

So Ordered.

Dated: September 30, 2022



Rachel Blise

Rachel M. Blise
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Shaquilla Hannon,

Debtor.

Case No. 21-26050-rmb

Chapter 13

**ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO DISMISS CASE FOR CAUSE WITH PREJUDICE**

This matter is before the Court on the U.S. Trustee's motion to dismiss. (ECF No. 39.) The U.S. Trustee seeks three things in his motion: (1) dismissal pursuant to 11 U.S.C. § 1307(c); (2) a one-year bar on future filings; and (3) a prohibition on the future discharge of the Debtor's existing debts under 11 U.S.C. § 349(a). The debtor did not file a written objection to the motion. The Court held a hearing on the motion on May 18, 2022. The debtor's counsel appeared at the hearing and requested that the Court deny the third aspect of the U.S. Trustee's motion. For the reasons set forth below, the Court grants the U.S. Trustee's motion in part and denies it in part. The Court will dismiss this case and impose a one-year bar on re-filing. The Court declines to dismiss the case with prejudice under § 349(a), which would prevent the debtor from later seeking a discharge of her existing debts.

This is the debtor's seventh bankruptcy case in 11 years. Five of the prior six cases were dismissed shortly after filing because the debtor did not pay the filing fee. *See* Bankruptcy Court for the Eastern District of Wisconsin Case Nos. 20-27041, 20-24691, 19-30676, 11-36138, 11-28917. In a chapter 7 case filed in October of 2016, the debtor received a chapter 7 discharge in January of 2017. *See* Bankruptcy Court for the Eastern District of Wisconsin Case No. 16-30120. In the current case, the debtor paid the filing fee with the petition and filed a chapter 13 plan. She did not initially make payments under the chapter 13 plan, which led the chapter 13 trustee to file a motion to dismiss on February 1, 2022. The debtor and the trustee settled the motion, and the Court entered an order on March 11, 2022 denying the chapter 13 trustee's motion to dismiss. The order required the debtor to make timely payments and was a doomsday order under the Court's Uniform Doomsday Procedures. The debtor made one payment in February 2022, but did not make any additional payments. The chapter 13 trustee submitted a certificate of default on April 5, 2022 requesting that the court enforce the doomsday order and dismiss the case.

On April 11, 2022, the U.S. Trustee filed his own motion to dismiss the case. The U.S. Trustee asserts that the debtor has abused the bankruptcy system with her repeated filings and that she acted in bad faith by omitting information from her schedules. The U.S. Trustee alleges that the debtor did not disclose on her schedules a loan she received from the Small Business Administration in 2021, and that the debtor also did not disclose any business associated with that loan. On April 18, 2022, the Court entered an order pursuant to Federal Rule of Bankruptcy Procedure 2004 permitting the U.S. Trustee to seek more information from the debtor regarding the loan and the business. The debtor did not produce the requested documents or appear for the Rule 2004 examination.

The U.S. Trustee now asks that the Court dismiss the case for cause, impose a one-year bar on re-filing, and prohibit the debtor from discharging her current debts in the future. The Court will address in turn each component the U.S. Trustee's motion.

Dismissal. The Court agrees that this case should be dismissed. Section 1307 of the Bankruptcy Code allows a bankruptcy court to dismiss a chapter 13 case for "cause." 11 U.S.C. § 1307(c). Although not contained in the statute itself, lack of good faith is sufficient "cause" for dismissal under Chapter 13. *See In re Love*, 957 F.2d 1350, 1354 (7th Cir. 1992). Having reviewed the record, the Court finds a lack of good faith exists constituting cause for dismissal. The debtor failed to make payments as required by her chapter 13 plan and the Court's doomsday order, and she did not comply with the Court's order that she provide documents and testimony to the U.S. Trustee pursuant to Rule 2004. The best interests of the creditors and the estate will be served by dismissal.

Bar on Re-Filing. Section 109 of the Bankruptcy Code bars individuals from re-filing for 180 days under certain circumstances. 11 U.S.C. § 109(g). None of those circumstances is present in this case. However, the majority consensus is that bankruptcy courts have the power under § 349(a) and § 105(a) of the Bankruptcy Code to impose a bar on re-filing for other reasons, and that the bar may be longer than 180 days. *See In re Gibas*, 543 B.R. 570, 600 (Bankr. E.D. Wis. 2016) (collecting cases); *In re Mendiola*, 573 B.R. 758, 765 n.1 (Bankr. E.D. Wis. 2017) (collecting cases).

The Court concludes that there is sufficient cause to ban the debtor from filing a bankruptcy case for a period of one year. The debtor has abused the bankruptcy process by repeatedly commencing cases and obtaining the immediate benefit of the bankruptcy system without complying with her obligations as a debtor. More importantly, based on the evidence

presented by the U.S. Trustee, it appears that the debtor failed to disclose a loan she received and may have failed to disclose a business she operated or operates. The bankruptcy system depends on full disclosure of a debtor's financial affairs. There must be repercussions for a debtor's submission of inaccurate or incomplete schedules. There are certainly times when an inaccuracy or omission is innocent or unknowing, in which case consequences like a bar on re-filing should not be imposed. Here, however, the debtor had a full opportunity to explain the omissions from her schedules, either in response to the U.S. Trustee's motion to dismiss or by appearing for a Rule 2004 examination. She did neither.

The Court therefore concludes that a one-year bar on re-filing is appropriate to address the debtor's bad faith and ensure the integrity of the bankruptcy system.

