

Dated: July 12, 2022
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

In re
EDDIE LEWIS HINES,
Debtor.

Case No. 19-25279
Chapter 13

**OPINION AND ORDER DISMISSING
CHAPTER 13 CASE WITH PREJUDICE**

This case came on for hearing before the Court on April 19, 2022, on the Chapter 13 Trustee's *Motion to Dismiss with Prejudice*.¹ The Chapter 13 trustee (the "Trustee") contends that Eddie Lewis Hines's ("Mr. Hines's" or "Debtor's") case should be dismissed with prejudice because he falsified this Court's prior order to incur additional debt by changing the date of issuance. Mr. Hines, proceeding *pro se*, has not responded to the motion and did not attend the hearing held on April 19, 2022. Upon review of the record, filed documents, exhibits, and

¹ ECF No. 67.

consideration of the argument by the Trustee, the Court finds that Mr. Hines's actions warrant dismissal with prejudice.

FACTUAL AND PROCEDURAL BACKGROUND

On July 9, 2019, Mr. Hines, through counsel, filed this Chapter 13 case.² Sylvia Brown was appointed the Chapter 13 Trustee. On October 8, 2019, the Court entered an Order Confirming Chapter 13 Plan.³ Approximately two and a half years post-confirmation, during the period of March 3-11, 2022, a loan processor at Stellantis Financial Services ("SFS")⁴ asked the manager to review a document that Mr. Hines provided to the company to obtain credit.⁵ Upon review, the manager informed the loan processor that the company is not willing to fund a loan with such an old "letter" (from 2020), and that Mr. Hines also had a motion to dismiss his bankruptcy case in 2021 for failure to make payments.⁶ The "letter" that the credit manager reviewed was an *Order on Amended Expedited Motion to Incur Additional Debt* entered on December 4, 2020 (the "December 4th Order").⁷ SFS's manager requested an updated (2022) letter.⁸ On March 9, 2022, SFS's loan officer forwarded another document to the manager for review. This second document was a purported "updated order" granting motion to incur additional debt, with an affixed date of February 16, 2022 (the "Falsified Order"). The Falsified

² ECF No. 1.

³ ECF No. 18.

⁴ Stellantis Financial Services, Inc., formerly known as First Investor Financial Services, Inc.

⁵ ECF No. 67, Ex. 2.

⁶ ECF No. 67, Ex. 2.

⁷ ECF No. 57.

⁸ ECF No. 67, Ex. 2.

Order was identical to the December 4th Order, except the date of entry was changed to February 16, 2022.⁹ The manager forwarded the Falsified Order to the Office of the Chapter 13 Trustee.¹⁰

Upon review of the Falsified Order, on March 21, 2022, the Chapter 13 trustee filed a *Motion to Dismiss Chapter 13 Case with Prejudice*.¹¹ On April 19, 2022, the Court conducted hearing on the Trustee's motion to dismiss.¹² Prior to the hearing the motion to dismiss, on April 8, 2022, the Court entered an order authorizing Mr. Hines's counsel to withdraw. Mr. Hines did not retain new counsel, and is proceeding *pro se*.

DISCUSSION¹³

A Chapter 13 case may be dismissed for "cause" beyond the reasons enumerated under 11 U.S.C. § 1307(c).¹⁴ When evaluating applicability of section 1307(c), courts have considered

⁹ The date on fabricated order reads "Date: February 16, 2022" and "The following Is ORDERED:"— when compared to the December 4th Order, the Falsified Order used a different font, "Dated" was changed to "Date," and "is" changed to "Is." See ECF No. 67, Ex. 2.

¹⁰ ECF No. 67, Ex. 2.

¹¹ ECF No. 67.

¹² At the hearing, counsel for the Trustee proffered that the Trustee's office received information from the prospective lender after the Debtor attempted to obtain a loan, the Trustee examined the issue, alerted the Debtor's attorney and the United States Trustee regarding the matter, and filed a motion to dismiss the case with prejudice.

