

Condition requiring the Debtor to stay current on his plan payments as contained in the Order Extending Automatic Stay as Against all Creditors is **absolute with no grace period** in making the plan payments to the Trustee

Case: 16-60303 *Prewitt*

Docket: None; case was automatically dismissed by the Court pursuant to the conditions as imposed upon the Debtor in the Order Extending Automatic Stay as Against all Creditors.

Facts: The Debtor filed at least two prior unsuccessful Chapter 13 bankruptcy proceedings prior to his filing this case. The timeline of the events leading to the dismissal of this case are as follows:

5/5/16 (Thursday): Bankruptcy Petition, Plan, Schedules, and other required documents filed by the Debtor. Debtor also filed his Motion for Continuation of Stay pursuant to the provisions of 11 U.S.C. 362(c)(3)(B). The Debtor's Chapter 13 Plan proposed to pay, among others, the replacement value of the Debtor's mobile home to 21st Mortgage as the mortgage holder.

5/6/16 (Friday): Court entered its Order Establishing Deadline (5/23/16) for Objection to Motion for Continuation of Automatic Stay and Setting of a Possible Hearing (5/26/16) on such Motion in the event such an Objection is filed.

5/12/16 (Thursday): 21st Mortgage filed its Objection to the Motion for Continuation of the Automatic Stay and an Objection to the confirmation of the proposed Chapter 13 Plan.

5/26/16 (Thursday): The Court conducted the contested hearing on the Motion for Continuation of the Automatic Stay after which the Court granted the Motion and entered its Order on the same day. On the record at the hearing (and as later set forth in the Order), the Court emphasized the importance of the Debtor timely making his Chapter 13 Plan payments to the Trustee. In particular, the Court required the Debtor to "timely initiate and at all times remain current in his payments to the Chapter 13 Trustee under his current Chapter 13 plan from the date of the entry of this Order to **February 28, 2017....**" The Court also noted that, in the event of any default in such payments in that nine-month period, "the automatic stay shall immediately terminate and such default shall constitute cause, in light of the prior case filings, for the immediate dismissal of this case without further notice or hearing and with prejudice of the right of the Debtor Bobby Dean Prewitt, to re-file for any relief under any chapter of Title 11, United States Code, **for a period of 180 days** from the date of dismissal."

6/3/16 (Friday): Debtor received, by direct deposit, his Social Security check.

6/4/16 (Saturday); The Debtor's first plan payment came due.

6/6/16 (Monday): 21st Mortgage filed its Notice of the Termination of the Automatic Stay based upon the fact that the Trustee had not yet received the first plan payment that came due on 6/4/16.

6/7/16 (Tuesday): Debtor acquires a money order representing his first plan payment and delivers such to his attorney's office for forwarding to the Trustee. Debtor's attorney forwards an e-mail to the Trustee advising him that the attorney had received the plan payment and was forwarding such to the Trustee.

6/9/16 (Thursday): The first plan payment posts with the Trustee's lock box (5 days after the due date). Debtor files an Objection to the Notice of Termination of the Automatic Stay.

6/10/16 (Friday): Trustee files his Comment in the case to advise the Court that the payment has now been received.

6/14/16 (Tuesday): Trustee files his Notice of Plan Payment Delinquency confirming that the plan payment was late but such had now been received.

6/22/16 (Wednesday): The Court entered its Order Dismissing the case with prejudice from refile for a period of 180 days (a copy of this Dismissal Order is attached to this Memo). The Court quotes extensively from the transcript of the contested hearing on the Motion to Continue the Automatic Stay to confirm that the timely making of the plan payments was a condition for the continuation of the stay and of the case.¹

Ruling: As noted above, the Court dismissed this case with prejudice from the Debtor refile for a period of 180 days.

Result: When the Court enters an Order Extending the Automatic Stay with the condition imposed upon the Debtor to timely commence and continue making the debtor's Chapter 13 plan payments for the time period as set forth therein (or the case would be summarily dismissed with prejudice without further notice or motion), this obligation is absolute with **no grace period**. In fact, the Court has now changed the language in the Order that he is now entering to specifically include the language that there is no grace period for the due date of the plan payments. In the attached Dismissal Order, the Court equated the requirement imposed upon the Debtor to timely initiate and at all time remain current in his payments to what attorneys call "strict liability".

