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IT IS SO ORDERED.

Dated: January 5, 2024



Beth A. Buchanan

Beth A. Buchanan
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In Re)	
)	
CARLEAN DATES)	Case No. 23-10007
)	Chapter 13
)	Judge Buchanan
Debtor(s))	

**MEMORANDUM OPINION DISMISSING THE DEBTOR'S BANKRUPTCY CASE
AND IMPOSING A TWO-YEAR BAR TO RE-FILING [Docket Number 64]**

[This opinion is not intended for publication or citation.]

The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334 and the standing General Order of Reference in this district.

This matter is before this Court on the *Motion to Dismiss Case* (“Motion to Dismiss”) [Docket Number 64] filed by Creditor HSBC Bank USA, N.A., as Trustee for the Certificateholders of ACE Securities Corp. Home Equity Loan Trust, Series 2006-FM2 Asset-Backed Pass-Through Certificates (“HSBC”) and the *Notice / Order Writ of Error Motion to Dismiss and Notice of Demand for Trial by Jury Nunc Pro Tunc (Now for Then) and Objection to Motion to Dismiss Because of Civil Rights Suit and Demand for Trial By Jury* (“Response”) [Docket Number 76] filed by Debtor Carlean Dates (“Ms. Dates” or “Debtor”).

In the Motion to Dismiss, Creditor HSBC alleges that Ms. Dates's Chapter 13 bankruptcy petition has not been filed in good faith and is an abuse of the bankruptcy system. HSBC requests that this Court dismiss the case and bar Ms. Dates from re-filing a bankruptcy case for at least two years. On August 16, 2023 an evidentiary hearing was held to determine this and other matters ripe for determination.¹ Based on the evidence, this Court concludes that Ms. Dates's bankruptcy filing constitutes an abuse warranting dismissal of her bankruptcy case and the imposition of a bar prohibiting Ms. Dates from filing another bankruptcy petition for a period of two years.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Multiple Bankruptcy Filings

On January 5, 2023, Ms. Dates filed a Chapter 13 bankruptcy petition. With that petition, she initiated her fifth bankruptcy case filed in the Southern District of Ohio since 2012, the year that Creditor HSBC began foreclosure proceedings with respect to the property at which Ms. Dates resides: 12062 Hazelhurst, Cincinnati, Ohio 45240 (the "Hazelhurst Property"). Her five bankruptcy filings, of which this Court takes judicial notice², are as follows:

- a) Case Number 12-14507 was filed on August 20, 2012 as a chapter 13 case. The case was dismissed on May 14, 2014 for failure to make plan payments. The case was closed on December 21, 2015.

¹ Other matters ripe for determination and heard as part of the evidentiary hearing on August 16, 2023 include: (1) HSBC's *Amended Motion for Relief from Automatic Stay with Request for In Rem Relief Under 11 U.S.C. § 362(d)(1), § 362(d)(2), and § 362(d)(4)* [Docket Number 62] and Ms. Dates's responsive filing titled *Notice/Order Writ of Error Motion to Lift Automatic Stay and Notice of Demand for Trial by Jury Nunc Pro Tunc (Now for Then) and Objection to Motion to Lift Automatic Stay Because of Civil Rights Suit and Demand for Trial by Jury Back by the Full Faith and Credit of the United States* [Docket Number 77]; and (2) Ms. Dates's Amended Chapter 13 Plan [Docket Number 47] and the objections to confirmation filed by HSBC, the Chapter 13 Trustee, and CarMax Business Services, LLC [Docket Numbers 30 (as amended), 33 and 34]. The dismissal of this case renders HSBC's motion for relief from stay and confirmation of Ms. Dates's amended plan moot and, accordingly, no determination will be made on these matters.

² As stated at the August 16, 2023 hearing, this Court takes judicial notice of the current docket as well as Ms. Dates's four prior cases filed in this district. *ZMC Pharmacy, LLC v. State Farm Mut. Auto. Ins. Co.*, 307 F.Supp.3d 661, 665 n.1 (E.D. Mich. 2018) (noting that a court may take judicial notice of its own docket); *Baccala Realty, Inc. v. Fink (In re Fink)*, 351 B.R. 511, 517 n.1 (Bankr. N.D. Ill. 2006) (holding that a court may take judicial notice of the record in its own cases).

