Dated: February 20, 2025
The following is ORDERED:

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Nancy Ellis Neely
Debtor

Case No. 24-25102
Chapter 13

OPINION AND ORDER GRANTING MOVANT'S MOTION TO DISMISS DEBTOR'S CHAPTER 13 CASE AND DENYING REQUEST FOR SANCTIONS

This matter came before the Court upon the Motion of Randall J. Fishman, Successor Trustee of the Henry C. Ellis, III Revocable Living Trust ("Ellis Trust" or "Movant") to Dismiss or convert Nancy Ellis Neely's ("Ms. Neely" or "Debtor") Chapter 13 case to a Chapter 7 case under 11 U.S.C. § 1307(c), and for sanctions (the "Motion") [DE 43] filed December 20, 2024. A hearing was held on January 15, 2025, and upon reviewing the relevant supporting documentation and hearing arguments of counsel, the Court took the matter under advisement.

JURISDICTION

This is a core proceeding under § 157(b)(2)(A). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of § 158(a)(1) and Part VIII ("Bankruptcy Appeals") of the Federal Rules of Bankruptcy Procedure. Regardless of whether specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby determines that Movant's Motion to Dismiss is GRANTED and Movant's request for sanctions is DENIED.

DISCUSSION OF BACKGROUND FACTS AND PROCEDURAL HISTORY OF THE CASE

While this bankruptcy case is still in its early stages, the parties have been litigating the issues at hand for more than six and a half years. In its opinion, *In re Estate of Ellis*, No. W2019-02121-COA-R3-CV, 2020 WL 7334392, (Tenn. Ct. App. Dec. 14, 2020), the Tennessee Court of Appeals provided a well-organized summary of the facts and procedural history in this matter that this Court now relies on.

In June 2015, a conservatorship proceeding was initiated in Shelby County Probate Court for Henry C. Ellis, III ("Mr. Ellis"), and Judge Kathleen Gomes was assigned to preside over the case. *Id.* at *1. The conservatorship proceeded without dispute for about two years. *Id.* On May 30, 2018, an attorney entered an appearance in the matter on behalf of Henry Ellis's daughter, Ms. Neely (Debtor/Respondent). *Id.* Debtor, that same day, moved to recuse Judge Gomes because of a conflict between Debtor's counsel and Judge Gomes.[1] *Id.* On June 6, 2018, Judge Gomes denied

[1] Judge Gomes had previously banned Debtor's then counsel, Richard W. Parks, from her courtroom which Ms. Neely testified to knowing about when she hired him; however, she later recanted this testimony and stated she "just knew that there was some bad blood there." [DE 69]

the motion for procedural noncompliance. *Id.* On July 6, 2018, Mr. Ellis passed away and Debtor then filed a petition in probate court to admit Mr. Ellis's will and to be appointed executrix of his estate. *Id.* Judge Gomes was also assigned this case initially. *Id.*

On August 22, 2018, Judge Gomes recused herself from the conservatorship and transferred the case to Division IV of Shelby County Circuit Court.[2] *Id.* Judge Gomes then similarly recused herself from the probate case on September 17, 2018 and transferred it to Circuit Court as a "companion file." *Id.* Debtor later filed an amended petition to admit the will to probate. *Id.* at *2. Debtor, on February 18, 2019, moved to recuse Circuit Court Judge Gina Higgins in both the conservatorship and probate cases, alleging that there was a conflict because Judge Higgins was also a candidate in the election where Debtor's counsel ran against Judge Gomes. *Id.* On October 3, 2018, Betty E. Fry and Vera E. Poag, parties interested in Mr. Ellis's estate, moved to transfer the probate matter to Chancery Court, arguing that the Circuit Court lacked jurisdiction over estate matters. *Id.* at *1. Mr. Ellis's conservator filed a response on October 11, 2018, but no apparent decision was made, nor did the parties or Circuit Court further consider the issue of subject matter jurisdiction. *Id.*

Also on February 18, 2019, Williams McDaniel, PLLC, provided notice to the Circuit Court that a consent order was filed in a separate Shelby County Chancery Court matter that provided that a judgment was entered in favor of Williams McDaniel against Debtor in the amount of $40,000.[3] *Id.* at *2. The order allowed the judgment to "be satisfied from funds to be received

[2] Debtor's counsel was also banned from appearing in Probate Judge Karen D. Webster's courtroom, leaving Circuit Court or Chancery Court as the only apparent options. [DE 69]

