

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>95-11930</u>
WILLIE HATCHER	)	
SS# 260-44-7872	)	
3736 Fairington Drive	)	FILED
Hephzibah, Georgia 30815	)	at 2 O'clock & 23 min. p.m.
	)	Date 4-1-96
Debtor	)	
_____	)	

**ORDER OF DISMISSAL WITH PREJUDICE BARRING  
REFILING WITHOUT PERMISSION OF THE COURT**

This Chapter 13 case represents an extreme example of abuse of the bankruptcy process by an individual debtor. This filing is the sixth Chapter 13 case brought by this debtor since 1980. The following is quoted from a previous case and outlines this individual's bankruptcy history to that point.

The debtor's first Chapter 13 proceeding was filed February 4, 1980. In re: Willie Emanuel Hatcher and Shirley Elizabeth Hatcher, Chapter 13 Case No. 180-00045. In the initial proceeding, the debtor listed no secured debts and proposed a plan to pay a one percent (1%) dividend to unsecured creditors whose claims are duly proven and allowed which plan was confirmed by order dated June 26, 1980. The debtor received a discharge on October 22, 1982. On July 15, 1986, the debtor filed his second Chapter 13 proceeding, In re: Willie E.

Hatcher, Chapter 13 Case No. 186-00657. The plan of the debtor in the second case proposed to pay all claims in full including arrearages owed to the predecessor in interest of First Union [Mortgage Corporation] on prepetition arrearages with postpetition payments to First Union's predecessor in interest paid direct commencing with the installment due for August 1, 1986. The plan was confirmed December 9, 1986, and voluntarily dismissed on January 20, 1987. The third Chapter 13 proceeding brought by the debtor, In re: Willie E. Hatcher Chapter 13 Case No. 187-00069, was filed January 26, 1987, and set forth a plan identical to the previous Chapter 13 plan in case No. 186-00657 with the exception that current payments due the predecessor in interest of First Union were to commence with installment due February 1, 1987. This case was confirmed on June 16, 1987. By motion filed February 2, 1988, First Union sought relief from stay in order to foreclose based upon the failure of the debtor to meet postpetition payments under the terms of the plan. The motion was settled by consent order entered March 10, 1988. The consent order required the debtor, beginning March 1, 1988, to meet timely monthly payments to First Union and to cure a postpetition arrearage of Eight Thousand One Hundred Sixteen and 26/100 (\$8,116.26) Dollars at the rate of Five Hundred Eighty-One and 33/100 (\$581.33) Dollars per month beginning March 1, 1988. First Union renewed its motion for relief from stay on May 13, 1988. Based upon the failure of the debtor to meet the payment obligations under the consent order, relief from stay was granted May 16, 1988. The debtor received a discharge on August 29, 1988. Debtor's fourth Chapter 13 proceeding, In re: Willie E. Hatcher, Chapter 13 Case No. 88-11082, was filed September 2, 1988, and proposed a plan to pay Two Hundred Seventy-Five and No/100 (\$275.00) Dollars per month to the Chapter 13 trustee for a period of sixty (60) months to pay a composition dividend to the holder of unsecured claims. The plan also provided to pay prepetition arrearages due

First Union by distributions from the Chapter 13 trustee with the debtor to make direct payments to First Union commencing with the regular payment due for October, 1988. By motion filed November 17, 1988, First Union again sought relief from stay. By order entered January 23, 1989, relief from stay was denied on condition the debtor cure his postpetition arrearages at a rate of one additional payment per month. The debtor failed to attend the continued confirmation hearing and by order dated March 21, 1989, that case was dismissed<sup>1</sup>. The . . . fifth Chapter 13 proceeding was filed June 6, 1989. . . [and the plan provided] for the payment of prepetition arrearages due First Union through distributions made by the Chapter 13 trustee with current payments, postpetition, to be made directly by the debtor beginning with payment due July, 1989. At the confirmation hearing, the debtor testified under oath that he had made either 3 or 4 postpetition payments. Since filing through date of hearing six postpetition payments [had] come due. The debtor testified that he . . . works in Atlanta, Georgia and returns to the premises covered under First Union's security interest on the weekends. The debtor maintains that the premises in question is his homeplace, but he contradicted himself in testimony as to the number and identity of persons that reside in the household. . . . This court finds the debtor's testimony evasive, contradictory, and totally lacking credibility. A determination of the debtor's sincerity in seeking relief under Chapter 13 at least requires a determination that the debtor was truthful in his testimony before the court. This court cannot make that determination. . . . In addition to denial of confirmation, this court may issue any order that is necessary or appropriate to prevent an abuse of process. See, 11 U.S.C. §105(a).