- b) Case Number 16-12410 was filed on June 28, 2016 as a chapter 13 case. The case was converted to a chapter 7 case on April 26, 2017 and was dismissed on November 13, 2017 based on Ms. Dates's failure to provide documents to the Chapter 7 trustee and failure to appear at the continued § 341 meeting of creditors. The case was closed on January 7, 2019.
- c) Case Number 18-13150 was filed on August 21, 2018 as a chapter 13 case and dismissed on November 9, 2018 based on Ms. Dates's failure to appear at the § 341 meeting of creditors and for failure to fund the plan.
- d) Case Number 18-14602 was filed on December 21, 2018 as a chapter 13 case. The case was converted to a chapter 7 case on February 20, 2019; Ms. Dates received a discharge on September 4, 2019, and the case was closed on November 3, 2020; and,
- e) Case Number 23-10007 was filed on January 5, 2023 as a chapter 13 case and is currently pending.

B. The Current Case

1. The March 16, 2023 Confirmation Hearing and Conclusions Regarding Foreclosure and Ownership of the Hazelhurst Property

Following her most recent bankruptcy petition filing initiating the current case, Ms. Dates filed her original Chapter 13 Plan [Docket Number 20] (the "Original Chapter 13 Plan") on January 19, 2023 to which multiple parties, including HSBC, objected. At the plan confirmation hearing held on March 16, 2023, HSBC presented evidence from state court foreclosure proceedings to support that Ms. Dates no longer owned the Hazelhurst Property at the time of her current bankruptcy filing and, thus, could no longer deal with the property in her bankruptcy case or avoid HSBC's lien as she attempted to do through the Original Chapter 13 Plan.

HSBC's evidence from the March 16, 2023 confirmation hearing was also presented and admitted at the August 16, 2023 hearing on HSBC's Motion to Dismiss.³ Accordingly, this Court adopts its factual findings from the March 16, 2023 confirmation hearing as determined in the

³ HSBC presented the same exhibits, Exhibits A through G, at both the March 16, 2023 confirmation hearing and the August 16, 2023 hearing on its Motion to Dismiss [Compare exhibits attached to Docket Number 36 to exhibits attached to Docket Number 78] and other matters. The identical sets of exhibits were admitted at both hearings.

Order Sustaining Objections to Confirmation, Denying Confirmation of Debtor's Plan [Docket Number 20] and Requiring Debtor to File an Amended Chapter 13 Plan ("Order Denying Confirmation") [Docket Number 41]. Those findings, related to the state court proceedings and ownership of the Hazelhurst Property, are as follows:

- a) HSBC filed a complaint in foreclosure against the Debtor on January 26, 2012 in the Hamilton County, Ohio Court of Common Pleas [HSBC Ex. E and F].
- b) HSBC obtained a judgment entry against the Debtor on January 29, 2014 [HSBC Ex. D and F].
- c) The Hazelhurst Property was purchased by HSBC through a Sheriff's sale on December 27, 2018⁴ and the sale was confirmed pursuant to a March 26, 2019 Amended Judgment Entry Confirming Sheriff's Sale and Ordering Distribution [HSBC Ex. C and F]. The Amended Judgment Entry also ordered the cancellation of certain mortgages and liens against the Hazelhurst Property, including the HSBC mortgage [HSBC Ex. C].
- d) A Sheriff's Deed conveying title of the Hazelhurst Property to HSBC was signed on April 9, 2019 and recorded with the Hamilton County Recorder's Office on April 15, 2019 [HSBC Ex. B].
- e) On April 17, 2020, HSBC released its mortgage against the Hazelhurst Property, which release was recorded with the Hamilton County Recorder's Office on April 24, 2020 [Debtor Ex. A] (the "Release of Mortgage").⁵ The Release of Mortgage provided that "the Mortgagee [HSBC] . . . does hereby release and reconvey *to the persons legally entitled thereto*, all of its right, title, and interest in the real estate described in said Mortgage, forever satisfying, releasing, cancelling, and discharging the lien from said Mortgage" [*Id.*] (emphasis added).
- f) At the time of the Release of Mortgage in April of 2020, HSBC held title to the Hazelhurst Property pursuant to the Sheriff's Deed [HSBC Ex. B] and therefore was "the person legally entitled" to the property and in whose favor the Release of Mortgage inured to. *In re Glenn*, 760 F.2d 1428, 1435 (6th Cir. 1985) (observing that a foreclosure sale results in a change of ownership of the property and that the purchaser at a foreclosure sale is frequently the mortgage holder itself).

