

Dated: September 30, 2026
The following is ORDERED:



Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

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

In re:
FREDERICK J. ELAM,
Debtor.

Case No. 25-25381-DEB
Chapter 13

**MEMORANDUM OPINION AND ORDER
GRANTING HSBC BANK USA'S MOTION
TO DISMISS CHAPTER 13 CASE WITH PREJUDICE**

The facts of this case present the quintessential example of abuse of the bankruptcy system for which dismissal with prejudice is the appropriate remedy. For 18 years, no mortgage payment has been made. This case came before the Court for an evidentiary hearing on March 11, 2026, and April 1, 2026, on HSBC Bank USA, National Association, as Trustee for Structured Adjustable Rate Mortgage Loan Trust 2004-12, by Nationstar Mortgage LLC's ("Creditor's" or "HSBC's") *Objection to Confirmation* ("Objection to Confirmation"), *Motion to Dismiss Case with Prejudice* ("Motion to Dismiss"), and Frederick J. Elam's ("Debtor's") *Motion to Deny Nationstar's Motion to Dismiss Bankruptcy Case Number 25-25381*

(“Response”).¹ The Court took the matter under advisement after the conclusion of the evidentiary hearing. Upon review of the record, filed documents, and consideration of the arguments from the parties, and for the reasons discussed below, the Court grants HSBC’s *Motion to Dismiss Case with Prejudice* and bars any future bankruptcy filing for three (3) years from the date of this Memorandum and Order.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Procedural Background

Frederick J. Elam (“Debtor”) filed a Chapter 13 *Voluntary Petition for Individuals Filing for Bankruptcy* on October 21, 2025.² Debtor’s filings were incomplete. Debtor filed *Schedule C, Schedule D, Schedule E/F, Schedule G, Schedule H, Schedule I, Schedule J, Statement of Financial Affairs & Debtor Declaration* on October 28, 2025.³

Debtor filed an illegible Chapter 13 Plan on November 21, 2025.⁴ On December 5, 2025, HSBC filed its *Objection to Confirmation*.⁵ The meeting of creditors was scheduled for November 25, 2025, and was concluded on December 9, 2025.⁶ On December 18, 2025, the

¹ Debtor’s *Chapter 13 Plan*, ECF No. 14; Nationstar’s *Objection to Confirmation and Motion to Dismiss Case with Prejudice*, ECF Nos. 23 and 29. Debtor’s *Motion to Deny Nationstar’s Motion to Dismiss Bankruptcy Case Number 25-25381*, ECF No. 34; Ch. 13 Trustee’s *Objection to Confirmation and Motion to Dismiss Due to Bad Faith* (ECF Nos. 32 and 28).

² *Chapter 13 Voluntary Petition for Individuals*, ECF No. 1.

³ *Schedule C, Schedule D, Schedule E/F, Schedule G, Schedule H, Schedule I, Schedule J, Statement Of Financial Affairs & Debtor Declaration*, ECF. No. 9.

⁴ *Chapter 13 Plan*, ECF No. 14.

⁵ *Objection to Confirmation of Plan*, ECF No. 23.

⁶ *Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Notice of Appointment of Trustee Cruseturner, Jennifer K*, ECF No. 2 and unnumbered docket entries made on November 25, 2025, and December 10, 2025.

chapter 13 trustee filed a *Motion to Dismiss for Bad Faith*.⁷ HSBC filed its Motion to Dismiss on December 23, 2025.⁸ The Trustee filed an additional *Objection to Confirmation* on January 5, 2026, and Debtor filed his Response on January 9, 2026.⁹

The Court held a preliminary hearing on February 10, 2026, addressing the Motion to Dismiss, Objection to Confirmation, and Debtor's Response. The Court continued those matters to March 11, 2026 and subsequently entered an *Order Scheduling Evidentiary Hearing and Shortening Discovery Deadlines*.¹⁰

The evidentiary hearing commenced on March 11, 2026, at 1:30 p.m. Before the presentation of evidence, the Court addressed various evidentiary matters. The Court denied HSBC's *Motion in Limine*,¹¹ which requested several evidentiary protections, to provide Debtor, who was self-represented, with the freedom to advance his arguments.¹² The Court sustained HSBC's *Objection to Expert Witness*, which requested that the Court prohibit Debtor from

⁷ *Trustee's Motion to Dismiss Due to Bad Faith*, ECF No. 28.

⁸ *Motion to Dismiss Case with Prejudice*, ECF No. 29.

⁹ *Trustee's Objection to Confirmation of Plan and Motion to Deny Nationstar's Motion to Dismiss Bankruptcy Case Number 25-25381*, ECF Nos. 32 and 34.

¹⁰ *Order Scheduling Evidentiary Hearing and Shortening Discovery Deadlines*, ECF No. 42.

¹¹ *Motion in Limine*, ECF No. 62.

¹² For example, the Court admitted several of Debtor's exhibits, permitted Debtor to present arguments and information, and allowed Debtor's daughter to provide narrative testimony despite potential hearsay concerns all over HSBC's evidentiary objections. Hr'g on Mar. 11, 2026, from 2:03:00 to 2:10:13; 2:12:25 p.m. to 2:13:00 p.m.; 2:38:16 p.m. to 2:39:00 p.m.; 4:10:45 p.m. to 4:11:15 p.m.; 4:15:30 p.m. to 4:15:41 p.m. The Court repeatedly emphasized that it intended to give Debtor "latitude" so that "he can put whatever he wants on the record." Hr'g on Mar. 11, 2026, from 2:26:25 p.m. to 2:26:50 p.m.

calling his daughter Christy Brehm as an “expert witness” because Mrs. Brehm is not a qualified expert under the Federal Rules of Evidence.¹³ Mrs. Brehm was allowed as a fact witness.

The Court proceeded with the evidentiary hearing but allowed Debtor to return on April 1, 2026, so that he could call Mrs. Brehm as a fact witness.¹⁴ HSBC’s counsel voiced several objections to Debtor and Debtor’s witnesses throughout the hearing, which were overruled by the Court to provide Debtor with the opportunity to explain his case.¹⁵ HSBC’s counsel submitted exhibits which were allowed into the record.¹⁶ Debtor had no objections.¹⁷ Still, HSBC’s counsel stipulated that it would not introduce Exhibits 9, 10, and 11 into the record.¹⁸

On April 1, 2026, at 1:30 p.m., the parties returned to question Mrs. Brehm and delivered their closing arguments. The Court then took HSBC’s Motion to Dismiss with Prejudice, Debtor’s Response, and HSBC’s Objection to Confirmation under advisement.

B. Factual Background.

1. The Secured Creditor

Debtor has not made a mortgage payment in eighteen (18) years on the real property located at 50 Brierwood Circle, Collierville, Tennessee 38107 (the “Property”), where he and his wife reside. HSBC Bank USA, National Association, as Trustee for Structured Adjustable Rate

¹³ Fed. R. Evid. 702; *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 585–597 (1993) (setting forth the requirements for admissibility of expert testimony under Federal Rule of Evidence 702).

