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IT IS SO ORDERED.

Dated: November 6, 2024



Mina Nami Khorrami
Mina Nami Khorrami
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS

In re: :
 :
Ameena Catherine Salahuddin : Case No. 2:24-bk-51719
 :
 : Chapter 13
 :
Debtor : Judge Nami Khorrami

**OPINION AND ORDER DENYING DEBTOR’S MOTION TO REVERSE ORDER
DATED SEPTEMBER 24, 2024 (DOC. 56), OVERRULING DEBTOR’S
OBJECTION TO ORDER DATED SEPTEMBER 24, 2024 (DOC. 57), AND
DENYING DEBTOR’S AMENDED MOTION TO STAY
PENDING APPEAL (DOC. 73)**

Before the Court is the *Motion to Reverse Order Dated September 24, 2024* (Doc. 56) (the “Motion”) filed by the debtor, Ameena Catherine Salahuddin (the “Debtor”), the Debtor’s *Objection to Order Dated September 24, 2024* (Doc. 57) (the “Objection”), and *Trustee’s Objection to Motion to Reverse Order Dated September 24, 2024* (Doc. 56) (Doc. 75) (the

“Response”). Also before the Court are the *Debtor’s Motion for Stay Pending Appeal* (Doc. 59) and the *Debtor’s Amended Motion for Stay Pending Appeal* (Doc. 73) (collectively, the “Motion to Stay”), the *Creditor’s Response to Debtor’s Amended Motion to Stay Pending Appeal* (Doc. 73) filed by the mortgage lender, Atlantica, LLC, through its servicer, Land Home Financial Services, Inc. (the “Creditor”) (Doc. 79) (the “Creditor Stay Response”), and the *Trustee’s Objection to Amended Motion to Stay Pending Appeal* (Doc. 73) (the “Trustee Stay Response”) (Doc. 80).¹ Having considered the Motion, Objection, and Response, and the Motion to Stay and the Stay Responses, and based on the following reasons, the Court finds that the Motion should be denied, the Objection should be overruled,² and the Motion to Stay should be denied.

Jurisdiction and Venue

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended General Order 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court.³ Proceedings relating to the dismissal of a case under 11 U.S.C. § 1307, including any proceedings to reconsider an order of dismissal or stay it pending appeal, are core proceedings under 28 U.S.C. 157(b)(2)(A) and (O). Venue properly lies in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ Where appropriate the Creditor Stay Response and the Trustee Stay Response will be addressed collectively as the “Stay Responses.”

² The Motion and the Objection are substantively identical. Accordingly, in the discussion that follows, the Court will address them jointly as the “Motion.”

³ On September 27, 2024, two days after filing the Motion, the Objection, and the Motion to Stay, the Debtor filed a *Notice of Appeal* (Doc. 60) (the “Notice of Appeal”). The appeal has been docketed in the United States District Court for the Southern District of Ohio as Case No. 24-cv-03992. Generally, the filing of a notice of appeal divests the lower court of jurisdiction to modify or vacate the order that is being appealed. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58, 103 S.Ct. 400, 74 L.Ed.2d 225 (1982). However, under Rule 8002(b)(2) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Motion delays the effectiveness of the Notice of Appeal until the Motion is decided, and therefore this Court has jurisdiction to adjudicate the Motion. *Slep-Tone Entm’t Corp. v. Karaoke Kandy Store, Inc.*, 782 F.3d 712, 716 (6th Cir. 2015) (the “concept of ‘effectiveness’ . . . delay[s] the transfer of jurisdiction to the appellate court from an otherwise timely filed notice of appeal until the relevant post-judgment motion is decided.”) (quotation omitted).

Relevant Facts

The Debtor filed her chapter 13 bankruptcy petition (the “Petition”) on May 1, 2024 (the “Petition Date”). The Petition was the Debtor’s third bankruptcy case since October of 2023. On May 29, 2024, the chapter 13 trustee, Edward Bailey (the “Trustee”), filed *Trustee’s Motion to Dismiss Debtor pursuant to 11 U.S.C. §§ 1307(c) and 109(g)* (Doc. 20) (the “Motion to Dismiss”), requesting dismissal of the case with a bar to refile for a period of 180 days for Debtor’s failure to prosecute her case, undue delay prejudicial to creditors, and abuse of the bankruptcy process. The Debtor did not respond to the Motion to Dismiss. The Court held a hearing on the Motion to Dismiss on July 9, 2024 (the “Dismissal Hearing”). The Trustee appeared through his counsel. The Debtor failed to appear. The Trustee presented his case and introduced and admitted supporting documents into evidence.