⁴ HSBC previously obtained in rem relief from stay pursuant to 11 U.S.C. § 362(d)(4) in case number 18-13150 by order entered on October 9, 2018 [Docket Number 26].

⁵ The same Release of Mortgage was presented as evidence by Ms. Dates at the March 16, 2023 confirmation hearing and at the August 16, 2023 hearing on HSBC's motion to dismiss [Docket Number 99, Debtor Ex. 3]. Accordingly, this Court also adopts its findings from the March 16, 2023 confirmation hearing related to the Release of Mortgage.

[Docket Number 41]. Based on the evidence presented at the March 16, 2023 hearing, this Court denied confirmation concluding that Ms. Dates did not own the Hazelhurst Property at the time of the bankruptcy filing and, for that reason, it was not property of the bankruptcy estate that could be dealt with in Ms. Dates's chapter 13 plan. *Id.* The Order Denying Confirmation listed other deficiencies in the Original Chapter 13 Plan including a failure to list a monthly payment amount to creditors from future earnings and a failure to serve the plan on all creditors. *Id.* The Order Denying Confirmation provided Ms. Dates with twenty-one (21) days to file an amended chapter 13 plan consistent with this ruling. *Id.*

2. Ms. Dates's Amended Chapter 13 Plan

On April 13, 2023, Ms. Dates filed her Amended Chapter 13 Plan [Docket Number 47] ("the Amended Chapter 13 Plan"). Like the Original Chapter 13 Plan, Ms. Dates's Amended Chapter 13 Plan included no monthly payment amount to creditors. *Id.* Furthermore, Ms. Dates included provisions in the Amended Chapter 13 Plan attempting to deal with the Hazelhurst Property and avoid HSBC's lien. *Id.*

At the August 16, 2023 hearing, which included a hearing on confirmation of her Amended Plan, Ms. Dates was asked whether her Amended Chapter 13 Plan was confirmable and met the requirements of the Bankruptcy Code. She refused to address the issue and stated that she was only there to prove ownership of the Hazelhurst Property.

3. Ms. Dates's Additional Evidence

At the August 16, 2023 hearing, Ms. Dates presented evidence in the form of witness testimony and exhibits [Docket Number 99, Debtor Exs. 1-5].⁶ The exhibits admitted into evidence include the following:

⁶ In addition to the evidence presented at the hearing, Ms. Dates filed two subpoenas on August 14, 2023 and six documents titled "Proof of Service" of subpoenas on August 16, 2023 [Docket Numbers 86-87 and 91-96]. HSBC

- a) An order from the state court foreclosure proceeding with HSBC entered February 25, 2019 that granted HSBC's motion to withdraw the Fifth Pluries Order of Sale scheduled for December 27, 2018 and granted leave to HSBC to file a Sixth Pluries Order of Sale [Debtor Ex. 1];
- b) The Order of Discharge dated September 4, 2019 that Ms. Dates received in Bankruptcy Case Number 18-14602 [Debtor Ex. 2];
- c) The April 17, 2020, Release of Mortgage with which HSBC released its mortgage against the Hazelhurst Property [Debtor Ex. 3 (matching Debtor Ex. A from the March 16, 2023 confirmation hearing)];
- d) A letter to Ms. Dates dated June 21, 2021 regarding an American Family Insurance homeowner's insurance policy issued to her and Malik Ali on the Hazelhurst Property [Debtor Ex. 4]; and
- e) A letter to Ms. Dates dated June 10, 2020 from Select Portfolio Servicing Inc. stating that it is a mortgage servicer on an account associated with the Hazelhurst Property and that the account is satisfied [Debtor Ex. 5].

