



IT IS ORDERED as set forth below:

Date: July 24, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

In re:	:	CASE NUMBER
	:	
LARRY RAY LEMMING,	:	14-43080-MGD
	:	
Debtor.	:	CHAPTER 13
	:	

ORDER OF DISMISSAL WITH PREJUDICE

A hearing on Creditor Dwayne L. Richardson's Motion to Dismiss With Prejudice (Doc. 53) was held on July 22, 2015. Richardson appeared *pro se*. Brian R. Cahn appeared for the Debtor, and K. Edward Safir appeared for the Chapter 13 Trustee. At the hearing, the Court granted the motion from the bench. This Order memorializes the Court's ruling. The Court has jurisdiction under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and venue is proper.

I. Background

The facts and procedural history of this case are recounted in detail in the Court's June 18, 2015 Order Denying Confirmation (Doc. 55), 532 B.R. 398. The Court recounts the following

matters relevant to the motion for reference. Debtor filed his first Chapter 13 case on September 27, 2013. (*Voluntary Petition (Chapter 13), In re Lemming*, No. 13-42802-mgd (Bankr. N.D. Ga. Sept. 27, 2013), Doc. 1) [hereinafter *Lemming I*]. Debtor's Seventh Amended Chapter 13 Plan in that case on was confirmed on October 6, 2014. (*Lemming I*, Doc. 63). *Lemming I* was dismissed on November 17, 2014 for Debtor's failure to comply with the terms of his own confirmed plan. (*Lemming I*, Doc 70).

This Chapter 13 case is Debtor's second, filed on December 17, 2014. (*Voluntary Petition (Chapter 13), In re Lemming*, No. 14-43080-mgd (Bankr. N.D. Ga. Dec. 17, 2014), Doc. 1) [hereinafter *Lemming II*]. The Court denied confirmation of Debtor's Fifth Amended Chapter 13 Plan on June 18, 2015 based on a failure to propose the plan in good faith and to comply with the secured creditor provisions in Section 1325(a)(5). (*Lemming II*, Doc. 55). That Order gave Debtor 14 days to file an amended plan, which Debtor did on July 2, 2015. (*Lemming II*, Doc. 63). Richardson objected and moved to dismiss with prejudice. (*Lemming II*, Docs. 53, 66).

II. Discussion

11 U.S.C. § 1307(c) provides that the Court may dismiss a Chapter 13 case "for cause, including . . . (1) unreasonable delay by the debtor that is prejudicial to creditors." This case, *Lemming II*, has been pending since December 17, 2014 — a period of seven months. It was filed one month after *Lemming I* was dismissed. (*Lemming I*, Doc 70). *Lemming I* was commenced in September 2013.

In this case, *Lemming II*, Debtor has filed seven plans, none of which were confirmed. Debtor filed a Sixth Amended Plan on July 2, 2015 but has not scheduled that plan for a confirmation hearing. (*Lemming II*, Doc. 63). The terms of that plan include a delay in the sale of

any of the property which secures the oversecured claim of Richardson for a period of up to 22 additional months. Richardson, the most substantial creditor in this case, has received no payment on his claims and has been forestalled from his remedies for a period of 20 months at this point and, if the court were to confirm Debtor's plan, may receive no substantial distribution for in excess of 22 additional months.

The Sixth Amended Plan calls for a payment of \$1,177 per month. Attorney's fees are to be paid at \$1,050 per month, which means no substantial distribution to creditors will be made for the first six months of this plan. It is unclear whether Richardson is to receive any distribution directly from plan payments prior to liquidation of at least some of the properties secured by his judgment lien. The delays in this case are unreasonable and Richardson has been prejudiced. Accordingly, this case will be dismissed.

The next question raised is whether the dismissal should be "with prejudice." Under Section 349(a), "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not . . . prejudice the debtor with regard to the filing of a subsequent petition under this title." *Lemming I* was dismissed on November 17, 2014. Any case filed prior to November 17, 2015 would be a third case following two dismissals thus and no automatic stay would come into effect. 11 U.S.C. § 362(c)(4).

Debtor's present need for financial restructuring is solely related to his debt to Richardson. It is Richardson who has been delayed and prejudiced by Debtor's action and inaction. The Court therefore finds cause to dismiss this case with prejudice. The dismissal of this case will bar Debtor from filing another bankruptcy case under any chapter for a period of 12 months from the date entry of this Order. This will allow Richardson sufficient time to pursue

payment of his judgment claim if he acts in a diligent manner. Accordingly, it is

ORDERED that Richardson's Motion to Dismiss With Prejudice is **GRANTED**. The above-styled case is **DISMISSED WITH PREJUDICE**, and Debtor is **BARRED** from filing any case under Title 11 for a period of 12 months from the date of entry of this Order.

The Clerk shall serve a copy of this Order upon Debtor, the Chapter 13 Trustee, the United States Trustee, and all creditors and interested parties.

END OF DOCUMENT