Based upon the evidence at the Dismissal Hearing (including judicial notice of matters appearing on the Court’s docket), the Court found that Debtor filed her Petition but did not file many of the documents required to be filed with the Petition under 11 U.S.C. § 521 and Bankruptcy Rules 1017 and 3015, such as the required schedules, statements, and plan.⁴ As a result, on the Petition Date, the Court issued an *Order Regarding Deficient Filing by Individual Debtor and Setting Fourteen (14) Day Deadline for Compliance; and Notice of Imminent Dismissal of Case* (Doc. 9) (the “Deficiency Order”), ordering that the Debtor’s Schedules, Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period (Form 122C-1), and related documents be filed by May 15, 2024. The Deficiency Order warned the Debtor that if the required forms were not timely filed, her case could be dismissed without further notice. Debtor did not file the required forms within the 14-day timeline specified in the Deficiency Order. Nor did the

⁴ Under Bankruptcy Rule 1007(c), these documents must be filed no later than 14 days after a petition is filed.

Debtor file her chapter 13 plan within 14 days of filing the Petition as required by Rule 3015(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), or appear at the June 5, 2024 meeting of creditors as required by 11 U.S.C. §§ 341 and 343. All these failures remained uncorrected as of the Dismissal Hearing.

The Court also found that Debtor had filed two prior bankruptcy cases. The Debtor’s first case, being case number 23-53546 (the “First Case”), was filed on October 12, 2023, and dismissed on November 27, 2023. Debtor’s second case, being case number 24-50528 (the “Second Case”), was filed on February 15, 2024, and dismissed on March 1, 2024. The First Case was dismissed for the Debtor’s failure to file the credit counseling certificate required by 11 U.S.C. 109(h), schedules as required by 11 U.S.C. § 521(a) and Bankruptcy Rule 1007(c), a chapter 13 plan as required by 11 U.S.C. § 1321 and Bankruptcy Rule 3015(b), and failure to tender any payment to the Trustee as required by 11 U.S.C. § 1326(a)(1). Debtor’s Second Case was dismissed for the Debtor’s failure to file a mailing list of creditors and other parties in interest, the credit counseling certificate required by 11 U.S.C. § 109(h), schedules as required by 11 U.S.C. § 521(a) and Bankruptcy Rule 1007(c), a chapter 13 plan as required by 11 U.S.C. § 1321 and Bankruptcy Rule 3015(b), and failure to tender any payment to the Trustee as required by 11 U.S.C. § 1326(a)(1).⁵ The Trustee also produced evidence showing that the First Case, Second Case, and this Petition were all filed days before scheduled state court foreclosure sales.

Based upon these findings, at the conclusion of the Dismissal Hearing, the Court dismissed the case and imposed a 180-day bar to refiling under 11 U.S.C. § 109(g) because the Debtor’s three cases in eight months had established a pattern of filing and then abandoning chapter 13 cases to frustrate a creditor’s rights under state law. *An Order Dismissing Case and Imposing Upon Debtor*

⁵ This is the Debtor’s third case filed within a year of the Petition Date, and no request to impose the automatic stay was filed in this case. As a result, under 11 U.S.C. § 362(c)(4), the automatic stay never went into effect in this case.

a *180-Day Bar to Refiling* (Doc. 20) was entered on July 11, 2024 (the “Dismissal Order”) (Doc. 24).

On July 18, 2024, the Debtor filed a *Motion to Vacate, Reconsider or Reverse Judgment* (the “First Motion to Vacate”) (Doc. 28). The Creditor filed *Creditor’s Response to Debtor’s Motion to Vacate, Reconsider, or Reverse Judgment (Doc 28)* (the “Creditor’s Response”) (Doc. 30). Debtor filed a *Reply to the Creditor’s Response to Debtor’s Motion to Vacate, Reconsider, or Reverse Judgment (Doc 28)* (Doc 33). The Court held a hearing on the Debtor’s First Motion to Vacate on September 10, 2024 (the “Reconsideration Hearing”). The Trustee and the Creditor appeared through counsel and the Debtor appeared pro se.