In addition, Ms. Dates called Mr. Malik Ali to testify. Mr. Ali testified that Ms. Dates sent the Release of Mortgage and letter from Select Portfolio Servicing to American Family Insurance. He testified that American Family issued a homeowner's insurance policy to Ms. Dates on the Hazelhurst Property. He noted that, in the letter American Family sent to Ms. Dates regarding the policy, American Family noted that a third party interest had been removed. He stated that American Family would not have issued the policy if Ms. Dates was not the owner of the Hazelhurst Property.

filed a motion to quash the two subpoenas filed at Docket Numbers 86 and 87 asserting, among other errors, that the subpoenas were incomplete, not properly served and did not provide a reasonable time to comply given that they were filed two days before the hearing [Docket Number 97]. This Court agrees. Pursuant to Federal Rule of Civil Procedure 45(d)(3), upon a timely motion, a subpoena must be quashed when the subpoena fails to allow a reasonable time to comply. In this instance, the subpoenas and the documents titled "proof of service" of subpoenas indicate that they were either served by express mail on August 12, 2023 or served by hand delivery on August 14, 2023. To the extent these subpoenas were intended to compel witness testimony or documentary evidence at the August 16, 2023 hearing, they did not provide reasonable time to comply. Accordingly, the subpoenas are quashed.

II. LEGAL ANALYSIS

A. Dismissal for Cause

Bankruptcy Code Section 1307(c) provides for dismissal of a chapter 13 case “for cause.” 11 U.S.C. § 1307(c). Although not specifically enumerated as such in Section 1307(c), a debtor’s lack of good faith has been determined to be cause to dismiss a case. *See Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 373-75 (2007); *Alt v. United States (In re Alt)*, 305 F.3d 413, 418–19 (6th Cir. 2002) (noting there is abundant authority to support dismissing a chapter 13 case that is not filed in good faith); *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 735 (B.A.P. 6th Cir. 2010).

The Supreme Court has not articulated what constitutes a lack of good faith warranting dismissal, although it has noted that such dismissals should be limited to “extraordinary cases.” *Marrama*, 549 U.S. at 375 n.11. While the guidance from the Supreme Court is limited, the Sixth Circuit has provided extensive guidance noting that, in determining whether a petition has been filed in bad faith, “[t]he key inquiry . . . is whether the debtor is seeking to abuse the bankruptcy process.” *Alt*, 305 F.3d at 419; *In re Grischkan*, 320 B.R. 654, 658 (Bankr. N.D. Ohio 2005). The movant seeking dismissal carries the burden of proving that the case was not filed in good faith. *Alt*, 305 F.3d at 420.

In making the determination of whether a chapter 13 bankruptcy case was not filed in good faith or abuses the bankruptcy process, the Sixth Circuit approves of a “totality of the circumstances” test that include some of the same factors relevant in determining whether a chapter 13 plan has been proposed in good faith. *Id.* at 419. Those factors include:

- (1) the debtor’s income;
- (2) the debtor’s living expenses;
- (3) the debtor’s attorney’s fees;
- (4) the expected duration of the Chapter 13 plan;

- (5) the sincerity with which the debtor has petitioned for relief under Chapter 13;
- (6) the debtor's potential for future earning;
- (7) any special circumstances, such as unusually high medical expenses;
- (8) the frequency with which the debtor has sought relief before in bankruptcy;
- (9) the circumstances under which the debt was incurred;
- (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt;
- (11) the burden which administration would place on the trustee;
- (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

Id.

In addition to these, the Sixth Circuit cites factors recognized in other circuits to determine whether a debtor's chapter 13 petition has been filed in good faith including:

the nature of the debt, including the question of whether the debt would be nondischargeable in a Chapter 7 proceeding; the timing of the petition; how the debt arose; the debtor's motive in filing the petition; how the debtor's actions affected creditors; the debtor's treatment of creditors both before and after the petition was filed; and whether the debtor has been forthcoming with the bankruptcy court and the creditors.

Id. (citing *In re Love*, 957 F.2d 1350, 1357 (7th Cir. 1992)); *Condon v. Brady (In re Condon)*, 358 B.R. 317, 325 (B.A.P. 6th Cir. 2007). Ultimately, good faith "is a fact-specific and flexible determination." *Alt*, 305 F.3d at 419; *see also Condon*, 358 B.R. at 325 (noting that the factors to determine good faith in filing the petition and good faith in proposing a plan overlap to some extent and that "both tests are designed to detect abuses of the provisions and spirit of chapter 13").