[3] Williams McDaniel did not file a timely claim in this bankruptcy case.

by [Debtor] from any distribution of her share of her father's estate." *Id.* Based on the consent order, Williams McDaniel moved to intervene in the estate case on April 19, 2019. *Id.*

The Circuit Court denied Debtor's motion, and an amended motion, to recuse on May 20, 2019, and July 19, 2019, respectively. *Id.* Debtor again moved to recuse on August 2, 2019, and the Circuit Court denied that motion the same day. *Id.* Debtor then filed an accelerated interlocutory appeal of that decision to the Tennessee Court of Appeals which affirmed the Circuit Court's decision on September 20, 2019. *Id.* (citing *In re Estate of Ellis*, No. W2019-01431-COA-T10B-CV, 2019 WL 4566962, at *9 (Tenn. Ct. App. Sept. 20, 2019)).

On October 28, 2019, the Circuit Court granted Williams McDaniel's petition to intervene, and Debtor appealed that decision to the Tennessee Court of Appeals. *Id.* at *3. The Tennessee Court of Appeals concluded that the Circuit Court did not have subject matter jurisdiction, vacated all orders entered by the Circuit Court, and remanded the matter back to probate court for the entry of a proper order of interchange. *Id.* at *8-9.

On May 6, 2020, Betty Fry, Vera Poag, and Henry C. Ellis, IV commenced an action in the Chancery Court of Tennessee for the Thirteenth Judicial District at Memphis, *Betty Fry, et al, v. Nancy Neely, et al.*, Case No. CH-20-0533-III. Debtor was a respondent to the Chancery Court proceeding. The complaint initiating the case sought a declaratory judgment, a restraining order, a temporary injunction, a permanent injunction, an accounting, alleged breach of fiduciary duties, and sought to remove Debtor as trustee of the Ellis Trust, to determine trustee compensation, to terminate the administrative trust, alleged violation of TENN. CODE ANN. § 35-15-707(b), and requested attorneys' fees and costs. The Chancery Court proceeding was pending for roughly four and a half years with numerous rulings and appeals. *See Betty Fry, et al. v. Nancy Neely, et al.*, No. W2021-00870-COA-R3-CV, 2023 WL 3034619 (Tenn. Ct. App. Apr. 21, 2023). On May 6, 2021,

the Ellis Trust filed a cross-petition for recoupment against Debtor and for disgorgement of attorneys' fees against Mr. Parks. [DE 43 ¶ 4]

On October 15, 2024, Debtor filed a voluntary Chapter 13 bankruptcy petition, commencing this case. At that time, numerous matters were pending before the Chancery Court which included: (1) Debtor's responses to multiple Dispositive Motions (Deadline of October 17, 2024), (2) Hearing on Betty Fry, Vera Poag, and Henry Ellis, IV's Motion for Discovery Sanctions pursuant to TENN. R. CIV. P. 37.02 (Hearing set October 21, 2024), (3) Pretrial Conference (Set November 4, 2024), (4) Hearing on Ellis Trust's Motion to Strike Debtor's Motion for Summary Judgment (Set November 4, 2024), (5) Hearing on Ellis Trust's Motion for Summary Judgment as to Richard Parks (Set November 4, 2024), (6) Hearing on Ellis Trust's Sealed Motion for Partial Summary Judgment as to the Debtor and Richard Parks (Set November 4, 2024), and (7) Trial on Merits (Set January 27 through February 6, 2025). *See* Hearing Ex. 6.

On October 17, 2024, Ellis Trust filed a Motion for Relief from Automatic Stay in this Court, seeking to proceed with the litigation against Debtor in Chancery Court. [DE 12] A hearing on that Motion and Debtor's Response [DE 21] was held on November 20, 2024. During the hearing, the Court learned that while other Trust beneficiaries had received distributions of $200,000 into their separate, individual trusts, Debtor received only $50,000 with the remaining $150,000 retained in the Ellis Trust to "protect it" from various judgment creditors. Ellis Trust argued that the rights of the non-debtor Trust beneficiaries should be adjudicated in Chancery Court. Debtor did not dispute this but argued that it would be inequitable to allow the Chancery Court action to proceed when she had no remaining funds to defend herself and could not use the $150,000 for that purpose. This Court took the matter under advisement and, after considering the infancy of the case, the docket, submitted materials, statements of counsel, all the evidence, the

entire record of the cause and the applicable law, denied the Motion for Relief without prejudice on November 26, 2024. [DE 29]

Subsequently, on or about December 2, 2024, Debtor attempted to remove the Chancery Court proceeding to this Court. [DE 31] On December 20, 2024, the Ellis Trust filed the instant Motion to dismiss or convert this case and for sanctions. [DE 43] A hearing was held on January 15, 2025.

