

1-28-04

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CARL A. LAWSON,

Debtor.

CASE NO. 03-81011-PWB

CHAPTER 13

UNITED RESIDENTIAL MANAGEMENT,
d/b/a WALDEN BROOK APARTMENTS,

Movant,

vs.

CARL A. LAWSON, Debtor and MARY IDA
TOWNSON, Chapter 13 Trustee,

Respondents.

IN RE:

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CHAPTER 13

UNITED RESIDENTIAL MANAGEMENT,
d/b/a WALDEN BROOK APARTMENTS,

Movant,

vs.

CARL A. LAWSON, Debtor and MARY IDA
TOWNSON, Chapter 13 Trustee,

Respondents.

**ORDER LIFTING AND ANNULLING STAYS, DISMISSING
CASE NO. 03-82997, and ESTABLISHING DEADLINE
FOR SEEKING SANCTIONS OTHER RELIEF IN
CONNECTION WITH DISMISSAL OF CASE NO. 03-81011**

Carl A. Lawson ("Debtor") has filed two petitions under chapter 13 of the Bankruptcy Code. This Order deals with both of them and with the motions for relief from stay that United Residential Management, d/b/a Walden Brook Apartments ("Landlord") filed in each one.

Case No. 03-81011

Debtor filed the first chapter 13 case, No. 03-81011, on October 14, 2003. The § 341(a) meeting of creditors was scheduled for November 14, 2003, and the hearing on confirmation was scheduled for January 14, 2004.

Debtor did not attend the § 341(a) meeting of creditors, has failed to file a chapter 13 plan as required by 11 U.S.C. § 1321, and has failed to file schedules and statements as required by FED. R. BANKR. P. 1007. The Chapter 13 Trustee has moved to dismiss this case. See Objection to Confirmation of Plan filed by the Chapter 13 Trustee on November 18, 2003; Court Docket in Case No. 03-81101.

On November 19, 2003, Landlord filed a Motion for Relief from Stay in Case No. 03-81101, requesting that the stay be lifted to permit Landlord to proceed with dispossessory proceedings to recover possession of 9309 Waldenbrook Drive, Lithonia, Georgia. A hearing was scheduled for 10 o'clock a.m. on December 3, 2003 on the same calendar with numerous other matters; counsel for the Landlord and the Debtor appeared at the hearing and the Court heard the motion that day. Although the Debtor's failure to attend the § 341(a) meeting and his failure to file his schedules, statements, and a chapter 13 plan by the time of that hearing would have justified dismissal of the case or immediate lifting of the stay, the Court declined to terminate the stay and gave the Debtor an additional opportunity to obtain relief under chapter

13. At that hearing, the Court conditioned the continuation of the stay on the Debtor making certain payments to Landlord pending a further hearing scheduled for January 14, 2004, in connection with the already scheduled confirmation hearing; directed the Debtor to file his required schedules, statements, and chapter 13 plan by December 12, 2003; and ruled that the automatic stay would be lifted if the Debtor failed to make any of the required payments or failed to timely file his plan and schedules. Debtor filed nothing further in this case and did not appear at the hearing on January 14.

The Debtor's failure to file any of the essential papers required in connection with seeking chapter 13 relief beyond his initial filings demonstrates a lack of good faith intention to prosecute chapter 13 Case No. 03-81011. Obviously, the failure to file a plan or required schedules and statements demonstrates an inability to obtain confirmation of a chapter 13 plan. Debtor's failure to appear at the January 14 hearing further evidences and, indeed, emphasizes his lack of good faith and inability to obtain confirmation of a plan. Failure to obtain confirmation of a plan means that the Debtor has no prospect of assuming his lease with the Landlord; if the lease cannot be assumed, there is no basis for continuing the stay in effect. In these circumstances, cause clearly exists for terminating the automatic stay of 11 U.S.C. § 362(a) as requested by Landlord in Case No. 03-81011.

The foregoing circumstances also establish that Case No. 03-81011 is now ripe for dismissal as requested by the Chapter 13 Trustee. For reasons discussed below, however, the Court will defer dismissal of the case for 30 days in order to give the Landlord, the Chapter 13 Trustee, or any other party in interest the opportunity to seek sanctions or further relief against the Debtor in the case prior to its dismissal.

Case No. 03-82997

At 10:03 a.m. on the morning of December 3, the same day on which the hearing on the Landlord's motion in Case No. 03-81011 was scheduled, the Debtor filed his second chapter 13 case, No. 03-82997. The second case was thus filed by the time the hearing scheduled in the first case for 10:00 a.m. was actually called and heard. The Debtor failed to advise the Court of this second filing at the time of the hearing. This judge discovered the second case when considering the Landlord's proposed orders submitted at the Court's direction in connection with the relief to be granted in the first case. On January 23, 2004, the Landlord filed a motion for relief from stay in the second case. A hearing is scheduled on that motion for February 11, 2004, at 10:00 a.m.