The circumstances presented in this case support a lack of good faith and abuse of the bankruptcy system. Ms. Dates has filed five bankruptcy cases since 2012 when HSBC's foreclosure proceedings began. Of her four prior case filings, only one has proceeded to discharge after being converted from chapter 13 to chapter 7. The other three cases were dismissed for failure of Ms. Dates to make payments to fund chapter 13 plans, failure to provide documents to the trustee and/or failure to appear at the required § 341 meeting of creditors. While Ms. Dates did not

meet debtor requirements necessary to continue three of her four prior cases, those cases had the effect of prolonging HSBC's foreclosure proceedings while Ms. Dates continued to live at the Hazelhurst Property without payment of the mortgage. Although HSBC eventually completed foreclosure proceedings and obtained ownership of the Hazelhurst Property through a sheriff sale in 2018, Ms. Dates refused to vacate the property. HSBC's state court actions to hold her in contempt and force her to vacate the Hazelhurst Property led to the filing of her current and fifth bankruptcy case. Ms. Dates's multiple bankruptcy filings, failure to fulfill basic requirements for continuing several of the cases, and the timing of her current bankruptcy petition to thwart HSBC's legitimate efforts to evict her from property she no longer owns and at which she is not a legal tenant support a lack of good faith and abuse of the bankruptcy system.

Ms. Dates' actions since filing her current bankruptcy case are also compelling. Soon after her fifth bankruptcy filing, she filed her Original Chapter 13 Plan. However, her plan was deficient. It lacked a monthly payment amount to creditors from her future earnings as required by the Bankruptcy Code and was not served on all of her creditors. *See* 11 U.S.C. § 1322(a) and Local Bankruptcy Rule 3015-1. In addition, Ms. Dates used provisions of the Original Chapter 13 Plan to deal with HSBC and its mortgage lien even though she no longer owned the Hazelhurst Property at the time of the bankruptcy filing so the property was not property of the estate and curing the mortgage arrearage was no longer an option. *See* 11 U.S.C. § 1322(c)(1) ("a default with respect to . . . a lien on the debtor's principal residence may be cured . . . until such residence is sold at a foreclosure sale"). These deficiencies were explained to Ms. Dates by this Court in its March 16, 2023 oral ruling denying confirmation and were listed in this Court's Order Denying Confirmation entered in conjunction with the oral ruling. The Order Denying Confirmation gave Ms. Dates twenty-one days to file an amended chapter 13 plan consistent with the ruling.

On April 20, 2023, Ms. Dates filed her Amended Chapter 13 Plan. However, it contained many of the same deficiencies as the Original Chapter 13 Plan in contravention of this Court's oral ruling and Order Denying Confirmation. In the Amended Chapter 13 Plan, Ms. Dates continued to omit a monthly payment amount to creditors, one of the most basic and critical requirements for chapter 13. Furthermore, Ms. Dates' Amended Chapter 13 Plan continued to include provisions to deal with HSBC and its mortgage lien.

At the August 16, 2023 hearing when questioned whether her Amended Chapter 13 Plan met the Bankruptcy Code's requirements for confirmation, Ms. Dates refused to discuss the issue stating that she was there for only one reason, to prove that the Hazelhurst Property belonged to her. However, the evidence and arguments that Ms. Dates presented in an attempt to prove ownership of her home are not persuasive.

First, Ms. Dates relied on a state court order from the foreclosure proceeding with HSBC entered February 25, 2019 that granted HSBC's motion to withdraw the Fifth Pluries Order of Sale scheduled for December 27, 2018 and granted leave to the Plaintiff to file a Sixth Pluries Order of Sale [Debtor Ex. 1]. She argued that this state court order meant that the sheriff sale did not occur or was withdrawn. However, this Court relied on the subsequent March 26, 2019 Amended Judgment Entry Confirming Sheriff's Sale and Ordering Distribution [HSBC Ex. C and F] and Sheriff Deed [HSBC Ex. B] to determine that the sheriff sale occurred, that HSBC was the successful bidder, and that ownership of the Hazelhurst Property has been transferred to HSBC as the purchaser. This Court is required to honor the orders and judgments of the state court and, to the extent that Ms. Dates wanted to challenge them, she needed to raise the arguments in state court. *See In re Buczek*, 653 B.R. 303, 308-09 (Bankr. W.D.N.Y. 2023) (holding that a bankruptcy court must honor the state court order granting a mortgage holder summary judgment and