¹⁴ Hr’g on Mar. 11, 2026, from 4:16:30 p.m. to 4:17:00 p.m.

¹⁵ Hr’g on Mar. 11, 2026, from 2:34:48 p.m. to 2:38:15 p.m.

¹⁶ Hr’g on Mar. 11, 2026, from 2:24:30 p.m. to 2:25:59 p.m.

¹⁷ Hr’g on Mar. 11, 2026, from 2:16:45 p.m. to 2:17:05 p.m.

¹⁸ Hr’g on Mar. 11, 2026, from 2:24:30 p.m. to 2:25:59 p.m. (admitting HSBC Bank’s exhibits 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 14, and 15).

Mortgage Loan Trust 2004-12, by Nationstar Mortgage, LLC is the secured creditor who holds the Deed of Trust on the Property. In December 2002, Debtor's wife, Linda Elam obtained ownership of the Brierwood Circle property and later transferred the property to the "L & F Irrevocable Trust," with Debtor serving as trustee.¹⁹ Shortly thereafter, Debtor, acting as trustee, used the property as collateral for a \$386,669.63 construction loan from Merchants & Farmers Bank.²⁰ In March 2004, the Elams obtained a separate \$540,000.00 loan from Realty Mortgage Corporation and pledged the same property as security, using the proceeds to repay the earlier bank loan and fund improvements to the home.²¹ Aurora Loan Services, LLC ("Aurora") eventually acquired the Elams' loan and note.²² After the Elams fell behind on payments, they entered into a Workout Agreement with Aurora in December 2007 and a Loan Modification Agreement in May 2008.²³ Nationstar Mortgage, LLC acquired Aurora's assets in 2012.²⁴ No mortgage payments have been made since no later than December 1, 2008.²⁵ The total debt owed to HSBC is \$1,341,798.65, and the pre-petition arrearage is \$951,642.39, as of the Petition date.²⁶

²⁵ HSBC's Exhibit No. 7 evidences a due date of December 2008 and no payments made after that due date. Exhibit No. 7. The record does not identify the date of the final payment made by Debtor. However, HSBC called Edward Hyne, an employee of Rocket Mortgage, LLC, and former employee of Nationstar for thirteen years prior to the Nationstar and Rocket Mortgage merger, as a fact witness. Hr'g on Mar. 11, 2026, from 2:39:15 p.m. to 2:40:15 p.m. Mr. Hyne identified Exhibit No. 7 as Debtor's detailed transaction history and represented to the Court that it was kept in the ordinary course of business and the transactions were notated at or near the time the transactions occurred. Hr'g on Mar. 11, 2026, from 3:10:59 p.m. to 3:12:45 p.m. Mr. Hyne further represented to the Court that the due date on the loan was December 1, 2008, and that Nationstar had never received a payment from Debtor. Hr'g on Mar. 11, 2026, from 3:12:45 p.m. to 3:13:00 p.m. Mr. Hyne also represented to the Court that the information in Exhibit No. 7 matches the information in page 6 of Proof of Claim 4-1 (Exhibit No. 8).

²⁶ Proof of Claim 4-1.

2. Mr. and Mrs. Elam's Bankruptcy Cases.

Debtor filed the present case on October 21, 2025, but Debtor and his family members have a long history with bankruptcy courts in the Western District of Tennessee.²⁷ Since 2009, Debtor has filed five previous cases, as outlined in the chart below.²⁸ All but the first case was dismissed involuntarily. Debtor's wife, Linda Elam, filed for bankruptcy in 2011.

Debtor (Case Name)	Case No.	Chapter	Date Filed	Date Closed
Frederick James Elam	09-27591	13	07/15/2009	12/28/2009
Frederick J. Elam	09-32723	7	11/12/2009	09/17/2010
Fred J. Elam	10-26015	13	06/04/2010	01/31/2011
Fred J. Elam	10-32144	13	11/05/2010	06/01/2011
Linda Elam	11-21571	7	02/16/2011	01/25/2024
Frederick James Elam	23-25274	13	10/24/2023	06/23/2024
Frederick J. Elam	25-25381	13	10/21/2025	N/A

3. Ongoing Litigation Delaying Foreclosure.

Debtor's first bankruptcy case was filed on July 15, 2009. Since then, creditors have been unable to complete foreclosure because of Debtor's six filings, which includes Debtor's wife's bankruptcy case that lasted from February 16, 2011 through January 25, 2024 (a chapter 7 case that was closed and reopened). In state and federal courts, Debtor and his wife engaged in extensive litigation concerning the Property and the validity of the mortgage.²⁹

a. State Court Proceedings

²⁷ Pursuant to Fed. R. Evid. 201, this Court takes judicial notice of Debtor's past bankruptcy proceedings.

²⁸ *In re Elam*, Case No. 09-27591 (case was dismissed "for other reasons"); *In re Elam*, Case No. 09-32723 (Debtor received standard discharge); *In re Elam*, Case No. 10-26015 (case was dismissed "for other reasons"); and *In re Elam*, Case No. 10-32144 (case was dismissed for failure to make plan payments). *In re Elam*, Case No. 11-21571 (Debtor's wife's case was fully administered); *In re Elam*, Case No. 23-25274 (case was dismissed for failure to make plan payments).

²⁹ See *In re Elam*, No. 22-8012, 2023 WL 5566199, at *3. (B.A.P. 6th Cir. Aug. 29, 2023) (outlining the Elams' adversary proceeding); *Elam v. Aurora Loan Servs., LLC*, No. 18-5743, 2019 WL 7603379, at *1-2 (6th Cir. Aug. 9, 2019) (outlining the Elams' state court and federal court litigation).

In 2012, Aurora filed an action in Tennessee Chancery Court seeking a declaration that the deed conveying the Property to the L&F Irrevocable Trust was void or, alternatively, that Aurora was entitled to assume Merchants & Farmers Bank's priority position.³⁰ In 2015, the Chancery Court granted Nationstar's motion for summary judgment, finding that the Elams, the trust, and Realty Mortgage intended for the Property to serve as collateral for the loan.³¹ The Elams appealed and the Tennessee Court of Appeals dismissed the appeal for lack of jurisdiction.³²

b. District Court and Sixth Circuit Proceedings

In 2017, Debtor filed suit in federal district court challenging the attempted foreclosure.³³ The district court granted the mortgage company's and related defendants' motion to dismiss the complaint, and denied the subsequent motion for reconsideration.³⁴ On appeal, in 2019, the Sixth Circuit affirmed the district court, concluding that, "the district court correctly determined that the Elams' claims and proposed claims are barred by the doctrine of *res judicata*" and properly denied "the Elams' motion for leave to amend their complaint."³⁵ The Sixth Circuit further stated that, "[t]he Elams also challenge the district court's conclusion that their claims are

³⁰ *Elam v. Aurora Servs. Loan, LLC*, No. 2:17-cv-02188-TLP-tmp, 2018 U.S. Dist. LEXIS 75477, at *3 (W.D. Tenn., May 2, 2018) (outlining the early facts of the Elams' litigation with each creditor).

