

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND**

In Re:

**CHRISTY M. SLAGLE**

Debtor

Case No. **18-15391-NVA**  
Chapter 13

**MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO QUALIFY FOR  
RELIEF UNDER CHAPTER 13, AND FOR BAD FAITH, AND NOTICE OF  
OPPORTUNITY FOR A HEARING**

Nancy L. Spencer Grigsby, Chapter 13 Trustee, by undersigned counsel, moves to dismiss this case based on the fact that Debtor's debts facially exceed the jurisdictional limit, and for bad faith, and for the reasons stated herein, respectfully requests that the dismissal be with prejudice.

**UNDISPUTED FACTS**

1. The instant case was commenced as a Chapter 13 on April 23, 2018 under the provisions of the Bankruptcy Abuse Protection and Consumer Protection Act of 2005.
2. This is the Debtor's fourth bankruptcy case, and is the Debtor's second pending in the last calendar year.<sup>1</sup> *See* Clerk's Notice of Prior Filing, identifying the following cases: 12-18868 (filed as a joint Chapter 7; received a standard discharge), 16-14926 (filed as a Chapter 13 on April 12, 2016 and dismissed on August 26, 2016), and 17-20482 (filed as a Chapter 13 on August 2, 2017 and dismissed on March 28, 2018).
3. In addition, her spouse, Gary Slagle, has filed three cases, 12-18868 (filed as a joint Chapter 7; received a standard discharge), 16-11212 (filed as a Chapter 13 on February 3, 2016 and dismissed February 29, 2016), and 16-25559 (filed as a Chapter 11 on November 28, 2016 and dismissed July 12, 2017).
4. Collectively, the Debtor and her spouse have commenced six bankruptcy cases since 2012, and five since 2016.
5. The Proof of Claim filed on behalf of the Debtor's mortgage lender, M&T Bank, reflects arrears in excess of \$232,000.00, amounting to nearly four years of payments. *See* Claim 9.

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<sup>1</sup> The automatic stay was not extended, and no stay exists as to the Debtor at this time.

6. The Debtor's Schedules I/J reflect monthly disposable income of \$197.00. *See* Dkt # 8, Page 27.
7. In the Debtor's prior case, 17-20482, a motion similar to the instant motion was filed on behalf of the Internal Revenue Service. The Chapter 13 Trustee for that case opposed the motion, and notably, the Debtor did not respond. The case was dismissed for failure to maintain plan payments before the motion could be adjudicated.
8. The schedules in the instant case, as originally filed, identify the Debtor's interest in the real property and improvements commonly known as 15 Deer Creek Lane, Elkton, MD 21921, and assign it a fair market value of \$648,800.00. *See* Schedule A, Dkt # 8, Page 3 of 41.
9. Schedule D identifies three secured claims, with a collective undersecured component of \$668,739.75. *See* Schedule D, Dkt # 8, Pages 12-13, Column C.
10. Schedule E/F identify additional unsecured claims of \$341,689.62. *See* Schedule E/F, Dkt # 8, Pages 14-20.
11. On May 8, 2018, an Amended Schedule E/F was filed which identifies an additional unsecured creditor, listed at \$3,000.00. *See* Dkt # 13.
12. The sum of the undersecured portions noted on the Debtor's Schedule D, and the Schedule E/F debts as originally filed and as amended, total \$1,013,429.30. Consequently, the Debtor has total scheduled unsecured debts of \$1,013,429.30.
13. In addition, the Debtor's Schedule E/F provide notice to the Internal Revenue Service, but identify a claim amount of \$0.00. *See* Dkt # 8, page 18.<sup>2</sup>
14. On April 30, 2018, the Internal Revenue Service filed a claim that identifies an unsecured priority claim of \$1,159,290.47 as well as a general unsecured claim of \$431,351.05. The claim has not been objected to.<sup>3</sup> *See* Claim 1-1.

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<sup>2</sup> The IRS filed a priority unsecured claim in the Debtor's prior case, 17-20482, in excess of \$1 million dollars.

<sup>3</sup> The priority claim is pending examination as to years 2013 – 2016, tax year 2017 is unassessed due to no return having been filed.

LAW

15. To qualify as a Chapter 13 debtor, one must owe, as of the date of filing, noncontingent, liquidated, unsecured debts of less than \$394,725.00. *See* 11 U.S.C. § 109(e).
16. Pursuant to 11 U.S.C. §1325(a) (7), the Court cannot confirm a Plan when the underlying basis for the debtor's filing of the petition was not in good faith. Similarly, under 11 U.S.C. §1325(a) (3), the Court may confirm a chapter 13 plan only if it has been proposed in good faith.

