

FINDINGS OF FACT

Debtor's first Chapter 13 case, number 91-41773, was filed on September 6, 1991. On February 20, 1992, Movant, a secured creditor with an interest in Debtor's real property, filed a "Motion for Relief from Stay or in the Alternative to Dismiss or Convert to Chapter 7." A hearing was held on the Motion on March 26, 1992. At the March hearing, Debtor tendered two payments to Movant and announced the voluntary dismissal of her Chapter 13 case.

Debtor filed her second Chapter 13 petition on May 26, 1992. Movant argues that Debtor is ineligible for Chapter 13 pursuant to Section 109(g)(2).

CONCLUSIONS OF LAW

Movant's position is based on 11 U.S.C. Section 109(g) which provides in relevant part:

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if--

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

11 U.S.C. §109(g). Thus a Chapter 13 debtor that voluntarily dismisses a case after a motion for relief is filed is barred from refiling for 180 days.

This Court is aware of the split of authority in interpreting Section 109(g)(2). Some courts have implied a good faith standard in Section 109(g)(2) to determine whether Debtor's dismissal of the previous case and refiling was prohibited. Other courts have refused to use the good faith standard and follow a mechanical 180 day rule without regard to reasons for the dismissal. *See generally* Matter of Milton, 82 B.R. 637 (Bankr. S.D.Ga. 1988). *See also* In re Keziah, 12 C.B.C. 2d 101, 105-06 (Bankr. W.D.N.C. 1985).

I have previously ruled that I would not apply the mechanical 180 day rule in all cases. Also, I have not required parties to show that debtor acted in bad faith. *See In re Murray*, No. 486-00325 (Bankr. S.D.Ga. August 21, 1986) (When the motion for relief from stay in the previously pending case was filed but not properly served and as a result thereof the debtor had no knowledge of the pendency of such a motion at the time he obtained the dismissal of the previous case, then the Congressional purpose to be served by passage of Section 109 is, in fact, not being served by dismissal of the subsequent case and the second case could proceed).

In Milton, *supra*, I ruled that where the parties entered into a good faith settlement of a motion for relief from stay that the debtor's second filing was not barred by

Section 109. The purpose of Section 109(g)(2) is to prevent debtor from refiling to stay a foreclosure, where the creditor had moved for relief to proceed with the foreclosure in the first case. *See Matter of Dattoy*, 49 B.R. 587 (Bankr. M.D.Ga. 1985).

I conclude that Debtor's second Chapter 13 case should be dismissed. Although Debtor may have tendered some payment at the March hearing, there was no complete cure or settlement as in Milton. Nor was there lack of knowledge of the pendency of the motion in the first case as in Murray. Movant seeks to foreclose on the same property which was the subject of its motion for relief filed in the first case. Movant, a secured creditor attempting to foreclose, has been prejudiced by Debtor's refiling. This case presents precisely the type of fact pattern which Congress addressed in its passage of Section 109(g)(2) and this Court is bound by that provision.

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law IT IS THE ORDER OF THIS COURT that Debtor's Chapter 13 case be dismissed.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of August, 1992.