³¹ *Id.* at *4.

³² *Id.*

³³ *Id.* at *4-5.

³⁴ *Id.* at *6, *10-11.

³⁵ *Elam v. Aurora Loan Servs., LLC*, No. 18-5743, 2019 WL 7603379, at *4 (6th Cir. Aug. 9, 2019).

barred by the applicable statutes of limitations. We need not address this argument because application of the doctrine of res judicata is dispositive.”³⁶

*c. Adversary Proceeding in Mrs. Elam’s
Chapter 7 Case and the Bankruptcy Appellate Panel.*

Following the Sixth Circuit’s decision, Linda Elam filed an adversary proceeding (Adv. No. 21-00098) in Linda Elam’s Chapter 7 case seeking a determination, “(1) that the assignment of the note to Aurora fails to meet requirements for an assignment under Tennessee state law; and (2) that the loan at issue was extinguished through the discharge in the underlying bankruptcy.”³⁷ The bankruptcy court ruled that it lacked jurisdiction because the chapter 7 trustee abandoned the Property when the chapter 7 case was closed 9 years prior.³⁸ The bankruptcy court’s decision was appealed to the Sixth Circuit Bankruptcy Appellate Panel. The issue of the appeal was whether the bankruptcy court erred by dismissing the adversary proceeding for lack of jurisdiction.

The Sixth Circuit Bankruptcy Appellate Panel affirmed the bankruptcy court and ruled that the bankruptcy court “correctly concluded that it did not have jurisdiction over the claims stated in the complaint because the claims did not constitute a ‘core’ proceeding.”³⁹ Further, rejecting the Debtor’s argument on appeal that the mortgage company’s lien was invalid, the appellate panel reasoned that Debtor “overstate[d] the nature and extent of a bankruptcy

³⁶ *Id.*

³⁷ *Linda Elam v. Nationstar Mortgage, LLC (In re Elam)*, Case No. 11-21571, Adv. Proc. 21-00098, ECF No. 30 at 6 (Bankr. W.D. Tenn. May 4, 2022).

³⁸ *Id.* at 10.

³⁹ *See In re Elam*, No. 22-8012, 2023 WL 5566199, at *3. (B.A.P. 6th Cir. Aug. 29, 2023).

discharge” and that the discharge did not eliminate the creditor’s ability to enforce its *in rem* rights against the property.⁴⁰

d. The Present Chapter 13 Case

Prior to filing the present case, Debtor filed a chapter 13 case on October 24, 2023, which was dismissed on June 23, 2024, for failure to make any payments. Debtor then filed this case on October 21, 2025.

Debtor filed a barebones chapter 13 petition and schedules that reported \$664,000.00 in unsecured claims, \$1,600.00 in monthly income, and \$1,350 in monthly expenses.⁴¹ Throughout the case, Debtor has remained unrepresented by counsel. However, at the evidentiary hearing, Debtor’s daughters admitted to extensively helping their father in his bankruptcy cases.⁴² Debtor’s chapter 13 Plan, filed November 21, 2025, indicated that the payment amount was to be determined at a later date, the trustee would make the payments, and that all other sections were not applicable to Debtor.⁴³ The chapter 13 plan is not legible and did not provide sufficient information that would allow the chapter 13 trustee to administer the case.⁴⁴

HSBC timely filed its proof of claim on December 24, 2025.⁴⁵

⁴⁰ *Id.* at *10.

⁴¹ *Chapter 13 Voluntary Petition for Individuals*, ECF No. 1.

⁴² Hr’g on Mar. 11, 2026, from 4:03:00 p.m. to 4:05:00 p.m.

⁴³ *Chapter 13 Plan*, ECF No. 14.

⁴⁴ *Chapter 13 Plan*, ECF No. 14. Debtor did not use the local chapter 13 plan form. The chapter 13 plan contained indecipherable handwriting that did not provide the chapter 13 trustee with information needed to administer the chapter 13 case.

⁴⁵ Proof of Claim 4-1.

Debtor has been shielded from foreclosure by his use of the bankruptcy system. Since 2008, Debtor has not made a payment on his debt to either Aurora or HSBC. The due date on the outstanding loan is December 1, 2008.⁴⁶ In the years that followed, the Elams' multiple bankruptcy cases delayed several attempts to foreclose on the property.⁴⁷ HSBC's claim is currently valued at \$1,341,798.65.⁴⁸

C. The Evidentiary Hearing and Positions of the Parties

1. Debtor's Unsupported Contentions

Debtor did not file a brief in support of his position. Debtor filed a letter (ECF No. 18) arguing that a discharge was granted on December 8, 2011, in Case No. 11-21571.⁴⁹ At the hearing, Debtor, or more commonly, Debtor's daughters, reiterated several claims from past cases and proceedings. Debtor argued that the note was not actually signed by the Elams,⁵⁰ that the transfer of the mortgage to another mortgagee invalidated the mortgage,⁵¹ that the discharged debt from 2011 prevents Nationstar from foreclosing on the Property,⁵² and that the Elams were victims of unfair lending practices.⁵³

⁴⁶ Hr'g on Mar. 11, 2026, from 3:13:55 p.m. to 3:14:36 p.m.; Exhibit No. 7.

⁴⁷ *Elam v. Aurora Loan Servs., LLC*, No. 18-5743, 2019 WL 7603379, at *1 (6th Cir. Aug. 9, 2019) (“[T]he Elams filed several bankruptcy actions, which helped them avoid multiple foreclosure attempts on the Property.”).

⁴⁸ Claim No. 4-1.

⁴⁹ *Chapter 13 Plan*, ECF No. 14.

⁵⁰ Hr'g on Mar. 11, 2026, from 4:09:06 p.m. to 4:09:50 p.m.

⁵¹ Hr'g on Mar. 11, 2026, from 2:34:48 p.m. to 2:36:00 p.m.

⁵² Hr'g on Apr. 1, 2026, from 3:27:12 p.m. to 3:27:50 p.m.

⁵³ Hr'g on Mar. 11, 2026, from 2:37:04 p.m. to 2:38:02 p.m.

Debtor was unrepresented by counsel, and despite sustained objections and a granted *Motion to Limit the Participation of Non-Attorneys at Evidentiary Hearing*, Debtor's family members made several unsolicited statements throughout the evidentiary hearing. One of Debtor's daughters, when cross examined, indicated that the signature did not belong to Debtor or his wife.⁵⁴ Earlier in the proceeding, however, Linda Elam had admitted that the signatures on the Note belonged to her and her husband.⁵⁵

Debtor also alleges that the assignment of the Note and the fact that the mortgage note is endorsed in blank invalidates the agreement. The record does not support Debtor's position, and other courts have rejected Debtor's contentions. Debtor and his wife executed a promissory note with Realty Mortgage Corporation dated March 31, 2004.⁵⁶ On the Note, there is a blank endorsement.⁵⁷ Nationstar Mortgage, LLC acquired Aurora's assets in 2012.⁵⁸ As explained in HSBC's *Objection to Admissibility of the Debtor's Exhibits*,⁵⁹ a blank endorsement makes the Note payable to its bearer, who may enforce it through an authorized servicer.⁶⁰ Under Tennessee law, the deed of trust follows the Note when the Note is transferred, without a

⁵⁴ Hr'g on Mar. 11, 2026, from 4:09:06 p.m. to 4:09:50 p.m.