Discharge Bar for Debtor's Existing Debts. Dismissal of a bankruptcy case generally "does not bar the discharge, in a later case under [the Bankruptcy Code], of debts that were dischargeable in the case dismissed." 11 U.S.C. § 349(a). This default rule may be altered, and a court may, for cause, order that the case be dismissed with prejudice. *Id.* In dismissing a case with prejudice, the court may "either bar the later dischargeability of debts that would have been dischargeable in the dismissed proceeding, or it may preclude the debtor from filing a subsequent petition related to those debts." *In re Hall*, 304 F.3d 743, 746 (7th Cir. 2002). The consequences of a dismissal with prejudice are significant, so such dismissals are "reserved for extreme situations, such as when a debtor conceals information from the court, violates injunctions, files unauthorized petitions, or acts in bad faith." *Id.*

The U.S. Trustee argues that this is an extreme case warranting the extreme step of dismissal with prejudice. The Court disagrees.

Though the debtor has filed numerous cases over the years, this case was different in that she paid the filing fee with petition, filed her schedules and a chapter 13 plan with the petition, and made at least one payment under the plan. No creditors appeared in this case to request relief, and it does not appear that the filing was an attempt to thwart the efforts of any particular creditor or creditors. The Court cannot say that the debtor's abuse of the bankruptcy system is so egregious that a dismissal with prejudice is warranted.

The U.S. Trustee also points to the Debtor's omissions from her schedules as a reason to dismiss this case with prejudice. The Court disagrees, not because the debtor should not face a consequence for her failure to provide truthful and accurate information, but because the Court concludes that Congress did not intend to bar the discharge of debts for chapter 13 debtors whose only offense is providing inaccurate information on their schedules.

In a chapter 7 case, the Bankruptcy Code provides a ready remedy against debtors who file inaccurate schedules. Section 727(a) provides that a debtor cannot receive a chapter 7 discharge if "the debtor knowingly and fraudulently, in or in connection with the case . . . made a false oath or account." 11 U.S.C. § 727(a)(4)(A). Congress has therefore determined that debtors who misrepresent their financial affairs on their schedules should not receive a discharge under chapter 7. Any debts excepted from discharge under § 727(a)(4) are not eligible for discharge in a subsequent chapter 7 case. *See* 11 U.S.C. § 523(a)(10).

No such remedy exists in chapter 13. There is no mechanism similar to § 727(a)(4) to bar the discharge of debts for chapter 13 debtors who file inaccurate schedules. In fact, Congress has allowed debtors who filed inaccurate schedules in a prior chapter 7 case to discharge their debts in a chapter 13 case. If a debtor successfully completes a chapter 13 plan, the debtor will receive a discharge under § 1328. Section 1328(a)(2) excepts from a chapter 13 discharge certain debts

listed in § 523(a), but noticeably absent from that list is § 523(a)(10). 11 U.S.C. § 1328(a)(2). That is, a chapter 7 debtor who provides false information on her schedules can be denied a discharge under § 727(a), but nothing prevents such a debtor from later filing a case under chapter 13 in good faith, completing her chapter 13 plan, and receiving a discharge of the debts for which a discharge was previously denied.

Under the regime advocated by the U.S. Trustee, a chapter 13 debtor who provides false information on her schedules will have no such opportunity because the U.S. Trustee wants to forever bar a chapter 13 debtor from discharging her debts in that situation. Unlike a chapter 7 debtor, the chapter 13 debtor who was denied a discharge through a § 349(a) dismissal with prejudice could not file a later chapter 13 case in good faith, complete a chapter 13 plan, and receive a discharge of the debts included in the prior case.

The Court can discern no basis for forever barring the debtor from discharging her current debts because she filed inaccurate schedules when Congress expressly chose to include a discharge bar for chapter 7 and no discharge bar for chapter 13. *See Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (“Where Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.”). That is not to say that Congress intended to excuse chapter 13 debtors from the obligation to provide accurate information in their schedules. Rather, it seems that Congress intended to make it more attractive for debtors to file under chapter 13 than under chapter 7 by removing some of the draconian consequences for certain actions. Other consequences, such as a bar on re-filing for a period of time, can be imposed to deter the sort of misrepresentations that appear to have occurred in this case.

One final aspect bears mention. Without a discharge bar, it may be that a chapter 13 debtor who makes misrepresentations on her schedules is in a somewhat better position than a chapter 7 debtor. A chapter 7 debtor denied a discharge under § 727(a)(4) for misrepresentations can never discharge those debts in a future chapter 7 case. A chapter 13 debtor whose case is dismissed without prejudice due to misrepresentations on her schedules may be able to discharge those debts in a later chapter 7 case because, without a denial of discharge under § 727(a)(4), there would be no bar to discharge in a later case under § 523(a)(10). But that is the path Congress has laid. Congress did not see fit to deny a discharge to chapter 13 debtors who make a false oath or account as it did for chapter 7 debtors. The Court will not use its power under § 349(a) to do what Congress did not.¹

For the foregoing reasons,

IT IS HEREBY ORDERED that this case is dismissed, effective immediately.

IT IS FURTHER ORDERED that the debtor is barred from filing a bankruptcy petition under any chapter for a period of one year from the date of the entry of this order

IT IS FURTHER ORDERED that the U.S. Trustee's request to bar the discharge of the Debtor's existing debts under 11 U.S.C. § 349(a) is denied.

#####

¹ There may be extreme cases in which a dismissal with prejudice in a chapter 13 case is warranted because, for example, there are other aggravating factors that accompany the debtor's misrepresentations. This is not such a case.