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Multiple Bankruptcy Filings and Creditors' Rights

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As a result of the stubborn sluggish economy which has existed in the Southern California region since 1991, bankruptcy filings in the Central District of California have increased dramatically over the last several years. In 1991, over 78,500 bankruptcy petitions were filed in the Central District of California, made up of Ventura, Los Angeles, Orange, Riverside and San Bernardino Counties. In 1992 and 1993, filings exceeded 92,000 per year. In 1994, even though the economy was "improving," over 82,000 petitions were filed in the Central District. The cases filed in the Central District of California represent approximately 10 percent of all bankruptcies filed in the U.S.

Included in the quarter-million bankruptcy filings since January 1991 are many debtors who filed multiple or serial bankruptcy petitions in an effort to forestall foreclosure and eviction. While in the past there has been very little relief for creditors in cases of multiple or serial petitions, there are now remedies in some cases. The Central District of California has taken a dim view of multiple or serial filings and has created various bases for relief for creditors.

Multiple and serial filings fall into two general categories: (1) debtors who have had their bankruptcy cases dismissed "with prejudice" (meaning they are barred from filing a subsequent bankruptcy petition for 180 days); and (2) debtors whose cases have been dismissed voluntarily or by court order (without a 180-day bar for refiling).

In spite of the ever-increasing number of bankruptcy filings, the Bankruptcy Court, and in particular the Court Clerk's office and certain judges, have provided relief to creditors from unscrupulous debtors who fraudulently misuse the automatic stay provisions of the United States Bankruptcy Code.

This article will explore the Central District Bankruptcy Court's response to the problem of multiple and serial bankruptcy filings. Both the Bankruptcy Court Clerk and the Court's judges acknowledge the fraudulent misuse of the Bankruptcy Code's automatic stay provisions and have acted to provide creditors with a means of combating such misuse.

■ **Prevention of Multiple Filings**

When a debtor's case has been dismissed with prejudice, the Clerk's Office has provided some relief for lenders and

landlords in preventing multiple and serial bankruptcy filings – the ICS computer System (Integrated Cashiering system), which has been in place in the Central District since 1991. According to the Court's Intake department, ICS is capable of taking a new debtor's social security number, name, and address and determining whether that debtor has had a previous bankruptcy case dismissed with prejudice. In those cases where the information matches up exactly with a previous case, the intake department will refuse to accept the new filings at any time within the 180-day period when the debtor is barred from filing a new bankruptcy petition.

That's the good news. The bad news is that debtors are changing social security numbers and the spelling of their names to circumvent the intake department's initial inquiry. In those cases, the Clerk's position is that a creditor's attorney will have to file a motion with the court to obtain a dismissal of the new case.

■ **Court Intervention in Multiple Filing Cases**

When a debtor's case has been dismissed voluntarily or involuntarily without prejudice (no 180-day bar to refiling), it is up to a creditor to obtain relief from the automatic stay or to have the case dismissed. The cases described below provide creditors/landlords with a means to obtain relief from the Court in the form of relief from stay or dismissal. The case law presented below will provide the Court with legal precedent to justify the dismissal of the subsequent filing with prejudice. This will generally give the landlord/creditor the time to complete the eviction or foreclosure.

Over the last several years, as the economy has suffered and bankruptcy filings have increased, the Court has been asked to intervene to stop the endless flow of multiple filings and the resulting delays in foreclosures and evictions.

The cases described below are but three examples of the lengths to which debtors have gone to avoid foreclosures. Similar problems occur in the realm of evictions.

■ **Case Study 1:** In Re: Kinney (C.D. Cal. 1985), 51 B.R. 840

This case, heard by Judge Mund in the Los Angeles Branch of the Central District of California, involved "one attorney, one family, one piece of real property, and one transfer, but ten separate filings." The Court noted that the magnitude of the abuse occurred because the ten bankruptcy filings involved six different bankruptcy judges.

The ten bankruptcy cases were filed during a 25-month period between September 1982 and October 1984. The bankruptcy cases were filed by six different family members under both Chapters 7 and 13. Numerous cases involving the same real property were being conducted in front of different judges at the same time, all the while thwarting the creditors from obtaining meaningful relief from the automatic stay.

The Court held that multiple bankruptcies filed by a family of debtors resulted in the loss of individuality of the debtors, allowing the Court to treat the family as one debtor for purposes of bankruptcy law.

The Court also found the debtors' and the debtors' attorney's actions to be in bad faith, subjecting the attorney to sanctions.

■ **Case Study 2:** In *Re: Huerta* (C.D. Cal. 1992), 137 B.R. 356 In *Huerta*, Judge Riddle of the San Bernardino branch of the Central District of California Bankruptcy Court dismissed a debtor's second consecutive bankruptcy case filed only two months after the dismissal of the debtor's first Chapter 13 case because the debtors failed to demonstrate good faith and a positive change of financial circumstances, which would make the second case more likely to succeed.