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<sup>1</sup>The court may take judicial notice of prior bankruptcy petitions filed by a debtor when

considering a subsequent petition. See, In re: Jackson 49 B.R. 298 (Bankr. Kans. 1985). See, also Allen v. Newsome 795 F.2d 934 (11th Cir. 1986) (district court may take judicial notice of prior habeas corpus applications filed by petitioner in proceeding on habeas corpus petition.)

In re: Willie E. Hatcher, Chapter 13 case No. 89-10834 slip op. at p. 2-10 (Bankr. S.D. Ga. March 14, 1990 Dalis, J.).

In addition to denying confirmation and dismissing the 1989 fifth filing, I "further ORDERED that in any subsequent Chapter 13 proceeding brought by this debtor, the stay imposed under the provisions of 11 U.S.C. §362(a) is modified to the extend necessary to allow First Union to proceed without further order with foreclosure of its security interest in its collateral pursuant to applicable state law." Id. @ p. 10.

The present case, In re: Willie Hatcher, Chapter 13 case No. 95-11930 was filed November 6, 1995. In this latest installment of Mr. Hatcher's bankruptcy odyssey he proposed to pay \$260.00 monthly for a period of 60 months to the Chapter 13 trustee and to make regular post-petition payments as they come due to Rhet Anderson and G.A. Watson holding security interests in debtor's residence with any claimed filed for pre-petition arrearage on such obligation to be paid by distributions from the Chapter 13 trustee. On December 18, 1995 Rhet Anderson Investments, Inc. and G. A. Watson filed motions for relief from the stay of 11 U.S.C. §362(a)

alleging a post filing default by the debtor in payments due directly from the debtor under the terms of his proposed plan. Pursuant to notice hearing was held on both motions and by orders filed February 12, 1996 I denied relief from stay to these creditors conditioned upon the debtor curing post petition direct payment due for the months of December, 1995 and January, 1996 on or before February 1, 1996 and required that the debtor make the regular February, 1996 payment not later than February 10 and to maintain direct payments timely thereafter until confirmation. The debtor defaulted under the terms of that order and relief from stay was granted to both G.A. Watson and Rhet Anderson Investments, Inc. by orders filed March 11, 1996. Confirmation hearing was held March 21, 1996. The debtor failed to appear and the debtor failed to make any payments to the Chapter 13 trustee as required under his proposed plan.

If facts ever warranted dismissal barring the refiling of a petition for relief under Title 11 by a debtor without prior leave of court, this debtor is that case. The conduct of this debtor clearly establishes a reasonable delay that is prejudicial creditors. 11 U.S.C. §1307(c)(1). The debtor failed to commence making timely payments under 11 U.S.C. §1326 further warranting dismissal. 11 U.S.C. §1307(c)(4). A general order of dismissal, however, will only provide this court and this debtor's creditors with the briefest interruption in the debtor's abuse of the

bankruptcy process. Bankruptcy Code §105(a) provides in part pertinent to this case

No provision of this title [11] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Nothing short of the extraordinary remedy of barring this debtor from filing additional petitions under Title 11 United States Code in the United States Bankruptcy Court for the Southern District of Georgia without prior approval of this court is required to prevent further abuse of the process of this court by this individual.

It is therefore ORDERED that this Chapter 13 case is dismissed;

further ORDERED that this individual is barred from filing a petition for relief under Title 11 United States Code without first applying to me for permission to file a bankruptcy case. The request for leave to file must be accompanied by the debtor's bankruptcy petition and all other documentation required for the filing for relief under Title 11 as well as the unpaid filing fee for the present case and a statement by the debtor in affidavit form signed under oath setting forth a full detailed statement explaining the debtor's failure to comply with the orders of this court of February 12, 1996, failure to appear at the confirmation hearing

March 21, 1996 and failure to make any payments whatsoever to the Chapter 13 trustee of this case.

It is further ORDERED that should this individual attempt to file a petition for relief under Title 11 United States Code without first complying with the provisions of this order, the stay of 11 U.S.C. §362(a) is set aside and void as to any creditor action taken against the individual.

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JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 1st day of April, 1996.