⁵⁵ Hr'g on Mar. 11, 2026, from 4:00:38 p.m. to 4:01:55 p.m. The Court notes that a party claiming that the signature on a document is not theirs bears the burden of proving by a preponderance of the evidence that the signatures were not theirs. *See Fountain Leasing v. Adamson*, No. 3:12-CV-397-PLR-CCS, 2014 WL 4978432, at *4–5 (E.D. Tenn. Oct. 6, 2014) (“A party challenging the existence of their own signature on a document bears the burden of showing, by a preponderance of the evidence, that he did not sign the document in question.”). Debtor presented no such evidence. Therefore, this argument is not persuasive.

⁵⁶ Proof of Claim No. 4-1, at 17–34; Exhibit No. 8.

⁵⁷ Proof of Claim No. 4-1, at 49.

⁵⁸ Exhibit No. 6.

⁵⁹ *Objection to Admissibility of the Debtor's Exhibits*, ECF No. 72.

⁶⁰ Tenn. Code Ann. § 47-3-205(b) (2025); *Brichant v. Wells Fargo Bank, N.A.*, 616 Fed. App'x 786, 787 (6th Cir. 2015).

separate assignment.⁶¹ Further, as an individual who is not a party to the contract between the assignor and assignee, Debtor lacks standing to object to the assignment.⁶² Debtor's concerns regarding the mortgage have been repeatedly addressed and rejected by other courts.⁶³ Debtor and his wife appealed the ruling in the adversary proceeding to the Sixth Circuit Bankruptcy Appellate Panel, where Debtor and his wife's arguments were summarily rejected.⁶⁴

In his *Motion to Deny Nationstar's Motion to Dismiss Bankruptcy Case Number 25-25381*, Debtor argued that the mortgage debt was discharged, and therefore, nothing remains due. This argument is without merit. A bankruptcy discharge eliminates a debtor's personal liability on a debt but does not extinguish a creditor's *in rem* rights against the property securing that debt.⁶⁵ As the Sixth Circuit Bankruptcy Appellate Panel previously explained in litigation involving the Property, Mrs. Elam's discharge did not avoid the mortgage lien, and no action was taken during her Chapter 7 case to avoid that lien.⁶⁶ Accordingly, even if Mrs. Elam's personal liability on the debt was discharged, HSBC's right to enforce its lien against the property remains unaffected. Debtor therefore cannot rely on Mrs. Elam's discharge to establish that nothing remains due on the mortgage.

⁶¹ *Brichant*, 616 F. App'x at 790-91; *Deutsche Bank Nat'l Trust Co. v. Tibbs*, No. 3:11-0763, 2014 U.S. Dist. LEXIS 8943, at *5 (M.D. Tenn. Jan. 24, 2014).

⁶² ECF No. 72 at 10, ¶ 34; *Livonia Props. Holdings, LLC v. 12840–12976 Farmington Rd. Holdings, LLC*, 399 F. App'x 97, 102 (6th Cir. 2010).

⁶³ See *In re Elam*, No. 22-8012, 2023 WL 5566199, at *3. (B.A.P. 6th Cir. Aug. 29, 2023); *Elam v. Aurora Loan Servs., LLC*, No. 18-5743, 2019 WL 7603379, at *1–2, *4 (6th Cir. Aug. 9, 2019).

⁶⁴ See *In re Elam*, No. 22-8012, 2023 WL 5566199, at *3. (B.A.P. 6th Cir. Aug. 29, 2023); *Elam v. Aurora Loan Servs., LLC*, No. 18-5743, 2019 WL 7603379, at *1–2, *4 (6th Cir. Aug. 9, 2019).

⁶⁵ *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S. Ct. 2150, 2154 (1991) (holding that a bankruptcy discharge leaves an *in rem* action against the debtor intact).

⁶⁶ See *In re Elam*, No. 22-8012, 2023 WL 5566199, at *6. (B.A.P. 6th Cir. Aug. 29, 2023).

Finally, Debtor’s unfair-lending argument has already been litigated and rejected and, even if it remained an open question, it would be barred by the applicable statutes of limitations.⁶⁷

2. HSBC’s Position

HSBC filed *Memorandum in Support of Motion to Dismiss Case with Prejudice* and an *Objection to Admissibility of the Debtor’s Exhibits* on March 10, 2026. HSBC asserts that Debtor is unable to make all payments required under the Plan and thus the plan is infeasible because Debtor admitted under oath that he could not afford to pay anything to the Trustee in this case and that he has only \$250 per month to contribute to an arrearage claim of more than \$900,000.⁶⁸ Further, HSBC asserts that Debtor cannot cure the default through a chapter 13 plan because the real property is not property of the estate and the claim is against the property—not the individual—meaning Debtor has no personal liability to the Creditor.⁶⁹

HSBC further asserts that Debtor’s claims have either been rejected by prior court decisions or are barred by the respective claims’ statute of limitations.⁷⁰ HSBC also asserts that it would be “a waste of judicial resources for this Court to relitigate Debtor’s Claims” because of

⁶⁷ *Memorandum in Support of Motion to Dismiss Case with Prejudice*, ECF No. 73, at 8, ¶ 28; *Linda Elam v. Nationstar Mortgage, LLC (In re Elam)*, Case No. 11-21571, Adv. Proc. 21-00098, ECF No. 30 at 6 (Bankr. W.D. Tenn. May 4, 2022), *affirmed In re Elam*, No. 22-8012, 2023 WL 5566199, at *3. (B.A.P. 6th Cir. Aug. 29, 2023); Hr’g on Apr. 1, 2026, from 3:51:12 – 3:53:13.

⁶⁸ ECF No. 73, at 5–6 ¶¶ 16–18.

⁶⁹ ECF No. 73, at 6 ¶¶ 19–21.

⁷⁰ ECF No. 73, at 8–9 ¶¶ 26–30 ¶¶; Hr’g on Apr. 1, 2026, from 3:51:12 p.m. to 3:53:13 p.m.

the overwhelming evidence against Debtor and the fact that Debtor and his wife have repeatedly attempted to relitigate settled issues.⁷¹

Finally, HSBC asks the Court to impose a bar against refiling for up to five years and no less than two years.⁷² HSBC further requests the Court issue an Order that any case filed while Debtor has no ownership in the property will not stay actions against the property.⁷³ HSBC asserts that this request is warranted because of Debtor's serial filings, lack of good faith, pattern of conduct, failure to make payments, and lack of meaningful participation in the bankruptcy process.⁷⁴

3. Chapter 13 Trustee's Report Proffer⁷⁵

At the April 1, 2026, evidentiary hearing, the chapter 13 trustee's staff attorney reported to the Court that the trustee received no payments from Debtor in his prior chapter 13 case, Case No. 23-25274, and likewise, the Trustee has received no payments from Debtor since the present case was filed in October 2025.⁷⁶

Based on HSBC's Proof of Claim No. 4-1, the trustee's staff attorney reported mortgage arrearages of \$951,642.39, which would require payments of approximately \$15,862.00 per month in a sixty-month plan.⁷⁷ When combined with the ongoing mortgage payment of

⁷¹ ECF No. 73, at 10 ¶ 31.