The Debtor filed an application to pay his filing fee in installments in the second case. By Order entered on December 8, 2003, the Court denied this application because Debtor had not paid his filing fees in the first case. The December 8 Order directed Debtor to pay the filing fee within 14 days and ordered that "if the Debtor fails to pay the filing fee in accordance with this order, this case shall stand DISMISSED and the automatic stay shall stand annulled ab initio as of the date of the filing of this case, without further order."

The Debtor did not pay the filing fee in the second case within the time prescribed by the December 8 Order. In accordance with the December 8 Order, therefore, the Court will now expressly order the dismissal of Case No. 03-82997 and expressly annul the automatic stay *ab initio* as of the date of the filing of the second case. The Debtor having had notice of the December 8 Order and sufficient opportunity to comply with it or seek relief from it, no further notice with regard to its enforcement is required. The dismissal of the case and the annulment of the stay based on the December 8 Order makes the Landlord's motion for relief from stay in

Case No. 03-82997 moot.

Sanctions or Further Relief

Because the Debtor failed to pay the filing fee in the second case, the Court need not consider, in the second case, whether the filing of the second case while the first case was pending and immediately before a hearing in the first case constitutes conduct (1) for which the Debtor should be sanctioned under FED. R. BANKR. P. 9011 or 11 U.S.C. § 105(a) or (2) which should result in dismissal with prejudice pursuant to 11 U.S.C. § 109(g) or § 349(a). The dismissal of the second case, however, does not preclude the imposition of sanctions or prejudicial dismissal of the first case on account of the conduct of the Debtor in both cases. Other courts have dealt with filings found to be an abuse of the bankruptcy process by barring a debtor from filing another bankruptcy case for a specified period of time, granting prospective relief from the automatic stay to a creditor with regard to future bankruptcy filings, determining that all or a part of a debtor's obligations to creditors will not be dischargeable in any future bankruptcy cases, and imposing monetary sanctions for attorney's fees and costs. *See, e.g., In re Roeben*, 294 B.R. 840 (Bankr. E.D. Ark. 2003); *In re Lesane*, 2003 WL 22434466 (Bankr. M.D. Ga. 2003); *In re Jones*, 289 B.R. 436 (Bankr. M.D. Ala. 2003); *In re Yimam*, 214 B.R. 463 (Bankr. D. Md. 1997); *In re Fernandez*, 212 B.R. 361 (Bankr. C.D. Cal. 1997), *aff'd on other grounds*, 227 B.R. 174 (B.A.P. 9th Cir. 1998), *aff'd* 208 F.3d 220 (9th Cir. 2000) (Table); *In re Snow*, 201 B.R. 968 (Bankr. C.D. Cal. 1996).

The Landlord, the Chapter 13 Trustee, and any other parties in interest should have the opportunity to seek sanctions or further relief before the Debtor is dismissed from this Bankruptcy Court. Accordingly, the Landlord, the Chapter 13 Trustee, and any other parties in interest shall have 30 days within which to file and serve appropriate pleadings to seek sanctions

or further relief. If such pleadings are timely filed, the Court will schedule a hearing for their consideration. If no pleadings are timely filed, the Court will proceed to enter an order dismissing Case No. 03-81011, without prejudice.

ORDER

Based on, and in accordance with, the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

1. The Landlord's Motion for Relief from Stay in Case No. 03-81011 is hereby **GRANTED**. The automatic stay of 11 U.S.C. § 362(a) is hereby terminated in Case No. 03-81011 so as to permit Landlord to pursue all available state law remedies to obtain possession of the property located at 9309 Waldenbrook Drive, Lithonia, Georgia, including, but not limited to, prosecuting any dispossessory action currently pending or instituting a new dispossessory action in the appropriate state court forum.

2. Case No. 03-82997 is hereby **DISMISSED**, and the automatic stay of 11 U.S.C. § 362(a) imposed in connection with said case is hereby declared to be annulled *ab initio*, effective as of December 3, 2003, the date of filing of Case No. 03-82997.

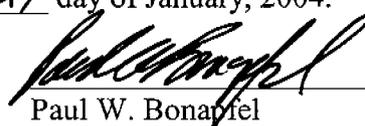
3. The Landlord's Motion for Relief from Stay in Case No. 03-82997 is dismissed, without prejudice, as moot in view of the dismissal of the case and accompanying annulment of the automatic stay arising therein.

4. In Case No. 03-81011, the Landlord, the Chapter 13 Trustee, and any other parties in interest shall have 30 days from the date of entry of this Order to file and serve appropriate pleadings requesting sanctions or other relief. If pleadings requesting sanctions or other relief are timely filed and served, the Court will schedule a hearing to consider whether sanctions should be imposed on the Debtor and whether the case should be dismissed with prejudice. If no pleadings requesting sanctions or other relief are timely filed, the Court will enter an Order

dismissing the case, without prejudice.

5. The provisions of FED. R. BANKR. P. 4001(a)(3) shall not be applicable to the relief from the automatic stay provided by this Order, and, therefore, the termination and annulment of the stay pursuant to this Order shall be effective immediately.

IT IS SO ORDERED this 27 day of January, 2004.



Paul W. Bonapfel
U. S. Bankruptcy Judge