ARGUMENT

I. The Debtor's Unsecured Debt's Far Exceed the Statutory Limit

17. As set forth above, including those amounts undersecured, the Debtor's schedules identify unsecured debts of \$1,013,429.30.
18. This figure does not include the claim of the IRS, which adds an additional \$1,590,641.52, bringing the total unsecured amount to \$2,604,070.80.
19. Even if the portions of IRS claim 1-1 identified as pending examination and unassessed were excluded, the unsecured debt amount still exceeds \$1.4 million dollars, which itself is greater than 3.5 times the statutory limit. If the undersecured portions of the first mortgage were also excluded based on an antimodification theory, the unsecured sum is still in excess of \$1,000,000.00.
20. The allowed unsecured claims as identified in the Court's Claims' Register confirm and provide additional evidence that the Debtor in fact far exceeds the statutory limit.

II. Bad Faith

21. Based on the fact that the Debtor is obviously ineligible for Chapter 13, the Trustee believes that this bankruptcy case, particularly when viewed in the context of the series of filings by the Debtor and her spouse, was filed with an "intent to hinder or delay or creditors." Specifically, the Trustee believes that this bankruptcy is part of a design or scheme wherein the Debtor seeks to retain her interest in her real estate without any reasonable prospect of actually reorganizing.
22. Under 11 U.S.C. §1325(a) (7), the Court cannot confirm a Plan when the underlying basis for a debtor's filing of the petition was not in good

faith. Similarly, under 11 U.S.C. §1325(a) (3), the Court may confirm a chapter 13 plan only if it has been proposed in good faith.

23. The Debtor's good faith intentions are demonstrated by actions prior to the filing. Specifically, on whether she acted with intent to hinder, delay, or defraud creditors when she and her spouse continue to file bankruptcy cases without any realistic means of repaying their creditors.
24. "The aim of Chapter 13 is to rehabilitate a financially distressed debtor. A financially distressed debtor cannot abuse the bankruptcy system by seeking its protection without contributing such debtor's fair share for the costs thereof." *In re Wright*, 82 BR 422 (Bankr. W.D.Va. 1988).
25. Despite their continued insolvency, the Debtor and her spouse have successfully evaded their creditors' collection efforts by their repeated serial bankruptcy filings. The Trustee believes these actions constitute a design or scheme where the Debtor, in concert with her spouse, has successfully "hindered and delayed" repayment to creditors—primarily their mortgage lender, judgment creditors, and the IRS. The Trustee believes that the instant case is a continuation of the same scheme.

### III. Lack of Good Faith is Grounds For Dismissal

26. The balance of opinion within the United States Court of Appeals for the Fourth Circuit, at least, appears to hold that that a lack of good faith in the filing of a Chapter 13 petition constitutes cause for dismissal or conversion under § 1307(c) of the Bankruptcy Code. *In re Henecheck*, 1996 WL 33676576 (E.D.Va. 1996) (unreported opinion).
27. Two key cases govern the Court's review of the debtor's good faith within the Fourth Circuit: *Deans v. O'Donnell*, where the Court rejected the *per se* rule, which simply looks to see whether the debtor provides substantial repayment to creditors, in favor a balancing of factors to determine whether the filing was an "abuse of the provisions, purpose, or spirit of [Chapter 13] in the proposal or plan," and *Neufeld v. Freeman*. *Deans v. O'Donnell*, 692 F.2d 969, 972 (4<sup>th</sup> Cir.1982); *Neufeld v. Freeman*, 794 F.2d 149, 152 (4<sup>th</sup> Cir.1986). The current Fourth Circuit balancing test is generally referred to as the "totality of circumstances" test.
28. Good faith is determined by the totality of the circumstances including:
  - A. type of debt sought to be discharged;

- B. whether the debt would be non-dischargeable under Chapter 7 (section 727);
- C. debtor's motivation and sincerity in seeking Chapter 13 relief;
- D. debtor's accuracy in stating his debts and expenses;
- E. debtor's honesty in the bankruptcy process and
- F. whether the Bankruptcy Code is being unfairly manipulated.

*Neufeld v. Freeman*, 794 F.2d 149 (4<sup>th</sup> Cir. 1986), citing *Deans v. O'Donnell*, 692 F.2d 968, 972 (4<sup>th</sup> Cir. 1982).