⁷² ECF No. 73, at 12-13 ¶¶ 38-40; Hr'g on Apr. 1, 2026, from 3:56:03 to 3:56:15.

⁷³ ECF No. 73, at 14, Prayer for Relief ¶ 2.

⁷⁴ ECF No. 73, at 5-13 ¶¶ 16-40.

⁷⁵ Hr'g on Apr. 1, 2026, from 3:58:27 p.m. to 4:00:07 p.m.

⁷⁶ Hr'g on Apr. 1, 2026, from 3:58:27 p.m. to 3:59:18 p.m.

⁷⁷ Hr'g on Apr. 1, 2026, from 3:59:18 p.m. to 3:59:40 p.m.

\$4,723.31 and other amounts required under the plan, the necessary chapter 13 plan payment would be approximately \$22,874.00 per month. Debtor reported net monthly income of only \$250 on Schedule J.⁷⁸

II. ISSUE PRESENTED

The central (and simple) issue this Court must decide is whether this chapter 13 case should be dismissed with prejudice with a bar from future filings for a period of at least three years when a debtor (and his non-filing spouse) have avoided mortgage payment obligations for an extended period, had multiple prior bankruptcy filings, filed incomplete bankruptcy documents in the present case, engaged in extensive litigation to delay the foreclosure, and advanced legal arguments previously rejected by other courts.

III. DISCUSSION⁷⁹

A. Dismissal with Prejudice

1. Legal Standard

The Bankruptcy Code permits a court to grant a fresh start to an honest but unfortunate debtor.⁸⁰ To avoid abuse of the bankruptcy process, the Code provides the Court with the power to dismiss a debtor's chapter 13 case for cause. The Sixth Circuit has concluded that subsections

⁷⁸ Hr'g on Apr. 1, 2026, from 3:59:40 p.m. to 4:00:07 p.m.

⁷⁹ The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334(b). Venue is proper in this District. 28 U.S.C. §§ 1408, 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B).

⁸⁰ See *Grogan v. Garner*, 498 U.S. 279, 286–87, 111 S.Ct. 654, 659 (1991) (“[T]he Act limits the opportunity for a completely unencumbered new beginning to the ‘honest but unfortunate debtor.’”).

105(a),⁸¹ 349(a),⁸² and 1307(c)⁸³ of the Code allow the bankruptcy court to dismiss a bankruptcy case for cause, and with prejudice.⁸⁴ Subsection 105(a) allows the bankruptcy court to exercise broad powers to act consistent with other more specific provisions of the Bankruptcy Code. Subsection 349(a) gives the bankruptcy court the authority to dismiss a bankruptcy case

⁸¹ Subsection 105(a) reads: “The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.” 11 U.S.C. § 105(a) (2026).

⁸² Subsection 349(a) states, “Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.” 11 U.S.C. § 349(a) (2026).

⁸³ Subsection 1307(c) provides:

Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after 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;
- (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) (2026) (emphasis added).

⁸⁴ *Dietrich v. Nob-Hill Stadium Props.*, No. 05-2255, 2007 U.S. App. LEXIS 3591, at *14–15 (6th Cir. Feb. 15, 2007) (“We conclude that the plain language of section 349(a) appears to allow a bankruptcy court to dismiss a bankruptcy petition with prejudice, permanently, if there is sufficient cause. That result is consistent with the decisions of most courts outside of the Tenth Circuit which have addressed the issue.”).

with prejudice, for cause.⁸⁵ Subsection 1307(c) outlines eleven “causes” for which a chapter 13 debtor’s case may be dismissed, which is a non-exhaustive list of “causes.”⁸⁶ As such, a bankruptcy court may dismiss a debtor’s chapter 13 case for reasons other than those provided under subsection 1307(c). All levels of courts have held or, at a minimum, acknowledged that debtors risk forfeiting their right to obtain chapter 13 relief when they act in bad faith at any point in the bankruptcy filing process.⁸⁷ However, a finding that a case should be dismissed for the debtor’s bad faith is “tantamount to a ruling that the person did not qualify as a debtor under chapter 13.”⁸⁸ That individual, in other words, is not a member of the class of “‘honest but unfortunate debtor[s]’ that the bankruptcy laws were enacted to protect.”⁸⁹

The Sixth Circuit held that a bankruptcy court must consider the totality of the circumstances, including both past conduct and present circumstances, in determining whether a debtor filed a chapter 13 petition in good faith.⁹⁰ The Court noted that the analysis requires a “fact-specific and flexible determination,”⁹¹ using the following factors:

⁸⁵ 11 U.S.C. § 349(a) (2026).

⁸⁶ *Marrama v. Citizens Bank*, 549 U.S. 365, 373, 127 S. Ct. 1105, 1110 (2007).

⁸⁷ *Id.* at 367–68 (“[D]espite the absence of any statutory provision specifically addressing the issue, the federal courts are virtually unanimous that prepetition bad-faith conduct may cause a forfeiture of any right to proceed with a Chapter 13 case.”); *Alt v. United States (In re Alt)*, 305 F.3d 413, 418-19 (6th Cir. 2002) (“[T]here is abundant authority for the notion that a bankruptcy court has the power to dismiss a Chapter 13 petition upon a finding that the debtor did not bring it in good faith.”).

⁸⁸ *Marrama*, 549 U.S. at 374.

⁸⁹ *Id.* at 374 (quoting *Grogan v. Garner*, 498 U.S. 279, 286, 287, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)).

⁹⁰ *In re Alt*, 305 F.3d 413, 419–20 (6th Cir. 2002); *In re Via*, No. 3:19-bk-33999-SHB, 2020 Bankr. LEXIS 536, at *8 (Bankr. E.D. Tenn. Feb. 27, 2020) (citing *Laguna Assocs. Ltd. P’ship v. Aetna Cas. & Surety Co. (In re Laguna Assocs. Ltd. P’ship)*, 30 F.3d 734, 738 (6th Cir. 1994)).

⁹¹ *In re Alt*, 305 F.3d at 419 (citing *Metro Employees Credit Union v. Okoreeh–Baah (In re Okoreeh–Baah)*, 836 F.2d 1030, 1032–33 (6th Cir.1988)).