DISCUSSION

Movant requests this Court to dismiss Debtor's Chapter 13 case, alleging that she filed this case in bad faith. Movant argues, under the Sixth Circuit's totality of the circumstances test outlined in *Alt v. United States (In re Alt)*, 305 F.3d 413 (6th Cir. 2002), Debtor's case should be dismissed. Movant further asserts Debtor's Chapter 13 petition essentially concerns the resolution of a two-party dispute. Finally, Movant requests this Court to sanction Debtor for attorneys' fees and expenses that resulted from this bankruptcy filing.

Pursuant to 11 U.S.C. § 1307(c), a "court may convert a case under [Chapter 13] to a case under [C]hapter 7 of this title, or may dismiss a case under [Chapter 13], whichever is in the best interests of creditors and the estate, for cause," including a non-exhaustive list of examples. "[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." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (citing *In re Alt*, 305 F.3d at 418-19). The burden of proving debtor's lack of good faith lies with the party moving to dismiss. *Alt*, 305 F.3d at 420 (citing *In re Love*, 957 F.2d 1350 (7th Cir. 1992)).

A. *Alt* Factors

There is substantial overlap between the factors used to determine good faith in the context of a dismissal under 11 U.S.C. § 1307(c) and good faith in the context of plan confirmation under 11 U.S.C. § 1325(a). *Id*. These factors are relevant to guide the Court in its analysis of whether a debtor is seeking to abuse the bankruptcy process. *Id.* at 419. To that end, the Sixth Circuit's "good faith test requires consideration of the totality of circumstances." *Id.* (quoting *Society Nat'l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 591 (6th Cir. 1992)). The Sixth Circuit has provided a non-exhaustive list of factors courts should consider when determining whether a plan has been proposed in good faith:

> (1) the debtor's income;
> (2) the debtor's living expenses;
> (3) the debtor's attorney 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 [the] debtor as indicative of the debtor's sincerity to repay the debt;
> (11) the burden which administration would place on the trustee; [and]
> (12) the statutorily-mandated policy that bankruptcy provisions be construed liberally in favor of the debtor.

Id. The Sixth Circuit also stated that "good faith is a fact-specific and flexible determination" and the decision "should be left to the bankruptcy court's common sense and judgment." *Id.*; *Metro Emps. Credit Union v. Okoreeh-Baah (In re Okoreeh-Baah)*, 836 F.2d 1030, 1033 (6th Cir. 1988).

To start, not every *Alt* factor is particularly relevant to the disposition of this Motion. The relevant factors in this particular case are outlined below.[4]

1. Prior Relief, Income, Potential for Future Earnings, Living Expenses, Attorney Fees and the Amount of Payment Offered by the Debtor

To this Court's knowledge, this is Debtor's first-time seeking relief in bankruptcy. Debtor is retired and her entire income, according to her bankruptcy petition, is social security in the amount of $2,541 per month. [DE 89] Debtor's monthly expenses are $2,324, which leaves her with a monthly net income of $217. Debtor's second amended plan proposes plan payments of $150 per month for sixty months. Because Debtor is retired, she does not expect an increase or decrease in her income within the next year.

Debtor's attorneys' fees in this case do not seem alarming—Mr. Lenow anticipates he will be paid $3,800 in this case [DE 1 Disclosure of Compensation], and Mr. Alexander is acting pro bono. However, Debtor paid nothing to bankruptcy counsel prior to the filing of the bankruptcy petition. *Id*. While this in and of itself is not dispositive of bad faith, when looking at the debts in this case and the proposed distribution to be made, the bulk of Debtor's plan payments will go to pay her bankruptcy counsel.

