

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

IN RE:)
)
Joan Marie Stewart,) Case No. 23-12806
)
Debtor(s).)

ORDER DISMISSING CASE WITH 180-DAY INJUNCTION

This is the debtor Joan Marie Stewart’s fourth bankruptcy since 2018 – all four related to arrears and/or scheduled foreclosures on her home by Wells Fargo. Her first case (no. 18-3450) was a chapter 11 filed in August 2018. Ms. Stewart made little progress toward a confirmable plan and failed to file tax returns for multiple years. The court dismissed the chapter 11 in January 2020 with a 90-day injunction. Ms. Stewart then filed a chapter 13 bankruptcy (no. 22-11301) in July 2022 but never appeared at her 341 meeting and never made a payment. The court dismissed that case in November 2022 before confirmation with a 90-day injunction against refiling for chapter 11 or chapter 13 bankruptcy. Ms. Stewart then filed another chapter 13 bankruptcy (no. 23-10736) in March 2023. She did not make payments on that case, either, and the court dismissed it in June 2023 before confirmation with a 90-day injunction against refiling under any chapter.

Finally, Ms. Stewart filed this chapter 13 in November 2023. She has never appeared for the 341 meeting – a telephonic meeting and not something for which she must appear in person. Wells Fargo filed a claim based on Ms. Stewart’s home equity line of credit on January 31, 2024, but Ms. Stewart did not object to that claim until June 6, 2024. The Wells Fargo claim is for \$2.3 million, including over \$493,000 in arrears; the house is worth about \$809,000 according to Ms. Stewart’s schedules. The Wells Fargo claim shows that the last payment received on the equity line was in December 2017 (before the 2018 bankruptcy) and Ms. Stewart “does not have

any copies of checks, receipts, bank statements, or other documentation reflecting any payments she has made” related to the line of credit since January 2018. (*See* doc. 76).

The chapter 13 trustee has moved to dismiss the case based on feasibility, bad faith, and abuse of the bankruptcy process. The court held a hearing on the motion and on Ms. Stewart’s objection to the Wells Fargo claim. At the hearing, the court heard extensive testimony from Ms. Stewart and admitted numerous documents into evidence at her request.

Ms. Stewart testified and offered documents that she filed this chapter 13 bankruptcy because she disputes the amount she owes to Wells Fargo. She testified that Wells Fargo has given her conflicting amounts for the loan payoff, including a lower amount in this bankruptcy, and that she has a friend who is willing to loan her the money to pay off the home equity line if Wells Fargo will just give her the correct payoff.

Ms. Stewart and her attorney contend that she should be allowed to adjudicate the precise home equity line amount in this bankruptcy. However, as discussed with counsel for the debtor at the hearing, this court need not determine claim amounts with mathematical precision for a chapter 13 case to go forward. The court can estimate such claims under Bankruptcy Code § 502(c) to avoid delaying bankruptcies, and has “wide discretion” in doing so. *See, e.g., In re A & B Assocs., L.P.*, No. 17-40185-EJC, 2019 WL 1470892, at *36 (Bankr. S.D. Ga. Mar. 29, 2019); *see also generally In re Wall*, No. 19-14210, 2020 WL 6065767 (Bankr. S.D. Ala. Aug. 28, 2020).

Ms. Stewart admitted that she owes a large amount of arrearage to Wells Fargo. She testified that she is currently only obligated for interest-only payments – still in the thousands of dollars per month – but that she has not made any of those since 2017. Even if this court were to estimate the Wells Fargo claim and reduce the arrearage claim by half (and Ms. Stewart’s

evidence does not support this), the case would still not even be close to being feasible, given Ms. Stewart's monthly net income of \$1,876 (Schedule J, as amended, doc. 21).¹ *See, e.g., In re Kollar*, 357 B.R. 657, 661 (Bankr. M.D. Fla. 2006) (“inability to propose a feasible plan of reorganization constitutes grounds for dismissal”).

But feasibility is not the only ground for dismissal. Having considered the arguments made by counsel for the debtor, and the testimony and documents from the debtor, the court finds that Ms. Stewart's fourth bankruptcy filing in about 5 years is yet another attempt to delay foreclosure by Wells Fargo despite admittedly making no payments on her home equity line since 2017. Ms. Stewart is not attempting to reorganize and repay her creditors but rather to determine the exact amount of her debt with Wells Fargo. “This alone demonstrates that [the] petition was filed in bad faith, as [Ms. Stewart] d[oes] not have an honest intent and genuine desire to utilize the provisions of [c]hapter 13 for its intended purpose – to effectuate reorganization.” *See In re Rivas*, 682 F. App'x 842, 845 (11th Cir. 2017) (citation, quotation marks, brackets, and ellipses omitted). She is clearly frustrated with Wells Fargo but there is no bankruptcy purpose in keeping this case going just to determine the precise amount of the Wells Fargo debt.

Ms. Stewart can file a state court declaratory judgment or similar action to adjudicate her dispute with Wells Fargo over how much she owes on the home equity line. Indeed, filing such an action (which she could have done any time in the last five years) would resolve her dispute

¹ This estimation is for the sake of argument only. If the court were to estimate the claim, it would likely estimate it higher and closer to the amount filed by Wells Fargo. Nonetheless, the debtor's objection to claim is now moot based on this dismissal. The court also notes that Ms. Stewart's monthly net income in November 2023 when she filed the case was -5,924.00. (*See* Schedule J, doc. 1). She amended her schedules in January 2024 to add “\$7,800.00 [in income] Assistance from friend who anticipates buying the house.” (*See* doc. 22).

with Wells Fargo if she does in fact have someone who is willing to loan her the money to pay off that debt. But this court is not the appropriate venue.

Even if feasibility and bad faith were not enough, the court and the chapter 13 trustee have given Ms. Stewart repeated opportunities over several months to appear telephonically for her 341 meeting (about six settings) and she has not done so. Every effort has been made to accommodate Ms. Stewart's participation in a telephonic hearing, but she has not done so since filing this case in November 2023. Taken as a whole, Ms. Stewart's continued bankruptcy filings and her conduct here are an abuse of the bankruptcy process and warrant dismissal. *See, e.g., In re Rivas*, 682 F. App'x at 844-46; *In re Jones*, 289 B.R. 436, 439-40 (Bankr. M.D. Ala. 2003).

For these reasons, independently and together, the court dismisses this chapter 13 case with a 180-day injunction against refiling for chapter 11 or chapter 13 bankruptcy.

Dated: July 23, 2024


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE