

Trustee declined to waive the prejudice period contained in a motion to dismiss in a pre-confirmed case

Case: 11-10646 *Davis*

Docket: Trustee's Dismissal Docket on 12/7/11 Beaumont Docket

Facts: This case was filed on 11/1/11 for the purported purpose of stopping a foreclosure on the Debtor's home. At that point, the Debtor failed to file any schedules, plan, statements, or other documents with the Court. The Debtor failed to provide the Trustee with any documentation that the Trustee requests of every Debtor prior to her 341 creditors' meeting. The Debtor failed to make any plan payments to the Trustee. The Trustee filed his Motion to Dismiss with Prejudice for 120 days. The Debtor filed her response to the Motion to Dismiss, thereby indicating that she did not oppose the dismissal of the case but did oppose the dismissal of the case with prejudice for 120 days. The attorney for the Debtor, who is not a regular filer in the Eastern District of Texas, talked by telephone both to the Trustee's Staff Attorney and Trustee, thereby requesting that the dismissal with prejudice be waived. Upon the Trustee's refusal to waive the request with prejudice, the attorney for the Debtor accused the Trustee of "loosing" the Debtor's home to foreclosure. The attorney for the Debtor indicated that she and the Debtor would appear in Court to oppose the dismissal of the case with prejudice.

Ruling: The Court dismissed the case with prejudice for re-filing bankruptcy for a period of 120 days. Neither the Debtor or her attorney appeared to oppose the dismissal of the case.

Result: The Trustee will not waive his request for the dismissal of a pre-confirmed case with prejudice for 120 days. Exception: Based upon past rulings of the Court, the Trustee will waive the 120 day prejudice period where the debtor is a pro se debtor and the debtor is in Court requesting that the prejudice period be waived so the debtor can hire an attorney to re-file his or her case. The argument that the Trustee has cost the Debtor in this case the Debtor's home (assuming that the mortgage company forecloses on the house during the next 120 days) is ridiculous. If the house is foreclosed upon, the Debtor is the cause for losing her home based upon the Debtor's failure to prosecute her bankruptcy once the case was filed.