Debtor's Schedule E/F lists $318,359.60 in total general unsecured claims, all of which are disputed. [DE 1] The total amount of timely filed claims in this case is $589,757.47; with $98,900 claimed as secured. Regardless, Debtor's plan proposes to pay $150 per month for sixty months, or $9,000 over the life of the plan (of which $3,800 will go to bankruptcy counsel). Thus, assuming Debtor's estimate is correct, Debtor's plan provides a return of roughly 1 - 2% back to unsecured

[4] The Court did not give any weight to any claim that administering this case would impose an additional burden on the Chapter 13 trustee compared to other cases.

creditors. Notwithstanding Debtor's dispute of the bulk of these claims, the above factors weigh against her. Especially since the bulk of the debt is anticipated to be subject to a § 523 dischargeability complaint (with the potential to survive discharge).

2. **The Sincerity with which the Debtor has Petitioned for Relief under Chapter 13 and Other Special Circumstances**

Chapter 13 requires the debtor "to be honest, forthcoming, truthful, and frank." *In re Alt*, 305 F.3d at 417 (quoting trial court's opinion). Debtor's sincerity in filing this Chapter 13 case is highly suspect for multiple reasons. First, Debtor's sole income listed in her petition is social security. Social security benefits are exempt from the claims of creditors:

> The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

42 U.S.C. § 407(a). Accordingly, Debtor's entire income is out of reach from any potential creditors — she is essentially "collection proof."

Furthermore, despite listing social security income in Schedule I as Debtor's only source of income, Debtor failed to disclose any income in her Statement of Financial Affairs. [DE 1, SFA Part 2, amended at DE 90] This is not truthful or forthcoming. In addition to receiving social security income, which was not disclosed properly in her schedules, the Ellis Trust distributed $50,000 to Debtor in May 2024, which Debtor also failed to account for in her Statement of Financial Affairs. [DE 1, SFA Part 2, amended at DE 90]

Furthermore, in the Motion for Discovery Sanctions pursuant to Tennessee Rule of Civil Procedure 37.02 filed on September 13, 2024 in the Chancery Court, Betty Fry, Vera Poag, and Henry Ellis, IV alleged that Debtor offered perjured testimony in her deposition, committed fraud,

destroyed evidence, instructed a witness to offer perjured testimony, instructed a witness to destroy evidence, and instructed a witness to evade service of a subpoena. [DE 43-1] Specifically, they alleged Marjorie Burton, whom Debtor described as a friend who had extended Debtor a short-term loan to cover attorneys' fees, testified under oath that Debtor informed her not to answer her door in order to avoid service of a subpoena and instructed her to delete text messages concerning the Chancery proceeding. [DE 43-1]

Movant also notes that Debtor has listed no creditors besides those currently adverse to her in the Chancery Court proceeding or otherwise involved in prior proceedings related to the Ellis Trust. Movant suggests—based upon impending dispositive response deadlines, hearing settings and trial setting dates in the Chancery Court (*See* Hearing Ex. 6)—that Debtor filed this case as a "litigation tactic and an opportunity for a change of venue." [DE 43, pp. 6-7] This was further evidenced by Debtor's complaints about the Chancery Court's rulings both at the hearing on this Motion and in various documents submitted to this Court. *See, e.g.*, Debtor's Response to Motion for Relief from Automatic Stay [DE 21]. Moreover, Debtor has repeatedly requested this Court to arbitrate the Ellis Trust dispute rather than proceed in the Chancery Court. Given the totality of all these factors, this Court agrees with Movant and concludes that Debtor has not sincerely petitioned for Chapter 13 relief.

3. **The Circumstances under which the Debt was Incurred**

The Court may consider "how the debt arose." *In re Alt*, 305 F.3d at 421 (citing *In re Love,* 957 F.3d at 1357 and *In re Barrett,* 964 F.2d at 592 (listing "circumstances under which the debt was incurred" as a factor)).

All the creditors Debtor listed in her schedules relate to litigation involving the Ellis Trust. There is only one Proof of Claim filed by a party not related to the prior litigation—claim # 2 from

Synchrony Bank in the amount of $100 for "Money Loaned Revolving Credit." Indeed, the sum of all the debt in this case that is not related to the prior litigation is only $100 in credit card debt. Essentially all the debt in this case relates to prior litigation that is still yet to be resolved and involves allegations of Debtor's breach of fiduciary duties.

In addition to the enumerated *Alt* factors, Debtor has demonstrated pre-petition bad faith in other ways. *See Marrama*, 549 U.S. at 367 n.1 (collecting cases). According to a deposition in the Chancery proceeding, Debtor indicated she hid, or will hide, a $50,000 distribution she received in a small bank account to avoid creditors or to avoid having her funds garnished. [DE 69-1] Debtor also did not recall, or refused to state, how she paid her attorneys. [DE 69-1]

Based upon the *Alt* factors, and Debtor's pre-petition conduct discussed above, this Court concludes that Movant has met its burden in proving Debtor's bad faith.