The First Motion to Vacate focused solely upon the reasons why the Debtor missed the Dismissal Hearing – namely, the need to care for her sister who was experiencing a medical emergency. It did not address the issues that led to the Dismissal Order. At the Reconsideration Hearing, the Court advised the Debtor that it accepted her reasons for not appearing at the Dismissal Hearing but was very concerned that none of the issues that led to dismissal and the 180-day bar had been addressed. The Debtor stated that she was serious this time about pursuing bankruptcy relief but conceded that “I know it may not look like it based off of my past.”

The Court declined to grant the First Motion to Vacate, however, based upon the Debtor’s representations that she was serious about pursuing chapter 13 relief, the Court allowed her a final opportunity to cure the deficiencies and issues in her case. The Court gave the Debtor one week to file her chapter 13 plan, all the schedules, statements, and other documents set forth in the Deficiency Order, provide the required documentation to the Trustee, and to make the required plan payments to the Trustee. The Court specifically discussed with the Debtor in some detail that any plan she filed would have to provide for payment on the Creditor’s mortgage – both regular

monthly mortgage payments as well as monthly payments towards the cure of the substantial prepetition arrearage that was set forth on the Creditor's proof of claim. The Court further stated that the Debtor would have to comply with *all* conditions set by the Court, and that if she failed to comply with any of them, her case would not survive. The Debtor stated she understood. The Court then entered the *Order Conditionally Granting Motion to Vacate* (the "Conditional Order") (Doc. 36) memorializing these terms on September 11, 2024.

The Conditional Order required the Debtor to file twelve categories of documents with the Court by September 17, 2024. The first eleven categories were the schedules and related documents the Debtor failed to file as required by the Deficiency Order. The twelfth category related to the Debtor's chapter 13 plan:

Mandatory Chapter 13 Plan for the Southern District of Ohio with monthly payments being sufficient for the Chapter 13 Trustee to disburse (a) on-going monthly mortgage payments, (b) payment of pre-petition mortgage arrears as provided in Creditor's Proof of Claim (Claim 8-1),⁶ subject to any objection by Debtor, and (c) per month payments to any other secured creditors, and (d) payment of the statutory Trustee fee, currently 7.5%.

Conditional Order at 2. The Conditional Order also required the Debtor to submit the first statutory plan payment to the Trustee, and to upload specified tax returns and paystubs to the Trustee's secure website, by September 17, 2024. *Id.* The Conditional Order also directed the Trustee to file a Report to Court stating whether the Debtor had complied with the terms of the Conditional Order. If she had, the Trustee was authorized to upload an order vacating the Dismissal Order. If she had not, the Trustee was authorized to upload an order denying the First Motion to Vacate. Conditional Order at 2-3.

⁶ The Creditor's Proof of Claim (Claim 8-1) asserted that the Creditor was entitled to regular monthly payments of \$818.06 and that on the Petition Date, the past due arrearage was \$161,365.69.

On September 19, 2024, the Trustee filed a *Notice of Default and Report to Court* (Doc. 36) (Doc.50) (the “Notice of Default”). The Notice of Default first addressed the fact that the Debtor had not provided the Trustee with the tax returns and paystubs required by the Conditional Order. The Trustee candidly acknowledged that this was the result of the Trustee including an erroneous address when he had submitted the Conditional Order to the Court. The Notice of Default also noted that the Debtor had timely filed the schedules and other documents required by categories 1-11 of the Conditional Order and had timely filed a chapter 13 plan.

However, the Trustee asserted that the plan did not comply with the Conditional Order because it provided for a length of zero months and no payments to the Trustee or creditors. The Trustee noted that the plan did not propose ongoing monthly mortgage payments, any payments towards the mortgage arrearage stated in the Creditor’s proof of claim 8-1, monthly payments to any other secured creditors, or payment of the statutory Trustee’s fee, all as required by the Conditional Order.⁷ The Trustee also certified that the first payment due on the Debtor’s plan had not been made as required by the Conditional Order. The Trustee asserted that these issues constituted a material default of the Conditional Order and indicated that the Debtor was not serious about pursuing chapter 13 relief. Accordingly, he submitted a proposed order denying the First Motion to Vacate.

