

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ENTERED ON DOCKET
OCT 01 2009

IN RE:) CHAPTER 13
KIMBERLY CELESTE DAVIS,) CASE NO. 09-65484-MHM
Debtor.)

**ORDER DISMISSING CHAPTER 13 CASE
AND BARRING REILING FOR ONE YEAR**

Hearing was held on confirmation of the Debtor's Chapter 13 Plan and the Chapter 13 Trustee's Motion to Dismiss September 3, 2009. In the written Objection to Confirmation [Doc. No. 47], and in the Chapter 13 Trustee's Motion to Dismiss Case [Doc. No. 46], both filed August 13, 2009, the Chapter 13 Trustee ("Trustee") moved to dismiss the instant case and also sought to bar Debtor's reiling any case under Title 11 for one year. Trustee showed and the record demonstrates the following:

Debtor has filed one previously unsuccessful Chapter 13 case, Case No. 08-79915, filed October 6, 2008, and dismissed prior to confirmation December 31, 2008, because Debtor failed to timely pay the filing fee to the Clerk of Court. In Case No. 08-79915, Debtor failed to file Schedules or a Chapter 13 Plan and failed to commence payments to the Chapter 13 Trustee.

In the instant case, Debtor failed to commence payments as required by 11 U.S.C. Section 1326. Debtor failed to provide a copy of her most recent income tax return to the Chapter 13 Trustee in violation of 11 U.S.C. Section 521(e)(2)(A)(i). Debtor has failed to abide by this Court's Order of September 9, 2009 requiring Debtor to tender a total of \$9,030.00 to the Trustee by September 18, 2009. To date, the Trustee has received no funds from Debtor.

Debtor filed a document that she characterizes as a plan, but Debtor's plan relies on an untenable legal theory. Debtor presented bogus financial instruments that purport to be or to show payment of some or all of her financial obligations. Debtor's "plan" appears to have evolved from earlier frivolous positions taken by others before the bankruptcy courts and the Internal Revenue Service premised upon ^{the} ~~be~~ purported creation of a secret bank account (sometimes referred to as a "straw man" account) at the Treasury Department for each United States citizen that individuals may purportedly use to pay tax and non-tax debts. Those who put forth this theory often argue that the proper way to redeem or draw on the account is to use one of various forms of ~~faux~~ ^{the} financial instruments. Such arguments are frivolous and cannot constitute the basis for a confirmable Chapter 13 plan. Persons who fraudulently use such false or fictitious instruments may be guilty of federal criminal offenses, such as under sections 287 and 514(a) of title 18. *See e.g. United States v. Heath*, 525 F.3d 451 (6th Cir. 2008) (defendant was convicted of presenting a fictitious financial instrument under 18 U.S.C. § 514(a)); *United States v. Anderson*, 353 F.3d 490, 500 (6th Cir. 2003) (upholding criminal convictions relating to a conspiracy involving the creation and offering of almost 200 fictitious sight drafts purporting to be drawn on the United States Treasury with an aggregate face value of more than \$550 million); *United States v. Oehler*, 2003 WL 1824967 (D. Minn. Apr. 2, 2003), *aff'd*, 116 Fed. Appx. 43, 2004 WL 2676441 (8th Cir. 2004) (defendant convicted of 30 counts of presenting a fictitious obligation with intent to defraud. As part of his defense, he testified that he believed that every citizen has an account with the United States Treasury containing hundreds of thousands of dollars and that those funds can be accessed using sight drafts drawn on the Treasury).

Debtor has failed to file a confirmable plan in the instant Chapter 13 case. After being advised by the undersigned that the fictitious financial instruments Debtor presented were ineffective to accomplish her hoped-for payment of her debts, Debtor failed to abandon her reliance upon her fallacious documents. Such failures support a finding of bad faith and represent an unreasonable and prejudicial delay in protecting the rights and interests of the estate and Debtor's creditors. A Chapter 13 case may be dismissed if facts show that the debtor is employing the bankruptcy system to frustrate her creditors' legitimate exercise of their rights without any intention or ability to reorganize, *see Shell Oil Co. v. Waldron*, 785 F. 2d 936 (11th Cir. 1986). Lack of good faith provides grounds under 11 U.S.C. §§ 105 and 349 to enjoin a debtor against re-filing for longer than the 180 days provided in §109(g). Debtor's reliance upon a scheme identified in open court as ineffective and frivolous constitutes bad faith sufficient to bar her from refile for one year. Accordingly, it is hereby

ORDERED that confirmation of the Debtor's Chapter 13 Plan is DENIED for Debtor's failure to comply with the applicable provisions of 11 U.S.C. Section 1325(a)(1). It is further

ORDERED that Trustee's request to dismiss this case pursuant to 11 U.S.C. Sections 105(a) and 109(g) is **granted**; Debtor is ineligible to file for relief under Title 11 of the United States Bankruptcy Code for one (1) year from the date of entry of this Order.

The Clerk, U.S. Bankruptcy Court, is directed to serve notice of this Order on all creditors, parties in interest, Debtor and the Chapter 13 Trustee.

IT IS SO ORDERED, this the 28th day of September, 2009.


MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

Draft Presented by:

/s/

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