

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 13
. .
PENNY L. BENNETT, . Case No. 22-10297 (BLS)
. .
. . 824 Market Street
. . Wilmington, Delaware 19801
. .
Debtor. .
. Wednesday, November 2, 2022

TRANSCRIPT OF VIDEO HEARING RE:
COURT DECISION ON MOTIONS
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES VIA ZOOM: (On the Record)

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1 (Proceedings commence at 10:40 a.m.)

2 THE COURT: Good morning, all. This is Judge
3 Shannon. I understand from the court reporter that all
4 necessary parties have joined.

5 This is the time set by the Court for a bench
6 ruling on several pending motions in the matter of Penny
7 Bennett, which is Case Number 22-10297.

8 Specifically, we have the motion by Bank of America
9 to dismiss this case pursuant to Section 109(g). And we also
10 have two motions filed by the debtor to extend the automatic
11 stay and requesting sanctions for a wilful violation of the
12 automatic stay.

13 For the reasons that I will share with you, I will
14 grant the motion to dismiss, as Ms. Bennett was not eligible
15 to be a debtor in Chapter 13 on account of the restrictions
16 imposed by Section 109(g).

17 Relatedly, I will deny the debtor's request for
18 relief relating to Bankruptcy Code Section 362 for imposition
19 of the automatic stay and for violations of the automatic
20 stay.

21 Before turning to the substance of the ruling, I do
22 apologize to the parties for the delay in providing a ruling
23 on this matter. The record reflects that we held a status
24 conference late in the summer for the purpose of determining
25 whether the record was sufficiently developed to permit a

1 ruling on the pending motions. And following that status
2 conference, by letter that was docketed August 29, 2022, I
3 advised the parties that no discovery or further factual
4 development would be necessary and the matter was taken under
5 advisement.

6 I confess it had been my intention to promptly
7 issue a full written opinion on the issues that were raised
8 here, but, frankly, pressures on my schedule prevented me
9 from accomplishing that on a time frame that made sense for
10 the parties and for the case.

11 Accordingly, I am providing you with this bench
12 ruling to offer as much clarity as I can, as promptly as I
13 can, in this format.

14 The relevant facts are not in material dispute.
15 The debtor owns her home in Dover, Delaware and it is subject
16 to a mortgage dating from 2011, held by Bank of America.

17 The debtor has filed three separate bankruptcy
18 cases and her husband Matthew George has filed his own
19 Chapter 7 case. The Court notes that relief from stay was
20 granted in Mr. George's case.

21 The debtor's first case was filed on January 2,
22 2019, a day before a schedule sheriff's sale. In that case,
23 Bank of America obtained relief from the automatic stay on
24 January 20, 2020, permitting it to move forward with a
25 foreclosure action. The 2019 bankruptcy case was dismissed

1 on October 26th, 2020.

2 Her second bankruptcy case was filed on April 8,
3 2021. Another order granting relief from stay in favor of
4 Bank of America was entered on November 18, 2021. And the
5 second case was voluntarily dismissed by the debtor on April
6 5, 2022.

7 The debtor's third bankruptcy case and the
8 currently pending case that is the subject of today's hearing
9 was filed on April 6th, 2022. This case was filed one day
10 after the voluntary dismissal of the debtor's second case.
11 This case was filed on the day before a scheduled sheriff's
12 sale of the property that was set to occur on April 7, 2022.
13 Notwithstanding the commencement of this case, the sheriff's
14 sale of the property occurred on April 7 and the home was
15 sold to a third party for a cash bid.

16 Bank of America has moved to dismiss this
17 bankruptcy case pursuant to Section 109(g) (2) of the
18 Bankruptcy Code. That section provides, in relevant part,
19 that no one can be a debtor under Chapter 13 if, in the six
20 months preceding the filing of a petition, quote:

21 "-- the debtor requested and obtained the voluntary
22 dismissal of the case following the filing of a
23 request for relief from the automatic stay."

24 There is no dispute that the conditions imposed by
25 Section 109(g) are satisfied here. The debtor filed her

1 petition on April 6th, 2022. It is undisputed that, less
2 than six months before the filing of this petition, a lift-
3 stay motion was filed in her prior case and the debtor
4 requested and obtained voluntary dismissal of the second
5 case.

6 The excellent briefing submitted by the parties
7 identifies three competing approaches that courts have
8 employed in construing and applying Section 109(g). They
9 have been described in the papers as the "mandatory
10 approach," the "causal connection approach," and the
11 "discretionary approach." And for ease of reference, I will
12 use these labels.