Upon reviewing the Notice of Default and the proposed order submitted by the Trustee, along with the documents that had been filed by the Debtor on September 17, 2024, the Court determined that the Debtor’s plan did not satisfy the conditions set forth in the Conditional Order and therefore entered the *Amended Order Denying Debtor’s Motion to Vacate Dismissal With 180-Day Bar to Refiling* (Doc. 54), on September 24, 2024 (the “Order Denying”). Given the technical

⁷ In addition, the Debtor had filed an *Objection to Claim* (Doc. 41), which asserted that the Creditor’s mortgage was invalid.

issues described in the Notice of Default regarding the Debtor's inability to provide documentation to the Trustee, the Court's ruling was based solely on the Debtor's plan and failure to make payment to the Trustee.

In addition to the Motion, which asks this Court to vacate the Order Denying, the Debtor has also filed the Motion to Stay. The Motion to Stay is not clear about which of this Court's orders to stay but this Court has treated the Debtor's Motion to Stay as requesting the Court to stay the enforcement of the Order Denying entered by the Court on September 24, 2024.

II. Analysis

A. Motion to Alter or Amend

The Bankruptcy Rules do not expressly provide for a "motion to reverse" or otherwise reconsider a final order. Courts generally treat such motions as motions to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure (the "Civil Rules") (made applicable herein by Bankruptcy Rule 9023), when they involve "reconsideration of matters properly encompassed in a decision on the merits." *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 174, 109 S.Ct. 987, 103 L.Ed.2d 146 (1989) (quoting *White v. N.H. Dep't of Emp. Sec.*, 455 U.S. 445, 451, 102 S.Ct. 1162, 71 L.Ed.2d 325 (1982)). *See also Smith v. Hudson*, 600 F.2d 60, 62 (6th Cir. 1979) (holding that a motion to "vacate and reconsider, or even reverse" a prior decision should be treated as a motion under Civil Rule 59(e)). A motion claiming that the court overlooked some factual or legal issue is a motion to alter or amend under Civil Rule 59(e). *Cameron v. Ocwen Loan Servicing, LLC*, 2020 U.S. Dist. LEXIS 14595, at *5 (S.D. Ohio Jan. 29, 2020).

The Sixth Circuit has recognized four grounds for granting relief under Civil Rule 59(e): (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice. *GM, LLC v. FCA US, LLC*, 44 F.4th 548 (6th Cir.

2022). Of these four grounds, the only one potentially implicated by the Motion is manifest injustice. One instance where courts have found manifest injustice is where the trial court has overlooked an argument made or evidence submitted by the moving party. *Cameron*, 2020 U.S. Dist. LEXIS 14595, at *5-6 (vacating summary judgment order because the court overlooked evidence of a factual issue creating a genuine issue for trial). Based upon the Court’s review of the Motion, Objection, and Response, the Court determines that it did not overlook anything when it entered the Order Denying.

Prior to entering the Order Denying, the Court reviewed the Trustee’s Notice of Default, which disclosed the issues that arose regarding the Debtor’s provision of documentation to the Trustee. Notice of Default at 2, ¶5. The only default alleged in the Notice of Default related to the lack of any payment to the Trustee and the provisions of the Debtor’s proposed plan. Notice of Default, ¶¶10-11. Accordingly, when the Court evaluated the Trustee’s Notice of Default, the Court limited its analysis to the lack of payment to the Trustee and the contents of the Debtor’s plan. The Court was fully aware of the technical issues regarding document submission experienced by the Debtor and understood that the Trustee was not relying upon them as a basis for asserting that the Debtor was in default of the Conditional Order.⁸

Rather, the Court issued the Order Denying because the Debtor failed to make payment to the Trustee and filed a facially improper plan that proposed no payments to anyone over a term of zero months in direct contravention of the Conditional Order. At the Reconsideration Hearing, the Court reviewed in detail what the Debtor would need to include in her plan, including payments to the Trustee sufficient to pay the Creditor’s regular mortgage payment, the cure amount, the

⁸ While these issues were not addressed in the Order Denying, “the fact that an issue was not explicitly mentioned by the court does not on its own entail that the court overlooked the matter in its initial consideration.” *The Shou Kao v. CardConnect Corp.*, 2019 U.S. Dist. LEXIS 106710, at *9 (E.D. Pa. June 26, 2019) (quotation omitted).

Trustee's fee, and other creditors. The Debtor stated that she understood. The plan filed by the Debtor, proposing a length of zero months and no payments to anyone, did not comply with the Conditional Order.

