UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF MICHIGAN

In re:

JAMI LEE FELL,	Case No. DL 19-04452
	Chapter 7
Debtor.	Hon. Scott W. Dales
_____/	

ORDER DISMISSING CASE
AND IMPOSING CONDITIONS ON FUTURE FILINGS

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

A posterchild for serial bankruptcy filers, debtor Jami Lee Fell (the "Debtor") has again filed a bankruptcy petition -- apparently her 18th petition since 2000.[1] As in many of her other cases, she has failed to file schedules and many of the other documents required under 11 U.S.C. § 521 and related rules.

Citing the persistent defaults in filing schedules and related statements, the United States Trustee ("UST") again filed a motion to dismiss and a request to bar re-filing (ECF No. 25, the "Motion"). The UST's Motion saved the court the trouble of issuing yet another show cause order presaging a similar, and all too familiar, conclusion, but the court did put the Debtor on notice of its continuing concerns by including language in the hearing notice that it was considering whether to bar the Debtor's discharge altogether, given her extraordinary example of serial filings culminating in the current case.

The court's and creditors' unhappy experience with Ms. Fell over the years cries out for relief from her propensity to file bankruptcy petitions while ignoring the common responsibilities of any debtor, such as paying filing fees and filing schedules and other documents required under either chapter 7 or 13, depending on how the Debtor styles any particular petition. In at least one earlier case, the court did impose a 180-day bar at the request of the chapter 13 trustee, *see* Case No. 17-05001-swd, and about 10 months later the Debtor filed another petition, *see* Case No. 18-05003-swd, which also ended in dismissal, that time for failure to pay the filing fee. The failure to pay the filing fee similarly prompted the court to dismiss the Debtor's two immediately preceding cases, Case Nos. 17-04174 and 17-05001.

[1] The Debtor filed her first petition in this court, under chapter 7, on August 7, 1995. *See* Case No. 95-83913-JDG.

The UST, in his Motion, reminds the court that an order entered in one of the Debtor's cases in 2005 prohibited her from filing any future bankruptcy cases except with the permission of the Chief Judge granted upon motion establishing the Debtor's good faith. *See* Order Dismissing Case, entered as ECF No. 13 in Case No. 05-12376 (Rhodes, J.). As far as the record shows, that order remains binding but, presumably due to the passage of time, unenforced. Concededly in ignorance of Judge Rhodes's requirement of pre-filing permission, the court tolerated numerous filings over the last fourteen years which the Debtor ought to have known violated the court's 2005 order.

The UST argues, with good reason, that the "Debtor has demonstrated a pattern of failing to fulfill the most basic requirements of a debtor in bankruptcy . . . ." *See* Motion at ¶ 4. In the current case, she has again failed to file schedules, a statement of financial affairs and other documents the chapter 7 trustee needs to administer this case. Although she attended the initial meeting of creditors, the docket shows that she was absent from the adjourned meeting -- evidently adjourned to permit her to supply documents the trustee requested.

At the hearing on the Motion, Debtor's counsel (who assumed representation after the Debtor filed her petition *pro se*) explained that his client also has not complied with the prepetition credit counseling requirement, though he argues that she attempted to do so. He also reports that when he learned of her ineligibility, he and his client decided not to file schedules, intending instead to suffer dismissal then refile yet another petition. He asked the court not to bar his client's discharge, blaming her shortcomings in the various cases on her status as a *pro se* litigant. The record, however, shows that she was represented in a fair number of her earlier dismissed cases.

As the UST notes in the Motion, however, although the Debtor has occasionally found legitimate success in this court in the twenty-five years since she filed her first petition, even when she had legal representation most of her cases failed because she refused or neglected to fulfill the most fundamental duties of any debtor under § 521 and otherwise. Moreover, her serial filings and frequent dismissals almost certainly acquainted her with the court's requirements. With only slight hyperbole, one could say that she has more filing experience than many attorneys. Yet she persists in failing to live up to her duties under the Bankruptcy Code, benefiting from the automatic stay (until recently) off and on over the last quarter of a century.[2] The court does not credit counsel's explanation that his client's status as unrepresented explains the unhappy pattern that prompted the UST to file this Motion and seek to bar future filings. Her bad faith in filing this case is an inescapable inference, and her ineligibility is admitted.

[2] The timing of her most recent filings prevented the automatic stay from taking effect in the current case. *See* 11 U.S.C. § 362(c)(4).