Prior to commencement of the Confirmation hearing in Beaumont on 7/14/16, the Court commented about this case and the need for the debtors to timely commence and stay current on their plan payments. The Court noted that if a debtor cannot timely commence making plan payments under the due date, the debtor should consider filing a Motion to Move the Due Date.²

Trustee's Recommendations for debtors under an Order Continuing the Automatic Stay with the condition that they timely commence and make their plan payments for the time period as set forth therein:

--If the debtor cannot, for whatever reason, make the payment by the due date as set under the Bankruptcy Code, the debtor should consider filing his Motion to Move the Due Date at the same time the Debtor files the Motion to Continue the Automatic Stay. Such a Motion should be very specific on why the due date needs to be moved in that the Trustee will be reviewing such carefully. If, for example, the Debtor simply does not want to make the first plan payment, the Trustee will probably object to such.

¹ Court: "...It doesn't matter what the excuse is...it doesn't matter how sympathetic the condition might be...[you] simply have to make the plan payment when it is due--or before, preferably....You have to make that payment every month through February 2017, ok? [Debtor acknowledges]"

² "Unless the Court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief..." 11 U.S.C. 1326(a)(1). (Emphasis added)

--The Debtor should consider making a full plan payment to the Trustee at the time of or shortly after the filing of the bankruptcy case. In that way, the debtor shall remain ahead in the payments no matter which manner the debtor commence making subsequent plan payments:

Wage withholding orders where a portion of a plan payment is taken out of each paycheck received each month. This may result in some months of the year the debtor is slightly delinquent and some months slightly ahead in the plan payments. An early payment should keep the debtor current in every month as the employer deducts the plan payment from the debtor's paycheck.

TFS payments taken directly from the debtor's bank account are delayed a week (in case the debtor exercises a charge back) before such is sent to the Trustee's office. Debtors should either have the payment come out of their checking account at least a week prior to the plan payment due date or, if the debtors have already made an earlier payment, the debtors would be slightly ahead on the plan payments so the one week delay should not be a problem.

TFS payments made through MoneyGram are also delayed by a few days before such are sent to the Trustee's office. Again, debtors should either make the payments to MoneyGram at least a few days prior to their plan payment due date or, if the debtors have already made an earlier payment, the debtors would be slightly ahead on the plan payments to the few day delay should not be a problem.

Plan payments mailed directly to the Trustee's Lock Box will be at the mercy of the U.S. Postal Service. If the debtors have already made an earlier payment, the debtors would be slightly ahead on the plan payments and any delay in mail delivery to the Trustee's lock box should not be a problem.

--If the Trustee has correctly filed a Notice of Plan Payment Delinquency (meaning that the Trustee has not received the plan payment by the due date), do not call the Trustee's Office requesting that such be withdrawn for any other reason other than such was filed in error. The Trustee will **not** withdraw it unless the Notice of Plan Payment Delinquency was filed in error. The Debtor can always file a response to the Notice of Plan Payment Delinquency setting forth the reason(s) why the payment was not made timely to the Trustee. The ultimate decision on whether the case will be dismissed or not after a delinquency will be made by the Court, not the Trustee.

As noted in Footnote 1 herein, the Court advised the Debtor at the hearing that the Debtor needed to timely make his plan payment by the due date "or before, preferably."