But the plan was not merely noncompliant with the Conditional Order. The treatment of the mortgage, combined with the Debtor's claim objection filed the same day, made clear that the Debtor intended to use the chapter 13 process to try to relitigate the validity of the Creditor's mortgage, even though the state court had already found the mortgage to be valid by issuing a foreclosure judgment and order of sale. As the Trustee asserted, the proposal to pay Creditor nothing on its mortgage was additional evidence that this case represents an abuse of the provisions of chapter 13. *In re Neal*, 652 B.R. 497, 512 (Bankr. S.D. Ohio 2023); *see also In re Caldrello*, 2024 Bankr. LEXIS 944, at *7 (Bankr. D. Conn. April 19, 2024) (holding that, where the debtor filed schedules and a plan that made clear she had no intention to pay her mortgage but simply sought to use the bankruptcy court as another forum to relitigate the validity of her mortgage, the case was filed in bad faith so as to warrant dismissal with a bar to refiling).

Accordingly, the Debtor has failed to establish manifest injustice. The Motion is denied, and the Objection is overruled.

B. Motion for Stay Pending Appeal

When considering a motion for stay pending appeal, this Court must weigh the following: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Nken v. Holder*, 556 U.S. 418, 434, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009).

Likelihood of success is the most important factor. *Mich. State A. Philip Randolph Inst. v. Johnson*, 749 F. App'x 342, 344 (6th Cir. 2018).

It is not clear whether there is anything to stay. The Order Denying did not alter the legal relations of the parties. The Debtor's case was already dismissed. The Order Denying simply kept it dismissed. Staying the Order Denying would grant the Debtor no relief – her case would still be dismissed and the 180-day bar to refiling would still be in effect. And it is only the Order Denying that is specified in the Notice of Appeal. However, because the Notice of Appeal and Motion to Stay indicate that the Debtor seeks to appeal the order imposing the 180-day bar, the Court will consider the Debtor's argument that dismissal with a 180-day bar to refiling was a disproportionate response to technical issues beyond her control.

First, the Debtor has not made the “strong showing” of likelihood of success on appeal required under the standard established by the U.S. Supreme Court in *Holder*. She argues that the Court erred by dismissing the case with a 180-day bar to refiling “based in part upon Appellant's inability to upload documents due to a technical error outside of Appellant's control, which should not have resulted in such a severe consequence.” Motion to Stay 6. But both the Dismissal Order and the Order Denying resulted from the Debtor's own acts and decisions.

The Dismissal Order was the result of the Debtor's own conduct in filing three chapter 13 cases in eight months without fulfilling her basic duties under the Bankruptcy Code and the Bankruptcy Rules in any of them. These duties are imposed by the Bankruptcy Code, and they are critical to the chapter 13 process. Chapter 13 does not work when a debtor does not file schedules or her plan and fails to appear at the meeting of creditors. The evidence at the Dismissal Hearing made clear that the Debtor had not complied with her basic duties under the Bankruptcy Code and Rules. Similarly, the Debtor did not comply with her basic duties in her prior two

bankruptcy cases. In addition, all of the Debtor's three bankruptcy cases were filed shortly before the scheduled sheriff's sale of the Debtor's home that was initiated by the Creditor. The Dismissal Order with its 180-day bar was thus fully warranted. *See In re Pike*, 258 B.R. 876, 881 (Bankr. S.D. Ohio 2001) ("A debtor who makes serial filings to obtain the protection of the automatic stay in order to delay or thwart creditor action, while refusing to fulfill the duties imposed by the Code, faces imposition of the 180-day bar to refile provided in 11 U.S.C. § 109(g).") (quotation omitted). As such, the Dismissal Order resulted from acts that were entirely within the Debtor's control.⁹

Likewise, the Order Denying was the result of the Debtor filing a plan that ignored the requirements of the Conditional Order regarding treatment of the Creditor's mortgage in her plan. Notwithstanding the Court's statements at the Reconsideration Hearing regarding what the plan needed to include and the Debtor's statement that she understood, the plan proposed to pay the Creditor nothing on its mortgage and instead sought to relitigate the mortgage's validity. While the Debtor complains that she should have been given a chance to correct problems with her plan through plan amendments, the whole point of the Conditional Order was to give the Debtor a chance to show, through her actions, that she was serious about pursuing bankruptcy relief. But the plan filed by the Debtor fell far short of what the Conditional Order required. The Debtor has failed to make a strong showing of likelihood of success regarding either the Dismissal Order or the Order Denying. This factor weighs heavily against a stay.