- (1) the debtor's income;
- (2) the debtor's living expenses;
- (3) the debtor's attorney's fees;
- (4) the expected duration of the Chapter 13 plan;
- (5) the sincerity with which the debtor has petitioned for relief under Chapter 13;
- (6) the debtor's potential for future earning;
- (7) any special circumstances, such as unusually high medical expenses;
- (8) the frequency with which the debtor has sought relief before in bankruptcy;
- (9) the circumstances under which the debt was incurred;
- (10) the amount of payment offered by debtor as indicative of the debtor's sincerity to repay the debt;
- (11) the burden which administration would place on the trustee;
- (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.⁹²

In applying these factors, the Court's focus is on whether the debtor has abused or is seeking to abuse the bankruptcy process.⁹³ The moving party bears the burden of proving that the case should be dismissed for cause pursuant to section 1307(c).⁹⁴

2. The Factors Weigh Heavily Toward Dismissal for Cause.

Debtor's Schedules I and J (and evidence presented at trial) show no ability to pay the mortgage obligation in this chapter 13 case. HSBC's Proof of Claim No. 4 states mortgage arrearages of \$951,642.39 and an ongoing monthly mortgage payment of \$4,723.31. In a sixty-month plan, payments of approximately \$15,862.00 per month would be required to cure the arrearage. When combined with the ongoing mortgage payment of \$4,723.31 and other amounts

⁹² *Id.* at 419. This list of factors provided by the Sixth Circuit is non-exhaustive as the Court recognized its inherent limit in identifying all of the considerations that could possibly be relevant in determining whether a debtor lacked good faith. *Metro Emps. Credit Union v. Okoreeh-Baah (In re Okoreeh-Baah)*, 836 F.2d 1030, 1033 (6th Cir. 1988).

⁹³ *In re Alt*, 305 F.3d at 419.

⁹⁴ *In re Alt*, 305 F.3d at 420 ("In the context of section 1307(c), the burden of showing the debtor's lack of good faith is borne by the party seeking dismissal.").

required under the plan, the necessary chapter 13 plan payment would be approximately \$22,874.00 per month. By comparison, Debtor reported net monthly income of only \$250 on Schedule J.⁹⁵ Further, Debtor's most recent prior chapter 13 case was dismissed after he made no payments toward \$1,235,105.44 in secured claims and \$5,505.16 in unsecured claims.⁹⁶ Finally, during the meeting of creditors on December 9, 2025, "Debtor testified under oath that he could not afford to pay anything to the Trustee in this case."⁹⁷

Debtor's living expenses are difficult to evaluate because Debtor's schedules are incomplete. Debtor's attorney's fees are a non-factor because he is proceeding *pro se*. The expected duration of Debtor's chapter 13 plan cannot be evaluated because it was not properly prepared and is illegible. Debtor's chapter 13 plan is mostly blank and fails to list HSBC's claim, which indicates a lack of good faith. Debtor lacks sincerity in seeking relief under chapter 13 of the Code, and he failed to demonstrate potential for future earnings. Debtor's representations to the Court indicate an unwillingness to make any future payments, as Debtor wrote in paragraphs four, six, and nine of his Response:

(4) All bankruptcies filed were by me because of Nationstar's foreclosure attempts with no collateral. They were all discharged as unsecured debts

....

(6) There are no payments to be made to the creditor as we can prove there is no debt

....

(9) No payments to be made.⁹⁸

⁹⁵ ECF No. 9.

⁹⁶ Chapter 13 Trustee's Final Accounting and Report (Case no. 23-25274, ECF No. 54).

⁹⁷ ECF No. 73, at 5, ¶ 17.

⁹⁸ ECF No. 34.

Debtor has presented no special circumstances supporting a good faith effort to proceed through chapter 13, and the frequency with which the Debtor has sought relief before in bankruptcy demonstrates a lack of good faith. Since 2009, Debtor has shown neither an ability nor a willingness to make plan payments. During the evidentiary hearing, Debtor advanced erroneous and irrelevant arguments, including that the deed being in the trust's name freed Debtor from the debt and that the money paid from 2004 through 2008 was not accounted for in the ledger.⁹⁹ Throughout the proceeding, Debtor repeated claims that have already been rejected.¹⁰⁰

The circumstances under which the debt was incurred and the monthly payment offered by Debtor indicate Debtor's insincerity in repaying the debt. It bears repeating that Debtor has failed to make a single payment on the mortgage note since 2008. Beyond that, Debtor has not been paying the taxes and insurance on the property, leaving HSBC to cover those expenses.¹⁰¹ Debtor has used bankruptcy proceedings and appeals of court decisions to avoid foreclosure and has not made a good faith effort to work with either the chapter 13 trustee or the creditor. Debtor has abused the bankruptcy process and has left the Court with no alternative but to bar him from refiling.

Because of Debtor's failure to file a viable chapter 13 plan, the chapter 13 trustee cannot administer the chapter 13 case, needlessly consuming the trustee's limited time and resources (and wasting judicial resources). Debtor's actions indicate that Debtor would simply refile and

⁹⁹ Hr'g on Mar. 11, 2026, from 3:43:30 p.m. to 3:45:41 p.m.

¹⁰⁰ Hr'g on Mar. 11, 2026, from 3:37:10 p.m. to 3:38:00 p.m. (requesting to see a document evidencing assignment of the note); Hr'g on Mar. 11, 2026, from 2:55:00 p.m. to 2:57:00 p.m. (advancing arguments regarding resolved issues like unfair lending practices)

¹⁰¹ Hr'g on Apr. 1, 2026, from 3:55:10 to 3:55:24.

again waste judicial resources to delay payment of his debts. Considering the statutorily mandated policy that bankruptcy provisions are construed liberally in favor of the debtor, Debtor's conduct leading up to and during this case has demonstrated a gross abuse of the chapter 13 process. Bankruptcy is available to the "honest but unfortunate debtor," but Debtor has been both dishonest and fortunate to remain in the home for eighteen years without making a payment. Debtor's actions constitute bad faith and allowing him to continue filing bankruptcy will waste judicial resources and prevent his creditors from receiving payments on the debts owed to them.

Debtor has shown a pattern of strategically using the bankruptcy system to avoid his obligations.¹⁰² Although serial filings do not alone establish bad faith, "a debtor's history of filings and dismissals may be evidence of bad faith."¹⁰³ Debtor has filed five previous bankruptcy cases since 2009. Debtor voluntarily dismissed the first case, and the remaining cases were dismissed, including two for failure to make payments to the Trustee.¹⁰⁴ Debtor's wife, Linda Elam, filed one bankruptcy case, and along with Debtor, appealed the decisions of the lower courts all the way to the Sixth Circuit Court of Appeals, where their arguments were summarily rejected.¹⁰⁵

¹⁰² In determining whether Debtor filed this case in good faith, the Court may consider Debtor's conduct in prior cases. See *In re Parson*, 632 B.R. 613, 626 (Bankr. N.D. Tex. 2021); *In re Boyd*, No. 19-20846, 2020 Bankr. LEXIS 3115, at *6 (W.D. La. Nov. 3, 2020).

¹⁰³ ECF No. 73, at 11 ¶ 37 (citing *In re Rios*, No. 13-11076, 2016 WL 8461532, at *3 (Bankr. D. Kan. Dec. 9, 2016) (footnote omitted)).

¹⁰⁴ Debtor's previous Bankruptcy Case Nos. 09-27591, 09-32723, 10-32144, 10-26015 and 23-25274.