13 I will discuss all three of the approaches in my
14 ruling, but, honestly, I don't want to bury the lede here.
15 This Court adopts the mandatory approach.

16 Research reveals that the mandatory approach has
17 been applied by the majority of published decisions
18 addressing this question. It takes a plain meaning approach
19 and typically requires that the Court simply determine if a
20 voluntary dismissal was obtained after the filing of the
21 lift-stay motion. Under this approach, the word "following"
22 is used in the statute to indicate a temporal relationship.
23 Courts have held that the mandatory approach vindicates an
24 obvious congressional intent to prevent abusive, serial
25 filings that were designed or intended to frustrate

1 legitimate creditor remedies.

2 The causal connection approach contemplates that a
3 court must find that there is a relationship between the
4 voluntary dismissal and the lift-stay motion. Specifically,
5 courts applying this approach require a finding that the
6 bankruptcy case was voluntarily dismissed because of this
7 lift-stay motion. Under this analysis, the word "following"
8 in the statute occupies, not a temporal function, but rather
9 contemplates that dismissal results from the lift-stay
10 motion.

11 The Court candidly observes that this approach
12 brings with it a facial attractiveness; in that, it provides
13 a mechanism to address anomalous situations that are found in
14 the case law, for example, where a debtor contests and
15 actually defeats a lift-stay motion, but later dismisses the
16 case for reasons entirely unrelated to the lift-stay motion.

17 I would also note that Collier on Bankruptcy
18 appears to endorse the causal connection approach.

19 Finally, the discretionary approach operates to
20 afford a Bankruptcy Court with broad flexibility in deciding
21 to dismiss a case under Section 109(g) and generally requires
22 wrongful intent or conduct by a debtor as a condition to
23 dismissal under Section 109(g).

24 As I noted a moment ago, this Court will adopt and
25 apply the mandatory approach which requires dismissal of this

1 case because the statutory criteria have not been met. I
2 believe that the wording of the statute is, neither vague,
3 nor ambiguous, and the Third Circuit has consistently
4 admonished that, once the meaning and import of a statute
5 have been determined by the words that Congress used,
6 judicial inquiry is at an end.

7 I would further note that, even if I were inclined
8 to adopt either the causal connection approach or the
9 discretionary approach, dismissal would be appropriate here.
10 It is abundantly clear that each of this debtor's bankruptcy
11 cases were filed to prevent delay or frustrate Bank of
12 America's legitimate remedies.

13 Indeed, Bank of America moved for and obtained
14 relief from the stay in each of the prior cases before
15 dismissal. The debtor filed her second case to stop a
16 sheriff's sale. Bank of America requested and obtained
17 relief from stay in the second case, moved forward with the
18 lawful exercise of its remedies, and scheduled a sheriff's
19 sale to effect the sale of the property and recover on its
20 mortgage and collateral. The debtor then dismissed the
21 second case and immediately filed this third case. Under the
22 causal connection approach, it is beyond dispute that this
23 case was filed as a result of or because of the stay relief
24 in the second case.

25 As to the discretionary approach, a debtor who has

1 consistently filed bankruptcy cases on the eve of the
2 foreclosure sale exclusively to frustrate her mortgage
3 creditor is hardly deserving of extraordinary intervention by
4 the Court, particularly where that intervention would be in
5 derogation of a clear statutory mandate.

6 As noted above, the debtor does not dispute the
7 time line of events that I have recited this morning.
8 Rather, the debtor contends, generally, that dismissal of the
9 first case was unwarranted on the contention that she was
10 current under her plan and post-petition mortgage
11 obligations. And similarly, the debtor contends that relief
12 from stay in the second case was likewise wrongly granted
13 because she contends that the debtor was -- that she was, in
14 fact, current post-petition on the mortgage. Even if true,
15 neither of these arguments is availing in this proceeding.
16 Challenges to a dismissal order and to a lift-stay order are
17 properly addressed by a motion for reconsideration or timely
18 appeal. Neither have occurred here.

19 This debtor is bound by the final orders entered in
20 her prior cases, and neither principles of equity, nor sound
21 jurisprudence would permit me to grant relief today on the
22 allegation that final orders entered on a sufficient record
23 in a prior case are somehow invalid. Accordingly, the
24 debtor's case will be dismissed pursuant to the requirements
25 of Section 109(g).

1 I will return briefly to the two motions filed by
2 the debtor which seek to extend the automatic stay and to
3 impose sanctions upon Bank of America for a perceived wilful
4 violation of the automatic stay. Both of those motions will
5 be denied.