⁹ The Court notes that, in the First Motion to Vacate and in the Motion to Stay, the Debtor asserts that she missed the Dismissal Hearing because of her sister's medical emergency. While this reason for missing the Dismissal Hearing was beyond the Debtor's control, her absence from the Dismissal Hearing did not cause the entry of the Dismissal Order. The Dismissal Order was entered because the record overwhelmingly demonstrated that the Debtor had, for the third time in eight months, filed a chapter 13 case and then entirely abandoned it. The Debtor's attendance at the Dismissal Hearing would not have changed those facts, nor could she have presented any evidence to counter those facts.

Second, the irreparable harm asserted by the Debtor is that her property will be subject to foreclosure without a stay. But, as the Trustee correctly asserts, the automatic stay never came into effect in this case, so that even if the Court were to grant a stay of the Dismissal Order, thereby reinstating the bankruptcy case, that would still not reinstate the automatic stay. Under 11 U.S.C. § 362(c)(4)(A), when a case is filed within a year of the dismissal of two prior cases, the automatic stay does not go into effect unless the Court so orders. No order imposing the stay under § 362(c)(4)(B) was sought by the Debtor or issued. Therefore, the automatic stay never arose in this case. The Debtor cannot be harmed by losing the protection of the automatic stay because of the dismissal of this case when she never had that protection in the first place.

Furthermore, the Debtor's asserted irreparable harm is that her real property would be subject to foreclosure without consideration of her arguments for the mortgage's invalidity. But the state court has already found that the mortgage is valid and this Court may not reverse or revisit that conclusion. Entry of a decree in foreclosure and issuance of an order of sale necessarily determines that the mortgage is valid because that is one of the elements of a foreclosure claim under Ohio law. *Huntington Nat'l Bank v. Haehn*, 125 N.E.3d 287, 297 (Ohio Ct. App. 2018). If the Debtor believes that the foreclosure judgement entered by the state court is erroneous, her recourse is with the Ohio appellate courts, not with this Court. Indeed, as noted above, using chapter 13 to try to relitigate that conclusion is evidence of bad faith. *Neal*, 652 B.R. at 502.¹⁰ The Debtor has failed to show irreparable harm. This factor weighs heavily against a stay.

Regarding harm to third parties, the Court agrees with the Trustee that, as a technical legal matter, the preceding discussion of 11 U.S.C. § 362(c)(4) indicates the creditors should not be

¹⁰ The Creditor Stay Response states (without attachment of supporting evidence) that the foreclosure sale occurred on October 4, 2024, so that there is no longer any harm to be prevented by imposition of a stay. The Court is reluctant to rely upon this assertion given that it is not supported by any evidence; in any event it is moot given the conclusion that the automatic stay never applied in this case.

harmd by a stay, because it would not cause the automatic stay to go back into effect. As a practical matter, however, the state courts tend to respond to a suggestion of bankruptcy by immediately staying the state court case. Thus, as a practical matter, creditors might be harmed by further delay. This factor is neutral at most.

On the fourth factor, the public interest does not favor a stay. The record overwhelmingly demonstrates that the Debtor is a serial filer who has sought the protection of the automatic stay while satisfying virtually none of the obligations the Bankruptcy Code imposes upon chapter 13 debtors. Congress adopted 11 U.S.C. §109(g) in 1984 as a measure to address the serial filer problem. *Pike*, 258 B.R. at 881. Granting a stay here would be fundamentally inconsistent with the Court's finding that the Debtor is not serious about pursuing chapter 13 relief. The public interest does not favor granting a stay under these circumstances.

Since none of the factors favor granting a stay, the Motion to Stay is therefore denied. For the reasons set forth above, the Motion is denied, the Objection is overruled, and the Motion to Stay is denied. This Opinion and Order resolves all the post-dismissal motions under Bankruptcy Rules 9023 and 9024 filed by the Debtor; therefore, upon entry of this Opinion and Order, the Notice of Appeal will become effective pursuant to Bankruptcy Rule 8002(b)(2).

IT IS SO ORDERED.

Copies to:

Default List

LeAnn E. Covey

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