B. Two-Party Dispute

Bankruptcy is not the proper avenue for resolving a two-party dispute.[5] "Courts have held that use of bankruptcy solely as a means of resolving a two-party dispute is tantamount to bad faith." *Grand Traverse Dev. Co. v. Bd. of Trs. of the Gen. Ret. Sys. of the City of Detroit (In re Grand Traverse Dev. Co.)*, 150 B.R. 176, 194 (Bankr. W.D. Mich. 1993) (citing *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.),* 749 F.2d 670, 674 (11th Cir. 1984), and *In re Heritage Wood 'N Lakes Estates, Inc.*, 73 B.R. 511, 514 (Bankr. M.D. Fla. 1987)).

As mentioned, Debtor has not hidden the fact that she is displeased with how the proceedings in the Chancery Court unraveled. In Debtor's Response to Movant's previous Motion

[5] Debtor has requested this Court to revisit one or more of the Chancery Court decisions. As a general matter, under the *Rooker-Feldman* doctrine, this Court notes it is "precluded from exercising appellate jurisdiction over final state-court judgments." *Lance v. Dennis*, 546 U.S. 459, 463 (2006) (citing *Dist. of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); and *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 286 (1970) and *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 416 (1923)).

for relief from the automatic stay [DE 21], she stated the Chancery Court "erred in failing to apply the provisions of the Henry C. Ellis, III Revocable Living Trust as the 'Law of the Case.'" Further, Debtor has not listed any creditor that is not related or currently adverse to her in the Chancery Court and she has been unable to show real financial distress except in ongoing attorneys' fees and costs related to that litigation. Debtor's voluntary petition also came right before many deadlines—as well as a trial on the merits—were upcoming before the Chancery Court. Thus, this Court views Debtor's bankruptcy petition, and subsequent removal of the Chancery proceeding, as Debtor's means of resolving a two-party dispute.

It is apparent to this Court that Debtor is seeking to use the bankruptcy process to subvert a potentially unfavorable result in Chancery Court. Thus, based on the aforementioned *Alt* factors and the fact that this case requires the resolution of a two-party dispute, this Court concludes that dismissal is appropriate under 11 U.S.C. § 1307(c). While some factors are neutral, or even weigh slightly in favor of Debtor due to the statutorily mandated policy that bankruptcy provisions be construed liberally in favor of the debtor, it is ultimately Debtor's pre- and post-petition conduct that leads this Court to dismiss Debtor's case for lack of good faith under § 1307(c). *See generally In re Cummings*, 523 B.R. 93 (Bankr. W.D. Mich. 2014) (dismissing case for "Debtors' irresponsible and self-serving conduct both before and after they filed for bankruptcy"). Indeed, this Court concludes that neither Debtor's plan nor petition were filed in good faith. *See also* 11 U.S.C. § 1325(a)(3).

C. Sanctions Request

This Court has both the inherent and statutory authority to award attorneys' fees and expenses as a sanction for misconduct. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) ("Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose

silence, respect, and decorum, in their presence, and submission to their lawful mandates.") (citations omitted); 11 U.S.C. § 105(a). This power "extends to a full range of litigation abuses" including situations "when bad faith occurs." *Mitan v. Int'l Fid. Ins. Co.*, 23 Fed. App'x 292, 298 (6th Cir. 2001) (citations omitted). Still, the power to award attorneys' fees and expenses as a sanction for misconduct is discretionary. *In re Milhose*, 469 B.R. 694, 709-10 (Bankr. E.D. Mich. 2012) (quoting *Chambers*, 501 U.S. at 45-46); 11 U.S.C. § 105(a). Despite Debtor's display of bad faith conduct both pre- and post-petition, such conduct does not warrant the exercise of this Court's discretionary power to grant sanctions for attorneys' fees and expenses incurred by Movant in this matter. Accordingly, the Court declines to award monetary sanctions for attorney's fees and expenses incurred by Movant in this case.

CONCLUSION

For the reasons stated above, the Court grants the Ellis Trust's Motion to dismiss Debtor's Chapter 13 case and denies the Ellis Trust's requests for sanctions.

IT IS SO ORDERED.

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following interested parties:

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