determining its right to foreclose; to the extent a party seeks reconsideration of that decision, the argument must be presented in state court); *In re Smith*, 2019 Bankr. LEXIS 3068, at *6-8, 2019 WL 4897030, at *3 (Bankr. N.D. Ohio Sept. 30, 2019) (determining that under the Rooker-Feldman doctrine, the bankruptcy court lacks authority to stand in the position of an appellate court and review a state court foreclosure judgment or the state court decisions refusing to overturn or modify it). *See also Valladares v. Ginnie Mae*, 2016 U.S. Dist. LEXIS 41870, at *11, 2016 WL 1243804, at *4 (D. N.J. March 29, 2016); *Forrest v. New Century Mortg. Corp. (In re New Century TRS Holdings, Inc.)*, 423 B.R. 467, 473-74 (Bankr. Del. 2010).

Second, Ms. Dates relied on letters and testimony from Mr. Ali to support that Ms. Dates was able to obtain an American Family Insurance homeowner's policy on the Hazelhurst Property that she would not have been able to obtain if not the rightful owner. However, unlike a deed, an insurance policy is not legal document demonstrating ownership of real property. Furthermore, no one from American Family Insurance was called to testify as to the nature of the policy issued and what title records or other evidence of ownership were reviewed by the company prior to issuing the policy. This Court finds this evidence inherently unreliable and unpersuasive as to ownership of the Hazelhurst Property.

Finally, Ms. Dates relied on HSBC's April 17, 2020 Release of Mortgage releasing its mortgage against the Hazelhurst Property [Debtor Ex. A]. At both the March 16, 2023 and August 16, 2023 hearings, Ms. Dates argued that the Release of Mortgage resulted in the Hazelhurst Property being reconveyed back to her. For the second time, this Court rejects that argument. As explained to Ms. Dates at the earlier March 16, 2023 confirmation hearing and in the Order Denying Confirmation, the Release of Mortgage released and reconveyed HSBC's mortgage interest "to the persons legally entitled thereto" [Debtor Ex. A]. At the time of the release, that

“person” was HSBC, holding legal title to the Hazelhurst Property pursuant to the Sheriff’s Deed. *See Fed. Land Bank of Louisville v. Glenn (In re Glenn)*, 760 F.2d 1428, 1435 (6th Cir. 1985) (observing that a foreclosure sale results in a change of ownership of the property and that the purchaser at a foreclosure sale is frequently the mortgage holder itself).

With that, this Court reiterates that Ms. Dates is not the owner of the Hazelhurst Property nor was she at the time she filed the bankruptcy petition initiating the current case. Nonetheless, Ms. Dates continues to use the bankruptcy process to thwart HSBC’s legitimate use of state court proceedings to enforce its in rem rights in the Hazelhurst Property.⁷ Furthermore, Ms. Dates has exhibited a lack of sincere intent to repay her creditors by refusing to correct fundamental deficiencies in her chapter 13 plan or address such issues at the August 16, 2023 hearing. Based on the totality of the circumstances, this Court concludes that Ms. Dates’ bankruptcy petition was not filed in good faith and represents an abuse of the bankruptcy system. Accordingly, HSBC’s Motion to Dismiss is granted.