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IN RE:	§	
	§	
BOBBY DEAN PREWITT	§	Case No. 16-60303
xxx-xx-2992	§	
200 Brentwood Cir., Athens, TX 75751	§	
	§	
Debtor	§	Chapter 13

**ORDER DISMISSING CHAPTER 13 CASE
WITH PREJUDICE FOR 180 DAYS**

ON THIS DATE, in light of this Court's prior order for the continuation of the automatic stay in this case pursuant to the provisions of 11 U.S.C. 362(c)(3)(B) (the "Stay Continuation Order") in which an obligation was thereby imposed upon the above-referenced Debtor to make his Chapter 13 plan payments to John Talton, Chapter 13 Trustee on a timely basis for the time period as set forth therein or else the case would be dismissed with prejudice from re-filing for a period of 180 days without the necessity of further notice or hearing, the Court finds that the Chapter 13 Trustee has submitted his certification that the Debtor's plan payment, which was due on Monday, June 6, 2016¹ posted instead on Thursday, June 9, 2016. This development has triggered a flurry of filings by both the Debtor and by 21st Mortgage Corporation, a primary secured creditor.

Notwithstanding such filings, including the Debtor's assertion therein that he was entitled to some type of grace period for the tendering of his required plan payment, the

¹ Since the original payment due date of the 4th day of the month fell upon a Saturday, the deadline was extended to the next business day — Monday, June 6, 2016.

Court has reviewed the record with regard to the instructions and admonitions which the Court gave directly to the Debtor and his counsel at the conclusion of the hearing when it rendered its oral ruling. The Court informed the Debtor and his counsel that the requirement that he “timely initiate and at all times remain current in his payments to the Chapter 13 Trustee under his current Chapter 13 plan” was the equivalent of what attorneys call “strict liability.” The Court continued with the following admonitions:

Court: . . . It doesn’t matter what the excuse is . . . it doesn’t matter how sympathetic the condition might be . . . [you] simply have to make the plan payment when it is due — or before, preferably. . . . You have to make that payment every month through February 2017, ok? [Debtor acknowledges]

. . . The Trustee is going to be monitoring this . . .because the Trustee is going to know when your payment is there. . . . You’re not going to get a motion . . . not going to get four weeks on a motion and waiting for a hearing. . . .There’s not going to be a hearing.

Between now and February . . . , if those payments are not made on or before that date, and I’m not talking about made as in sticking them in the mail, I’m talking . . .if the Trustee doesn’t have the money. . . . Are we clear? Are we on the same page? [Debtor acknowledges] . . .

Because this is the third strike. You either are going to perform or you’re not. . . .

[So] whatever you have to do . . . you just need to make sure that the payment is to the Trustee on time for the ongoing future or the case is going to get dismissed and there’s going to be a long enough period of prejudice . . . for Mr. Brady’s client and any other person who holds collateral to be able to exercise their rights.

Thus, any suggestion that the Debtor was unclear about what the Court’s order required of him is meritless and disingenuous. Accordingly, pursuant to the previous

Order of the Court, just cause exists for entry of the following order.

IT IS THEREFORE ORDERED that the above-referenced Chapter 13 case is **DISMISSED WITH PREJUDICE** to the re-filing of any petition under Title 11 by **Bobby Dean Prewitt**, the above-referenced Debtor, **for a period of one hundred eighty (180) days from June 22, 2016** and that all Income Withholding Orders previously entered in this case are hereby terminated.

IT IS FURTHER ORDERED that, pursuant to 11 U.S.C. §1326(a)(2), the Chapter 13 Trustee shall proceed with the distribution of any funds in his possession in the following manner:

- (1) the pre-confirmation adequate protection payments which have been previously tendered by the Debtor to the Chapter 13 Trustee for the benefit of creditors holding an allowed claim secured by personal property retained by the Debtor shall be forwarded to the applicable secured creditor(s) by the Chapter 13 Trustee in the monthly amount specified by the Debtor in the most recently-proposed Chapter 13 plan;
- (2) funds thereafter remaining on deposit with the Chapter 13 Trustee, if any, shall first be applied to the payment of all approved administrative expenses, to be distributed on an equivalent basis until such time as a claim has been paid in full, unless a different distribution priority has been authorized under any prior order of the Court; and
- (3) following the full satisfaction of all allowed administrative expenses, funds thereafter remaining on deposit with the Chapter 13 Trustee, if any, shall be distributed to the Debtor.

Signed on 06/22/2016



THE HONORABLE BILL PARKER
UNITED STATES BANKRUPTCY JUDGE