¹⁰⁵ *Elam v. Aurora Loan Servs., LLC*, No. 18-5743, 2019 WL 7603379, at *4 (6th Cir. Aug. 9, 2019).

The Court finds that the record overwhelmingly supports that Debtor lacked good faith in filing this chapter 13 case and concludes that this case should be dismissed for cause.

B. Dismissal with Prejudice and Bar on Future Filing

Having concluded that this case should be dismissed for cause, the Court now turns to dismissing the case with prejudice and barring future filing in connection with the Property. HSBC's Motion to Dismiss and the accompanying memorandum requested a bar from refiling of at least two years, with a request at the hearing to impose a bar of as many as five years.¹⁰⁶ It is up to the discretion of the Court to determine how long the debtor should be barred from refiling.¹⁰⁷ If the record supports it, courts generally bar a debtor from anywhere from two years to five years, with five years being "reserved for the most egregious of cases."¹⁰⁸ The Court will refrain from exercising its discretion to grant a five-year ban.

Given Debtor's failure to make any payment for 18 years, the failure to make chapter 13 plan payments in this and previous cases, and Debtor's conduct across all six bankruptcy cases, this Court believes three years is the appropriate amount of time to bar Debtor from refiling a

¹⁰⁶ ECF No. 29; ECF No. 73; Hr'g on Apr. 1, 2026, from 3:56:03 p.m. to 3:56:16 p.m.

¹⁰⁷ *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 737 (B.A.P. 6th Cir. 2010) (holding that the 180-day prohibition specified in section 109(g) does not apply to a refiling bar when there is sufficient good cause); *In re Via*, No. 3:19-bk-33999-SHB, 2020 Bankr. LEXIS 536, at *12 (Bankr. E.D. Tenn. Feb. 27, 2020) ("[T]he majority of courts — including the Second Circuit, Fourth Circuit, Sixth Circuit Bankruptcy Appellate Panel, and Eight[h] Circuit Bankruptcy Appellate Panel — considering this issue have ruled that the bankruptcy court has the power and authority to prohibit serial filers from filing petitions beyond the scope of the 180-day period by virtue of sections 349(a) and 105(a)." (citations omitted)) (quoting *In re Henderson*, No. 12-50376, 2012 Bankr. LEXIS 2055, 2012 WL 4498887, at *1–2 (Bankr. S.D. Ohio May 4, 2012)).

¹⁰⁸ *In re Via*, 2020 Bankr. LEXIS 536, at *12–13 ("In re Jordan, 598 B.R. at 411 (imposing a five-year bar after finding that 'a review of Debtor's past filings provides evidence to prove that Debtor's failures were intentional and willful'); *In re Wilcoxon*, 2018 Bankr. LEXIS 3616, 2018 WL 6016540, at *3 (imposing a five-year bar because the debtor 'repeatedly demonstrated that he does not take the foundational requirements of bankruptcy filings seriously' by continually frustrating creditors, not providing proof that he took the pre-petition credit counseling briefing, and not making any filing fee payments in his cases).").

bankruptcy petition. Similar behavior in other courts has warranted a three-year ban.¹⁰⁹ In the Sixth Circuit, bad faith is “evidenced by the debtor’s deliberate acts or omissions that constitute a misuse or abuse of the provisions, purpose, or spirit of the Bankruptcy Code.”¹¹⁰ For example, in *Riddle v. Greenberger*, the Sixth Circuit upheld a three-year ban for a debtor who had filed four previous times and repeatedly failed to follow the formalities of his bankruptcy proceedings.¹¹¹ By contrast, in *Mains v. Foley*, the district court vacated a three-year bar as disproportionate where the debtors had pursued a legitimate and unsettled question of law, and had not made false statements, concealed information, or otherwise abused the litigation process.¹¹²

Here, Debtor has filed for bankruptcy five previous times, not including his wife’s thirteen-year bankruptcy case, in which he participated. Debtor failed to include HSBC in his schedules in this proceeding and advanced erroneous legal arguments concerning settled issues of law. Debtor’s prolonged failure to make mortgage payments is particularly egregious, and a three-year ban is more than justified.

¹⁰⁹ See generally *Riddle v. Greenberger (In re Riddle)*, No. 20-3901, 2022 U.S. App. LEXIS 31723, at *7 (upholding a lower court’s three-year bar from refiling for a debtor who had filed four previous times and made bad faith attempts to delay the bankruptcy process); *In re Parson*, 632 B.R. 613, 625 (Bankr. N.D. Tex. 2021) (imposing a three year ban for a pro se debtor who had filed two previous Chapter 13 cases to prolong payment and avoid foreclosure and refused to cooperate during proceedings); *In re Nixon*, No. 05-12169, 2005 WL 4041163, at *1 (Bankr. S.D. Ohio May 18, 2005) (imposing a three year ban for a debtor who filed seven bankruptcy cases).

¹¹⁰ *Riddle*, 2022 U.S. App. LEXIS 31723, at *6 (quoting *Piazza v. Nueterra Healthcare Physical Therapy, LLC (In re Piazza)*, 719 F.3d 1253, 1272 (11th Cir. 2013)).

¹¹¹ *Id.*

¹¹² *Mains v. Foley*, Nos. 1:11-CV-456; 1:11-CV-740, 2012 U.S. Dist. LEXIS 23802, at *20–21 (W.D. Mich. Feb. 24, 2012).

C. Support for Prospective Relief Regarding the Property.

HSBC also requests the Court order that no future bankruptcy filing in connection with the Property shall operate as an automatic stay while Debtor does not own the property.¹¹³

Although HSBC did not expressly cite the applicable Code provision in its memorandum, this Court is able to grant prospective relief from an automatic stay when appropriate.¹¹⁴

Section 362(d)(4) provides for relief from the automatic stay where a bankruptcy filing is used as “part of a scheme to delay, hinder, or defraud creditors” through unauthorized transfers of property or successive bankruptcy filings.¹¹⁵ Courts may grant a creditor relief from stay with regard to specific property in any future bankruptcy case involving that property.¹¹⁶ When a debtor files for bankruptcy in bad faith with the only aim being to prevent a creditor’s foreclosure proceedings, prospective relief from the automatic stay is appropriate.¹¹⁷ HSBC asks the Court to grant relief from the automatic stay with respect to the Property. Under section 362(d)(4) and the associated case law, the Court has the power to grant this prospective relief.

¹¹³ The basis for HSBC’s request for prospective relief is Debtor’s argument that his trust owns the property. As discussed above, this issue was resolved by the Tennessee Chancery Court and affirmed by the Tennessee Court of Appeals. Thus, this Court will not address the issue of ownership.