"Where there is sufficient cause, bankruptcy courts have the authority pursuant to 11 U.S.C. §§ 105(a) and 349(a) to prohibit bankruptcy filings in excess of 180 days." *Cusano v. Klein (In re Cusano),* 431 B.R. 726, 737 (6th Cir. BAP 2010); *see also Mains v. Foley*, Nos. 1:11–CV–456, 1:11–CV–740, 2012 WL 612006, at *7 (W.D. Mich. Feb. 24, 2012) (citing *Cusano* approvingly, but vacating a three-year ban on filing as an abuse of discretion).

Recognizing, as Judge Jonker did in *Mains*, that the court must exercise its sanction power "with restraint and discretion" and in a manner commensurate with the offense,[3] the court nevertheless hews to the sanction that Judge Rhodes imposed on this Debtor in 2005 -- no future filings without judicial pre-screening -- for several reasons.[4]

First, the prohibition on filing includes the safety valve of judicial approval upon a formal demonstration of good faith. Concededly the requirement of pre-filing approval will modestly discourage and postpone relief (including the automatic stay) until the court can rule on the motion, but much of that disability, in the near term at least, has already been visited upon the Debtor by Congress when it enacted § 362(c)(4). In fact, the automatic stay did not take effect in the current case given the Debtor's recent filing history.

Second, even after the passage of time relaxes the strictures of § 362(c), the Debtor's shocking history of serial filings over the last two decades certainly justifies the court in insisting upon a showing of good faith before burdening the Debtor's creditors with the expense and delay of yet another chapter proceeding. As noted above, with eighteen mostly unsuccessful cases in nineteen years, the Debtor epitomizes the serial filer.

Third, it bears noting that the Debtor did not appeal from Judge Rhodes's 2005 order imposing the very same relief that the UST seeks in his Motion, and nothing in the record, other than the court's lapses in enforcing the 2005 order, suggests that it is no longer binding on her.

Fourth, by not opposing the UST's Motion the Debtor's counsel (in the presence of his client) acquiesced in the relief requested, presumably including the requirement of pre-filing approval by the Chief Judge. He only asked that the court not bar her discharge – the possibility the court raised in its hearing notice.

Accordingly, the court will revive the requirement, first expressed in Judge Rhodes's 2005 order and adverted to in the Motion, that before filing another petition for relief under title 11 in this district the Debtor must first obtain the permission of the Chief Judge, on motion establishing

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[3] *Mains*, 2012 WL 612006, at *7 (citing *In re Downs*, 103 F.3d 472, 478 (6th Cir. 1996)).

[4] The court does not read *Mains* as precluding an order barring filing without pre-filing approval, but only as finding under the circumstances of that case that the sanction was unduly harsh, particularly given the first amendment concerns that Judge Jonker expressed.

her (i) good faith; (ii) ability to pay the filing fee; (iii) readiness to file schedules and related documents with the petition or as otherwise required under § 521 and the rules; and (iv) commitment to attend the meeting of creditors and otherwise cooperate with the trustee.

Because the Debtor's current counsel assured the court that he would be involved in the next filing, and because no interested party advocated for barring discharge, the court has determined not to dismiss the current case with prejudice to a discharge in the next.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Motion is GRANTED, and the Debtor's chapter 7 bankruptcy case is DISMISSED without discharge of debts;

2. All provisions of 11 U.S.C. § 349 shall be effective;

3. Creditors of the Debtor may take whatever action is permitted by applicable non-bankruptcy law to collect their respective debts without further permission of this Court;

4. John A. Porter, Esq., the chapter 7 trustee, is released as trustee and his bond may be canceled;

5. The Debtor is BARRED from filing any future bankruptcy petitions in this district without first obtaining the permission of the Chief Judge granted upon motion establishing to the court's satisfaction the Debtor's good faith and the other requirements identified in the body of this Order; and

6. The Clerk shall take steps to ensure compliance with the pre-filing motion and approval described in the immediately preceding paragraph.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order Dismissing Case and Imposing Conditions on Future Filings pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Ms. Jami Lee Fell (by First Class U.S. Mail), Conrad H. Vincent, Jr., Esq., John A. Porter, Esq., chapter 7 trustee, and the United States Trustee (by First Class U.S. Mail).

END OF ORDER

IT IS SO ORDERED.

Dated February 24, 2020

Scott W. Dales
United States Bankruptcy Judge