- 29. The 2005 Reform Act added the good faith filing requirement of 11 U.S.C. § 1325(a)(7), wherein "the action of the debtor in filing the petition was in good faith" is evaluated in addition to the long-standing §1325(a)(3) requirement of good faith intentions in filing the plan.
- 30. [The] proper good faith inquiry is 'whether or not under the circumstances of the case there has been an abuse of the provisions, purpose, or spirit of [the Chapter] in the proposal or plan. *See In re Bland*, 2008 WL 2002647 at 3 (Bankr. N.D.W.Va., 2008) *citing Branigan v. Bateman (In re Bateman)*, 515 F.3d 272, 283 (4<sup>th</sup> Cir. 2008) and *Deans v. O'Donnell*, 692 F.2d 968, 972 (4<sup>th</sup> Cir. 1982).
- 31. Here, there appears to be a clear abuse of the provisions, purpose, or spirit of the Code in that the facts and circumstances found in the various bankruptcy filings, which, with the exception of the joint Chapter 7, were all dismissed, and in certain circumstances, in a very short period.
- 32. In addition, the husband's Chapter 11 and the Debtor's most recent Chapter 13 in which a debt limit motion was filed, coupled with the fact that the stay was not extended in this case and that it was filed less than a month after the dismissal of the prior case, clearly show the Debtor's selection of Chapter 13 was both willful and knowing, and with zero legal basis upon which to support it, and with the knowledge that it would be short lived. This conduct evidences a lack of good faith and a pattern of filings to simply frustrate creditors.
- 33. In short, this case will likely again conclude in dismissal, as have the Debtor and her spouse's prior cases, rendering the instant case objectively futile on its face and lacking in the sincerity of intent and purpose necessary in chapter 13. This is particularly true in light of the

substantial mortgage arrears and IRS claim when viewed against what is for all intents and purposes, little or no disposable income.

34. Based on the totality of the circumstances as noted herein, this case patently lacks good faith.

IV. The Court Has Broad Discretion to Dismiss with a Bar to Refiling

35. This pattern of improperly manipulating the Bankruptcy Code must end.
36. This Court has the discretion to prohibit the Debtor from filing a new case for a period of 180 days. “Our court of appeals has recognized that...§ 349(a) gives a bankruptcy judge discretion to ‘order otherwise’ for cause and to dismiss a petition with prejudice; this discretion may be exercised either to prohibit the filing of a petition within a set time, or it may preclude the debtor from receiving a discharge in bankruptcy of debts in existence when the case is dismissed.” *In re Weaver*, 222 B.R. 521, 522 (Bankr. E.D. Va. 1998), citing *In re Tomlin*, 105 F.3d 933, 937 (4<sup>th</sup> Cir. 1997). “The usual remedy for a bad faith filing is a dismissal pursuant to § 109(g), which works to prohibit the filing by a debtor of any case under Title 11 for a period of 180 days.” *Tomlin*, 105 F.3d at 938-39.
37. Based on the history of serial filings, it appears that a dismissal with prejudice is the only means by which creditors will be able to further their interests.

**WHEREFORE**, for the reasons set forth above, the Trustee requests that this Court dismiss the instant case with prejudice as to re-filing for a period of 180 days, pursuant to 11 U.S.C. §§ 105, 349, 1307, generally, as being in the best interests of creditors.

Date: July 3, 2018

Respectfully submitted,  
**Nancy Spencer Grigsby**  
**By Counsel:**

/s/ **Brian A. Tucci**  
Brian A. Tucci (#18055)  
Counsel for Chapter 13 Trustee  
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**NOTICE OF OPPORTUNITY TO REQUEST A HEARING  
TO THE DEBTOR'S ATTORNEY OF RECORD:**

You are notified of the filing of the foregoing Motion by the Trustee stating that the Debtor exceeds the jurisdictional debt limits set forth in 11 U.S.C. § 109(e).

You are further notified that unless a responsive pleading stating facts which controvert, justify or explain the Trustee's allegation be filed and a copy of said pleading be served upon the Trustee, on or before **July 24, 2018**, together with a request for hearing thereon, this case may be dismissed on such date and the case may be closed.

**CERTIFICATE OF SERVICE**

I hereby further certify that on the 3rd day of July, 2018, a copy of the foregoing response was sent electronically, via the Court's CM/ECF System, to those parties identified below:

- **Nancy Spencer Grigsby** grigsbyecf@ch13md.com
- **Robert M. Stahl**, stahllawcourt@comcast.net;  
stahlrr71542@notify.bestcase.com
- **Joshua Welborn** jwelborn@somarylandattorneys.com

A copy was also mailed via first-class mail, postage prepaid to:

Christy M Slagle  
15 Deer Creek Lane  
Elkton, MD 21921  
**Debtor**

**/s/ Brian A. Tucci**  
Brian A. Tucci

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND**

In Re:

**CHRISTY M. SLAGLE**

Debtor

Case No. **18-15391-NVA**  
Chapter 13

**ORDER DISMISSING CASE FOR FAILURE TO QUALIFY  
AS A CHAPTER 13 DEBTOR, AND FOR BAD FAITH, WITH PREJUDICE**

UPON consideration of the Chapter 13 Trustee's Motion to Dismiss, good cause having been demonstrated, it is by the United States Bankruptcy Court

ORDERED, that the motion is GRANTED; and it is further

ORDERED, that the dismissal be with prejudice for a period of 180 day for the entry of this Order.

Copies to:

Debtor  
Debtor's Counsel  
Chapter 13 Trustee's Counsel  
Chapter 13 Trustee