¹¹⁴ 11 U.S.C. § 362(d)(4); *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 737 (6th Cir. B.A.P. 2010) (citing 11 USCS § 349 and 11 U.S.C. § 105(a)); *see also In re Feldman*, 309 B.R. 422, 426 (Bankr. E.D.N.Y. 2004); *In re Hamer*, No. 00-1180, 2000 U.S. Dist. LEXIS 12341, at *7 (E.D. Pa. Aug. 18, 2000); *In re Rowe*, 239 B.R. 44, 54 (Bankr. D. N.J. 1999); *In re Felberman*, 196 B.R. 678, 683 (Bankr. S.D.N.Y. 1995); *In re Abdul-Hasan*, 104 B.R. 263, 266–67 (Bankr. C.D. Cal. 1989).

¹¹⁵ 11 U.S.C. § 362(d)(4). Prior to 2005, courts granted “[p]rospective relief from the automatic stay . . . where ‘serial filers’ have abused the bankruptcy process by using the stay to prevent foreclosure without any intention or ability to complete the bankruptcy process.” *In re Feldman*, 309 B.R. 422, 426 (6th Cir. B.A.P.) In 2005, the legislature codified section 362(d)(4),

¹¹⁶ Keith M. Lundin, LUNDIN ON CHAPTER 13, § 64.3, at ¶ 1, LundinOnChapter13.com (last visited Sep. 28, 2026).

¹¹⁷ *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 738 (6th Cir. B.A.P. 2010).

The core inquiry is thus whether Debtor’s bankruptcy filings were used to delay, hinder, or defraud creditors.

As discussed at length above, Debtor’s conduct exemplifies serial filing, bad faith, and abuse of the bankruptcy process. His filings have lacked detail, and his conduct has indicated no desire to repay debts owed. Debtor has failed to make payments on the mortgage for eighteen years and has employed a scheme to delay and hinder HSBC’s ability to foreclose on the Property. Accordingly, this Court finds and concludes that any future bankruptcy case filed by or on behalf of Debtor, his spouse, or trustee of a trust holding an interest in the Property, in connection with the Property will not operate as an automatic stay as to the Property.

D. No Ordinary Pro Se Debtor

Pro se litigants are entitled to some leeway,¹¹⁸ and Debtor was given significant leeway throughout the case.¹¹⁹ Courts often rule against unrepresented debtors.¹²⁰ Here, Debtor was allowed to present his case despite repeated failures to follow the rules of evidence. The Court allowed Debtor to introduce arguments in many forms and overruled objections from HSBC’s counsel to give Debtor “latitude.”¹²¹ For example, Debtor’s daughters presented narratives

¹¹⁸ *McDonald’s Corp. v. Strahm*, No. 20-3550, 2022 U.S. App. LEXIS 3292, at *7 (6th Cir. Feb. 4, 2022) (“Although pro se litigants are afforded significant leeway . . . they still have an obligation to comply with and monitor deadlines”).

¹¹⁹ See e.g., *Estelle v. Gamble*, 429 U.S. 97, 106-07, 97 S. Ct. 285, 292 (1976) (“The handwritten pro se document is to be liberally construed.”); *Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 594 (1972) (stating that pro se complaints are held to “less stringent standards than formal pleadings drafted by lawyers”).

¹²⁰ See, e.g., *In re Parson*, 632 B.R. 613, 628 (Bankr. N.D. Tex. 2021) (dismissing case and imposing a refiling bar despite the debtor proceeding pro se); *Lea v. Tracy Langston Ford, Inc.*, No. 19-5706, 2019 U.S. App. LEXIS 38710, at *13 (6th Cir. 2019) (ruling against a debtor proceeding pro se).

¹²¹ Hr’g on Mar. 11, 2026. from 2:00:17 p.m. to 2:00:25 p.m.

throughout the hearing—both on the stand and off.¹²² Debtor was allowed to continue the hearing until April 1, 2026, to allow his other daughter to provide testimony.¹²³

Debtor is not a typical pro se debtor. Debtor—who was a mortgage broker¹²⁴—has avoided his obligations through the bankruptcy system for almost two decades. Debtor’s family supports his efforts by preparing and filing his legal paperwork and advancing arguments before the Court.¹²⁵ Debtor has filed for bankruptcy multiple times, some with the assistance of an attorney, meaning he is familiar with the benefits of being represented by an attorney.¹²⁶

Even with an attorney, there appears to be no reasonable argument that would allow Debtor to live in a home for eighteen years without paying the mortgage.

IV. CONCLUSION AND ORDER¹²⁷

For the reasons stated above, the Court finds and concludes that Debtor filed this case in bad faith, the case should be dismissed with prejudice, a three-year bar on refiling is warranted, and that prospective relief from the automatic stay as to the Property is appropriate. Accordingly, it is **ORDERED**:

1. Nationstar Mortgage LLC’s (“HSBC”) *Motion to Dismiss with Prejudice* (ECF No. 29) is **GRANTED**.

¹²² Hr’g on Apr. 1, 2026, from 2:48:53 p.m. to 2:49:10 p.m.

¹²³ Hr’g on Mar. 11, 2026, from 4:16:30 p.m. to 4:17:00 p.m.

¹²⁴ Hr’g on Apr. 1, 2026, from 2:48:53 p.m. to 2:49:10 p.m.

¹²⁵ Hr’g on Mar. 11, 2026, from 4:03:06 p.m. to 4:04:52 p.m.

¹²⁶ See, e.g., *In re Parson*, 632 B.R. 613, 628 (Bankr. N.D. Tex. 2021).

¹²⁷ HSBC also requests attorneys’ fees in its Motion to Dismiss and its Closing Argument; and for \$10,000 in sanctions with Debtor’s daughters being jointly and severally liable. Hr’g on Apr. 1, 2026, from 3:52:50 p.m. to 3:55:03 p.m. The Court declines to rule on these requests for relief at this time as it has not been properly briefed on the arguments from both parties.

2. Frederick J. Elam is barred from filing a bankruptcy petition for three (3) years from the date of this Order.

3. Any bankruptcy case filed by or on behalf of Debtor, by Debtor's spouse or other family members, or a trustee of any trust holding an interest in the Property, in connection with the real property located at 50 Brierwood Circle, Collierville, TN 38017, will not operate as an automatic stay as to the Property consistent with provisions of 11 U.S.C. § 362(d)(4) for the bar period of three years.

4. Debtor's *Motion to Deny Nationstar's Motion to Dismiss Bankruptcy Case Number 25-25381* is **OVERRULED, DENIED, AND DISMISSED**.

5. Nationstar Mortgage LLC's ("HSBC") *Objection to Confirmation* (ECF No. 23) is **OVERRULED** as moot.

Copies of this Memorandum and Order shall be served on:

Debtor:

Frederick J. Elam
50 Brierwood Circle
Collierville, TN 38017

Creditor:

HSBC Bank USA, National Association,
as Trustee for Structured Adjustable Rate
Mortgage Loan Trust 2004-12, by
Nationstar Mortgage LLC
Attn: Nationstar Mortgage LLC
Bankruptcy Department
P.O. Box 619096
Dallas, TX 75261

Creditor's Attorney:

Michael J. McCormick
Tennessee BPR No. 25180
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Chapter 13 Trustee:
Jennifer K. Cruseturner
Chapter 13 Standing Trustee
5350 Poplar Avenue #500
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All Creditors on the Matrix