B. Additional Sanctions

When particularly egregious facts are demonstrated, other sanctions may be imposed including barring a debtor from future filings for a finite or indefinite period of time. *See* 11 U.S.C. § 105(a) and § 349(a); *Dietrich v. Nob-Hill Stadium Props.*, 2007 U.S. App. LEXIS 3591, at *14-

⁷ In her filings and at the August 16, 2023 hearing, Ms. Dates raised other legal arguments that lack merit. First, she argues that HSBC proceeded with foreclosure in 2018 in violation of the automatic stay that existed at that time. However, HSBC had previously obtained in rem relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(4) in Case Number 18-13150 by order entered on October 9, 2018 and the relief granted was valid for a period of two years [Case Number 18-13150, Docket Number 26]. Second, Ms. Dates argues that her Chapter 7 discharge granted on September 4, 2019 in Case Number 18-14602 should have eliminated HSBC’s lien. However, this argument is also incorrect. Unlike unsecured debts, a lien “rides through” bankruptcy unaffected unless the lien is avoided. *In re Jackson*, 554 B.R. 156, 165 (B.A.P. 6th Cir. 2018) (holding that “[t]he discharge of personal obligations through a Chapter 7 discharge does not terminate a secured creditor’s in rem rights unless the creditor’s lien was avoided during the bankruptcy” and, consequently, unavowed liens continue post-discharge), *aff’d*, 2017 WL 8160941 (6th Cir. 2017). Because HSBC’s lien was not avoided during Ms. Dates’s Chapter 7 case, it remained a valid lien after her discharge and HSBC could enforce its in rem lien rights through foreclosure.

15, 2007 WL 579547, at *5 (6th Cir. Feb. 15, 2007) (concluding that “the plain language of section 349(a) appears to allow a bankruptcy court to dismiss a bankruptcy petition with prejudice, permanently, if there is sufficient cause”); *Riddle v. Greenberger (In re Riddle)*, 2020 Bankr. LEXIS 1695, at *29-32, 2020 WL 3498438, at *11-12 (B.A.P. 6th Cir. June 29, 2020) (upholding dismissal of serial filer’s case with a three-year bar to re-filing to prevent a debtor from continuing to file for an improper purpose and misuse the bankruptcy process); *In re Wilcoxon*, 2018 Bankr. LEXIS 3616, at *7-8, 2018 WL 6016540, at *3 (Bankr. N.D. Ohio Nov. 15, 2018) (barring re-filing for a period of five years based on the debtor’s pattern of serial filings to frustrate creditors while ignoring his responsibilities to pay filing fees and complete credit counseling); *In re Grischkan*, 320 B.R. 654, 659-61 (Bankr. N.D. Ohio 2005) (dismissing a case and barring debtor from re-filing for 180 days based on the debtor’s bad faith in filing four bankruptcy cases in three years with the purpose to thwart a lender’s legitimate attempts to foreclose on a house he and his wife continued to live in without making any attempts at repayment of the mortgage loan).

HSBC argues in its Motion to Dismiss that the facts of this case warrant a bar preventing Ms. Dates from filing another bankruptcy case for a period of two years. This Court agrees. She has filed multiple bankruptcy cases in which she did not fulfill debtor requirements necessary to continue the cases but which hindered and delayed HSBC’s ability to foreclose and sell the Hazelhurst Property while she continued to reside at the property without paying the mortgage. Her current chapter 13 case continues the pattern. Within the current case, she filed a chapter 13 plan lacking a monthly payment amount to creditors and attempting to deal with real property that the debtor no longer owned. When given the chance to amend, Ms. Dates filed a second chapter 13 plan with the same deficiencies in contravention of a court ruling and order. Finally, when asked

at the August 16, 2023 hearing to address the confirmability of her most recently filed amended plan, she refused, stating that she was only there to prove ownership of the Hazelhurst Property.

Her actions have been egregious and have shown a lack of respect for the legitimate use of a chapter 13 bankruptcy case to repay creditors to the best of a debtor's ability. Instead, Ms. Dates continues to use bankruptcy case filings to improperly deal with the Hazelhurst Property and has been unwilling to focus on other issues or correct deficiencies in her chapter 13 plan. Ms. Dates gives this Court no reason to believe that this pattern of misusing the bankruptcy process will end. For these reasons, this Court grants HSBC's request and imposes a bar prohibiting Ms. Dates from filing another bankruptcy case for a period of two years.

III. CONCLUSION

For the reasons stated herein, HSBC's Motion to Dismiss [Docket Number 64] is GRANTED. Debtor Carlean Dates's case is dismissed with a two-year bar to re-filing. An order will be entered in conjunction with this opinion.

SO ORDERED.

Distribution List:

Default List Plus

Geoffrey Peters, Esq.
LeAnn Covey, Esq.