Debtors' first Chapter 13 case was filed in July 1990. In December 1990, the standing Chapter 13 trustee, Shannon Haney, filed a motion to dismiss for failure to make plan payments. The debtors cured the default in trustee payments and the motion was taken off-calendar. A second motion to dismiss was made in March 1991 because the debtors failed to make payments to the trustee and also failed to comply with an adequate protection order issued on behalf of the debtors' secured creditor.

Ultimately the case was dismissed in August 1991 on the grounds that the debtors were six months in arrears on plan payments.

On September 30, 1991, debtors filed a second Chapter 13 case. The Court conducted a comparison of the debtors' schedules, budget, and statements, and found that a second petition filed within a short period following dismissal, while not proscribed per se, must be viewed differently than the first filing. The Court held that the debtors have a heavier burden to establish their good faith. In this case, the Court found that the debtors merely manipulated the numbers in their budget and filed the second bankruptcy to thwart the secured creditor's attempt to foreclose on the debtors' real property. Therefore, the second filing was dismissed.

■ **Case Study 3:** In *Re: Willie Brown* (C.D. Cal. 1980) The *Brown* case took the multiple filings problem one step further. On two occasions on the eve of foreclosure, the real property in question was transferred to a grantee who filed a "face sheet" bankruptcy filing. In this case, the Court, by Judge Ordin, allowed the creditor to obtain an order for relief from stay without notice to the debtor.

The secured creditor contended that *Brown* and his grantees pursued a course of conduct intended to hinder, delay, and defraud the secured creditor in the enforcement of its rights. The secured creditor claimed that being required to give notice to *Brown* of a new motion for relief from the automatic stay would cause a new transfer to occur.

The secured creditor asserted that if the Court were "impatient" to deal with such conduct that the Court should fashion relief that takes into account the tactics, design, and objectives of *Brown* and others. It would afford the secured creditor a realistic remedy to protect and enforce his legal rights.

In that case, the Court allowed the secured creditor to proceed with the scheduling and conduct of its foreclosure sales without requiring the secured creditor to give notice of the sale or the motion for relief from automatic stay to *Brown* or his grantees. Once the foreclosure sale was completed and the trustee's deed recorded, the debtors were to be given notice of the court's order and given an opportunity to be heard

as to whether the Court's order permitting the foreclosure sale to take place without notice should be set aside.

■ **Debtor's Obligation to Act in good Faith**

Despite the different circumstances in each of these cases, the reasoning behind the Courts' decisions is the same: In order to be afforded the right to a second (or subsequent) automatic stay, the debtor must establish that the subsequent filing was made in good faith. The debtor or debtors must not use the Bankruptcy Court to delay, hinder or defraud the Court or the debtor's creditors.

While in the past there has been very little relief for creditors in cases of multiple or serial petitions, there are now remedies in some cases.

The courts in both *Kinney* and *Huerta* held that the petition and/or the Chapter 13 plan must be filed in good faith. In a Chapter 7 case, the debtor must be willing to cooperate with the trustee to account for and liquidate his estate for the benefit of his creditors (citing 11 U.S.C. § 727 (a)).

In a Chapter 11 or Chapter 13 case, good faith requires that there must be a reasonable expectation on the part of the debtor that he can successfully reorganize and that an effort to carry out such reorganization has been undertaken.

■ **Conclusion**

If a debtor files multiple or serial bankruptcies in order to avoid foreclosure or eviction, the Court will generally refuse to find that the subsequent filings were made in good faith, absent a showing of changed circumstances.

If the debtor's sole motive in filing a second petition is to delay foreclosure or eviction, then the Court may find that such subsequent filing was made in bad faith. In such cases, the Court may then dismiss the subsequent case and impose a 180-day bar on future filings by that debtor. Additionally, if a family of debtors files multiple/serial petitions, the Court has found they may be treated as a single debtor for purposes of the 180-day bar.

Finally, if a debtor transfers property to third parties to hinder and delay foreclosure or eviction and the transferees file subsequent bankruptcies, the Courts in the Central District of California have allowed relief from stay to be granted without notice to debtors and transferees and have allowed the creditor to complete foreclosure without notice prior to the issuance of a trustee's deed.

The Courts in the Central District of California have provided numerous methods of protecting creditors when debtors abuse the automatic stay provisions of the United States Bankruptcy Court. These are just a few examples of how the Court is attempting to remedy debtor's abuse.

If you find yourself in a situation where your attempt to complete a foreclosure or eviction is thwarted by unscrupulous debtors who are abusing the automatic stay provisions of the Bankruptcy Code, there may be relief available to you. We are available to assist you in making that determination. ■

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