¹³ This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). This opinion and order constitute the court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

¹⁴ Section 1307(c), in relevant part, reads:

[A]fter notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;

“the totality of the circumstances” and a list of “non-exhaustive” set of factors. While bad faith is not an enumerated “cause” for dismissal under subsection 1307(c), bad faith constitutes cause that allows dismissal with prejudice.¹⁵ This Court is adopting the approach of first determining whether cause exists to dismiss the case, and then deciding form of dismissal.¹⁶ The movant seeking dismissal has the burden of demonstrating bad faith.¹⁷

Here, the Trustee’s motion to dismiss with prejudice, including attached exhibits, as well as proffer and argument made at the hearing, support dismissal of Mr. Hines’s Chapter 13 case. Mr. Hines altered the December 4th Order by changing the date from December 4, 2020 to February 16, 2022 to create the Falsified Order. Mr. Hines then provided this Falsified Order to

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- (7) revocation of the order of confirmation under section 1330 of this title, and denial of confirmation of a modified plan under section 1329 of this title;
 - (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
 - (9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a);
 - (10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521(a); or
 - (11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

11 U.S.C. § 1307(c) (2022).

¹⁵ *Alt v. U.S. (In re Alt)*, 305 F.3d 413, 418–19 (6th Cir. 2002) (stating that “[t]he key inquiry . . . is whether the debtor is seeking to abuse the bankruptcy process[.]” when evaluating a case under 1307(c)); *In re Sherrod*, No. 17-40432-EJC, 2018 WL 3323883, at * 5 (Bankr. S.D. GA Jul. 5, 2018) (citing *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 373 (2007)) (finding that the debtor forged a letter purportedly from the Chapter 13 Trustee to obtain financing for the purchase of a motor vehicle and dismissing the case with prejudice; and stating that “[t]he Debtor’s bad-faith conduct is “an abuse of the provisions, purpose [and] spirit” of the Bankruptcy Code[.]”).

¹⁶ In *In re Sherrod*, the bankruptcy court adopted a two-step process for dismissal under 1307(c) by (1) determining whether cause exists to dismiss the case, and (2) deciding that appropriate remedy—“what form of dismissal should be taken.” *Id.* at *5 (citing *Ellsworth v. Lifescape Med. Assoc. (In re Ellsworth)*, 455 B.R. 904, 922 (B.A.P. 9th Cir. 2011)).

¹⁷ *Id.* at *5; *In re Alt.*, 305 F.3d at 420.

the SFS to obtain a loan.¹⁸ The Trustee has met her burden of showing that Mr. Hines's conduct of creating the Falsified Order and presenting it to a prospective creditor constitutes bad faith and cause for dismissal. Mr. Hines's conduct of creating and using the Falsified Order is inexcusable and warrants dismissal with a bar against refiling.¹⁹

CONCLUSION

The Court finds that Mr. Hines acted in bad faith when he created the Falsified Order and presented that fabricated order to a prospective lender to obtain credit. The Court concludes that dismissal with prejudice is warranted under the facts of this case. Accordingly, it is **ORDERED**:

1. The Motion to Dismiss is granted.
2. The case is dismissed with prejudice.
3. Debtor is barred from filing another bankruptcy Petition under any chapter of the United States Bankruptcy Code, in any bankruptcy court, for a period of two (2) years from the date of this Order.

cc: Debtor
Chapter 13 Trustee
United States Trustee
All Creditors on the Matrix

¹⁸ Nothing in the record explained why the Debtor was not able to renew his motion to incur additional debt.

¹⁹ See *In Re Grischkan*, 320 B.R. 654, 661 (Bankr. N.D. Ohio Jan. 26, 2005) ("Under § 349(a), the general rule is that a case dismissal is without prejudice. The section does, however, give a court authority to sanction a debtor for cause by imposing a bar against re-filing.") (citing *In re Casse*, 198 F.3d 327, 336 (2nd Cir. 1999)).

UNITED STATES BANKRUPTCY COURT

Western District of Tennessee

Case No.: 19-25279
Chapter: 13

In Re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Eddie Lewis Hines
734 Bey Street
Memphis, TN 38114

Social Security / Individual Taxpayer ID No.:

xxx-xx-1263

Employer Tax ID / Other nos.:

NOTICE OF DISMISSAL

You are hereby notified that an Order Dismissing the above case was entered on July 12, 2022.

Dated: July 12, 2022

Lisa H. Haney
Clerk, U.S. Bankruptcy Court

BY: Jacquelyn Stewart
Deputy Clerk