



According to appellee's motion,<sup>1</sup> on July 5, 1979, appellant obtained a home mortgage of \$40,500, and the mortgage was later assigned to appellee. On April 11, 1997, appellant filed a Chapter 13 bankruptcy petition. Appellee motion ¶ 6. On October 1, 1997, Dulisse defaulted on the mortgage, appellee br. at 4, and on October 9, 1997, the bankruptcy case was dismissed, appellee motion ¶ 6. According to appellant's objection filed in Bankruptcy Court on July 20, 1998, he attempted to pay the balance past due, but his payment was returned. Appellant obj. at ¶17. On the same day, he notified the private mortgage insurance (PMI)<sup>2</sup> company, which had insured the mortgage, that he had lost his job and would be unable to make further mortgage payments. Appellant's notice of appeal ¶ 6(e). On September 27, 1999, a judgment in mortgage foreclosure was entered and a sheriff's sale was scheduled for December 10, 1999. Appellee br. at 4. Three days before the sale, appellant filed a second bankruptcy petition that automatically stayed the sale. 11 U.S.C. § 362(a).<sup>3</sup> Appellee motion at ¶ 7. On August 1, 2000, appellee was granted relief from the stay, appellee br. at 4, and, on September 7, 2000, the second petition was

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<sup>1</sup> The bankruptcy court did not issue findings of fact.

<sup>2</sup> PMI spreads the risk of default for high risk loans between the lender and the insurance provider. Resolution Trust Corp. v. Urban Redevelopment Authority of Pittsburgh, 638 A.2d 972, 974 (Pa. 1994).

<sup>3</sup> Under 11 U.S.C. §362(a), a § 302 petition operates as a stay of:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

dismissed. Appellee motion ¶7. Two days before the rescheduled sheriff's sale on January 5, 2001, appellant again effectuated a stay by filing a third bankruptcy petition. Appellee motion at ¶8. On January 31, 2001, appellee moved to dismiss and to modify the stay. On February 20, 2001, the motion was granted and appellant was prohibited from filing another bankruptcy petition for 180 days. In re Dulisse, Bankr. No. 01-20045 (Bankr. E. D. Pa. February 20, 2001) (Twardowski, B.J.). This appeal followed.

Appellant's primary argument is that PMI applies to debtors who become financially unable to make mortgage payments and protects them from foreclosure proceedings. However, the mortgagee, not the mortgagor, is the beneficiary of PMI. The insurance is required for mortgages guaranteed by the Federal National Home Mortgage Corporation (Freddie Mac) where the amount of the loan is greater than 80 percent of the equity in the property. See Racher v. GMAC Mortgage Corp. of Pa., 95-4588, 1996 WL 276351, at \*2 (D.N.J. May 8, 1996). The "insurance coverage was intended to protect the mortgage holder . . . in the event of default by the borrower." Resolution Trust Corp. v. Urban Redevelopment Auth. of Pittsburgh, 638 A.2d 972, 974 (Pa. 1994).

Here, the question presented is whether granting relief from the automatic stay was appropriate under the circumstances. Chapter 13 was designed to allow debtors to reorganize their finances and create a flexible payment plan, and "the automatic stay is one of the fundamental debtor protections" to "permit[] the debtor to attempt a repayment or reorganization plan." In re Hamer, No. 00-1180, 2000 WL 1230496, at \*5 (E.D. Pa. Aug. 18, 2000). Nevertheless, relief from an automatic stay is appropriate "for cause," 11 U.S.C. § 362 (d)(1), or if "the debtor does not have an equity in such property," 11 U.S.C. § 362(d)(2)(A) and "such property is not necessary to an effective reorganization," 11 U.S.C.

§ 362(d)(2)(B). “The statute does not define ‘cause,’ so courts must determine whether ‘cause’ exists on a case-by-case basis.” In re Hamer, 2000 WL 1230496, at \*3 n.27. Filing a bankruptcy petition in bad faith is sufficient cause for dismissal or relief from an automatic stay. See In re Trident Associates Ltd. Partnership; 52 F.3d 127, 130 (6th Cir. 1995), In re Gimelson, No.00-4983, 2001 WL 336988, at \*2 (E.D. Pa. Apr. 3, 2001); In re Lippolis, 228 B.R. 106, 112 (E.D. Pa 1998). Serial filings and petitions filed solely to forestall creditors are indicative of bad faith. See, e.g., In re Casse, 198 F.3d 327, 332 (2nd Cir. 1999) (debtors who filed three bankruptcy petitions without filing a reorganization plan were bad faith serial filers); In re Merchant, 256 B.R. 572, 577 (Bankr. E.D.Pa. 2000) (“successive filings of bankruptcy petitions was done in bad faith”).<sup>4</sup> Here, the chronology of the bankruptcy filings in relation to the dates of the sheriff’s sales is evidence that the petitions were not intended for reorganization, but to delay the foreclosure sales. The Bankruptcy Court was well within its power to grant appellee’s motion for relief from the automatic stay and dismissal of the petition.

The Bankruptcy Court also prohibited the appellant from filing another petition for 180 days. It has been said that, “[t]ogether, . . . §§ 105(a) and 349(a) enable the bankruptcy court to restrict a debtor’s ability to file subsequent petitions.”<sup>5</sup> In re Hamer, 2000 WL

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<sup>4</sup> Serial filers are “among the Hannibal Lecters of current bankruptcy litigation.” In re Casse, 198 F. 3d at 332.

<sup>5</sup> 11 U.S.C. § 105(a): “The court may issue an order, process, or judgement that is necessary or appropriate to carry out the provisions of this title.”

Under 11 U.S.C. § 349(a), “[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent

1230496, at \*6. This type of prospective relief is usually granted when a serial refiler's abuse of the bankruptcy process damages a single secured creditor. Id. Under the facts of this case, the Bankruptcy Court's grant of prospective relief was warranted.

An order accompanies this memorandum.

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Edmund V. Ludwig, J.

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petition under this title, except as provided in section 109(f) of this title.”

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: :  
CARL RICHARD DULISSE : CIVIL ACTION  
: :  
: :  
: No. 01-1385  
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ORDER

Ludwig, J.

AND NOW, this        day of July, 2001, the appeal of Carl Richard Dulisse is  
denied and the order of the Bankruptcy Court is affirmed. 28 U.S.C. § 158.

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Edmund V. Ludwig, J.