor's bankruptcy is a two-party dispute. *Ellsworth*, 455 B.R. at 917; *Lin*, 499 B.R. at 437.

Here, as confirmed by the Trustee at the hearing held on March 13, 2024, Debtor has failed to provide an updated schedule I/J that comports with the 341 meeting testimony taken by the Trustee on November 17, 2023. This includes the taxes Debtor pays on his freelance business income and payments Debtor is making towards his parent's home equity line of credit. Debtor's schedules A/B reflect sums allegedly owed to Debtor by Ms. Eastman pursuant to a state court judgment proceeding that have not been clarified or explained. Debtor's failure to file

the appropriate documentation has impeded the Trustee from determining what Debtor's household budget might be and made it impossible for him to administer the case. This case was filed on October 5, 2023, and now, 160 days post-petition, Debtor's financial picture is still not clear. This significant delay is unquestionably prejudicial to creditors.

Despite the serious deficiencies and misrepresentations in the documentation provided to the Court and to the Trustee, Debtor has used the Bankruptcy Court to aggressively pursue relief against Ms. Eastman for which there is no basis. Despite the several state court orders and stipulations Debtor has entered into with Ms. Eastman that show conclusively that no loan modification was entered into to remove Ms. Eastman from the mortgage, Debtor has continuously represented to this Court that a loan modification was entered into in 2014. Without the assistance or knowledge of his counsel, Debtor has inundated the Court with motions requesting relief that this Court has no power to grant, including requests to terminate Ms. Eastman's receivership and/or force a sale of the property to which she has not consented. All of these motions have been filed in attempt to defeat the state court litigation. Debtor stated at the hearing on March 13, 2024 that he requested discovery (Request, ECF No. 72) in his bankruptcy case because such a request was unsuccessful in state court. This Court, by its January 19 Order, ordered Debtor and Ms. Eastman back to state court. Debtor has not been forthcoming with his representations concerning debts, income, and expenses, and has continuously misrepresented facts in his petition and motions.

Conclusion

The case is dismissed under § 1307(c) and for lack of good faith. The Trustee shall submit an order consistent with this opinion.

Dated: March 13, 2024
Poughkeepsie, New York



/s/ Cecelia G. Morris

Hon. Cecelia G. Morris
U.S. Bankruptcy Judge