

Case involving a debtor refiling a second bankruptcy within the 120 day prejudice period pursuant to the dismissal order of first bankruptcy.

Case: *Gomez*; 12-10211

Docket: Show Cause Hearing as to Why the Automatic Stay Should Not be Annulled and Sanctions Imposed upon Debtor's Counsel set for 4/10/12

**Facts:** The Debtor retained an attorney to file a Chapter 13 bankruptcy. The Debtor failed to make any plan payments and the Court subsequently granted the Trustee's Motion to Dismiss thereby dismissing the case with prejudice thereby prohibiting the Debtor from refiling a bankruptcy under any Chapter for a period of 120 days. The Debtor obtained another attorney and refilled a second case three days prior to the expiration of this 120 day period. The Debtor then filed a motion for continuation of the automatic stay in the second consecutive case as well as a Motion to Shorten the Debtor's 120 Day Prejudice Period to Refile the Case Nunc Pro Tunc. In this second Motion, the Debtor alleged that the second filing three days prior to the expiration of this 120 day prejudice period was inadvertent in that the second attorney had miscalculated this 120 day period. The Court also issued a Show Cause Order on why the automatic stay should not be annulled and sanctions imposed on the Debtor's second attorney for filing the second case in violation of the 120 day prejudice period. All of these matters were set for hearing on the same day. In attendance at the hearing were the Debtor, Debtor's attorney, and the Trustee's Staff Attorney.

*Evidence:* The Debtor testified that the filing of the second case before the expiration of the prejudice period was an error made by the attorney. The Debtor further testified that he was unaware of any pending foreclosure or repossession actions. The Debtor's attorney acknowledged that the error was made by the Debtor's attorney and that the Debtor should not be punished for the attorney's error.

*Ruling:* Judge Parker denied the motion for continuation of the automatic stay as to all creditors beyond the 30 days as generally imposed in a second bankruptcy filing and denied the Debtor's Motion to Shorten the 120 day prejudice period to Refile the Case Nunc Pro Tunc. Judge Parker also entered an Order annulling the automatic stay that had been implemented during the first 30 days of the second bankruptcy filing, thereby finding the second bankruptcy was filed in bad faith in that it specifically violated the Court's dismissal order from the first case. Judge Parker also entered an order sanctioning the Debtor's attorney thereby requiring said attorney to refund back to the Debtor the \$800.00 received pre-petition as well as forfeiting all compensation for services rendered and expenses incurred in the filing of the second case.

In so ruling, Judge Parker noted that the Court found it interesting that the second bankruptcy was filed on the Monday prior to the first Tuesday of the month when foreclosures normally take place. Judge Parker further noted that, even if he believed that the Debtor merely acted without diligence when he filed, the Debtor should not benefit from the mistake and that the our justice system requires a debtor to be bound by the decisions an attorney makes for the debtor.