6 As a threshold matter, the Court notes that Section
7 362(b) (21) (A) specifically provides that actions taken by a
8 creditor against the property of a debtor that is not
9 eligible under Section 109(g) are excepted from the automatic
10 stay. Thus, notwithstanding the filing on April 6, 2022 of
11 the debtor's petition, Bank of America has not violated the
12 automatic stay in electing to proceed on April 7 with the
13 sheriff's sale. In the absence of a stay violation, no
14 sanctions can issue against Bank of America here.

15 Finally, given that the Court has found that Ms.
16 Bennett was ineligible to be a debtor, any question of
17 extending the automatic stay in her case is, by definition,
18 moot.

19 I specifically address this issue to comment on a
20 point raised by the parties in their briefing on the lift-
21 stay motions. Specifically, Bank of America, I believe,
22 contends that the first case had not actually been closed by
23 the Clerk of Court; and, since that first case was still
24 technically open, then Ms. Bennett had three pending -- three
25 separate pending bankruptcy cases upon the filing of her

1 third petition.

2 The first case was dismissed by the Court on April
3 26, 2020, but it was not closed by the Clerk's Office until
4 much later, on October 7, 2021. I take this opportunity to
5 share with the parties my determination that the operative
6 date for evaluating the pendency of a case for purposes of
7 Section 362(c) is the date of dismissal, not the date of
8 closing of the case by the Court and Clerk's Office.

9 Closing a case involves a series of administrative
10 and accounting steps that are entirely beyond the control or
11 involvement of any debtor and even the Court. Experience
12 teaches that many months, or perhaps even years, may pass
13 before a case is finally closed.

14 The legislative intent behind Section 362 and, for
15 that matter, Section 109(g) appear to me to be keyed off of
16 the dismissal of the case. This is especially true with
17 Section 109(g), which is predicated -- Section 109(g)(2),
18 which is predicated upon the debtor's voluntary dismissal of
19 her case. Section 109(g) places the debtor as the master of
20 her fate. If she chooses to voluntarily dismiss her case,
21 there may be consequences, and she is presumably alert to
22 those consequences when she elects to dismiss.

23 This observation weighs heavily against the causal
24 connection approach that I discussed above. I acknowledge
25 that anomalous results may occur where a debtor voluntarily

1 dismisses her case for reasons entirely unrelated to a lift-
2 stay motion, but that is a decision that she will have
3 presumably made cognizant of the potential consequences and
4 the restrictions to her future freedom of action.

5 For the reasons stated, I will promptly issue an
6 order dismissing this case pursuant to Section 109(g)(2).

7 Are there any questions?

8 MS. MCLAUGHLIN SMITH: Your Honor, it's Marcy
9 McLaughlin Smith of Troutman Pepper on behalf of Bank of
10 America.

11 First, I just want to thank you for your ruling and
12 the forthcoming orders.

13 I did have one clarifying question, which is that
14 the proposed order attached to Bank of America's dismissal
15 motion did request an amount of \$500 in attorneys' fees to
16 Bank of America. So I just wanted to understand whether Your
17 Honor had considered that and if it would be included in your
18 order or not.

19 THE COURT: I have not. I will not require further
20 motion practice on that. Let me take a look at those papers
21 and I will decide whether to include that in the order. I
22 certainly don't need briefing or submissions back and forth
23 and I wouldn't want to burden the record further. I
24 understand the request and I will consider it. Okay?

25 MS. MCLAUGHLIN SMITH: Thank you, Your Honor.

1 THE COURT: Sure.

2 Ms. Pappoulis, any questions?

3 MS. PAPPOULIS: A clarifying point, Your Honor,
4 with the facts. There was no sheriff's sale scheduled in Ms.
5 Bennett's second case that was filed. That case was filed by
6 her previous attorney while there was a moratorium in the
7 State of Delaware regarding foreclosures and sheriff's sales
8 moving forward. There was no sale regarding the -- that was
9 pending during the second case.

10 THE COURT: Thank you for -- thank you for the
11 clarifying. I apologize if I got the time line and the
12 circumstance wrong, but I do appreciate the clarification.

13 All right. Any other questions or issues?

14 (No verbal response)

15 THE COURT: Very well.

16 All right. Again, I appreciate everyone's time.
17 And again, I do apologize for the delay in responding or
18 ruling upon this matter. I know it's been pending for
19 awhile. And again, as I said during the argument, I very
20 much appreciate the excellent submissions that I received
21 from both sides and the Court will rule promptly.

22 Thank you very much. We are adjourned.

23 UNIDENTIFIED: Thank you.

24 (Proceedings concluded at 10:55 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



November 3, 2022

Coleen Rand, AAERT Cert. No. 341
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