
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)
)
JOHN W. JARRELL, JR.) Chapter 13
DIANE JARRELL) Number 95-40150
)
Debtors)
)
)
)
VANDERBILT MORTGAGE)
& FINANCE, INC., Assignee of)
First Carolina Financial Corp.)
)
Movant)
)
)
)
v.)
)
JOHN W. JARRELL, JR.)
DIANE JARRELL)
)
Respondents)

**ORDER ON MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION FOR RELIEF FROM STAY**

The Motion to Dismiss, or in the Alternative, Motion for Relief from Stay
filed by Vanderbilt Mortgage & Finance, Inc., Assignee of First Carolina Financial

Corporation ("Vanderbilt"), came on for a hearing before this Court on April 19, 1995. At the hearing it was revealed that the Debtors had filed a previous Chapter 13 case, case number 94-40116, on January 20, 1994, and in that case Vanderbilt Mortgage and Finance, Inc., had filed a Motion for Relief against the same property that is the subject of the Motion for Relief in this Chapter 13 case. Vanderbilt's Motion for Relief in Debtors' previous Chapter 13 case was resolved by consent order on June 24, 1994, under which Debtors agreed to revalue the collateral in their plan and keep payments current and under strict compliance. At some point in Debtors' previous Chapter 13 case they fell behind in their payments, and Vanderbilt filed a notice of default. Before relief was granted in that case, however, Debtors voluntarily dismissed their previous Chapter 13 case on January 19, 1995.

The instant case was refiled on January 26, 1995. Vanderbilt brought the Motion for Relief presently before the Court, alleging a bad faith filing and a violation of Section 109(g) of the Bankruptcy Code.

Section 109(g) provides:

(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.

It is therefore clear that Debtors' filing of this Chapter 13 case violates 109(g)(2) because the Debtors had requested and obtained voluntarily dismissal of their previous case following the filing of a request for relief from the automatic stay by Vanderbilt Mortgage. Moreover, even if 109(g)(2) were not applicable, it is clear that Debtors have acted in bad faith in refiling their case. The terms of the consent order entered in the previous case on Vanderbilt's previous Motion for Relief make it plain that the parties contemplated that, if the Debtors again fell behind in their monthly payments, Vanderbilt would be entitled to relief from stay and able to exercise its rights under state law. Debtors' refiling of the instant Chapter 13 case is a clear and blatant attempt to end run the results of that consent order. Accordingly, IT IS THE ORDER OF THIS COURT that the Debtors' Chapter 13 case is hereby dismissed.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of May, 1995.