UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	Chapter 13
	)	
PETER FLEMMING,	)	Case No. 24-20414-KL
	)	
Debtor	)	

MEMORANDUM OPINION
AND
ORDER

I.
STATEMENT OF PROCEEDINGS

This Chapter 13 Case is before the Court on a Motion filed on June 18, 2024 by Julie White ("White") to Dismiss Case With Prejudice or in Alternative Objection to Plan by the Debtor Peter Flemming ("Debtor").

A hearing was heard on September 18, 2024 and the court took this matter under Advisement. White and the Debtor filed their proposed Findings of Fact and Conclusions of Law on November 18, 2024 and November 24, 2024

II.
JURISDICTION AND CORE PROCEEDING

The Court has jurisdiction of this matter Pursuant to 28 USC. §1334(b) and this matter is a core proceeding pursuant to 28 USC §157(b)(1)

IV.
FINDINGS OF FACT
CONCLUSION OF LAW
AND DISCUSSION

The Debtor on March 15, 2024 filed his Chapter 13 Petition. The Debtor on March 15, 2024 filed his Chapter 13 Plan. The plan provided for plan payments of $100.00 a month for a plan term of 36 months and proposed plan payments to unsecured nonpriority claims of $831.90 including the claim of White. The claims register maintained by the court show that total claims filed in the amount of $315,565 and that the unsecured nonpriority claim No. 4-1 filed by White is in the amount of $302,521 is 97% of the total claims. No objections to said claim has been filed by the Debtor.

On June 18, 2024, White filed her Dismissal Motion, alleging, inter alia, that the Bankruptcy represents a bad faith effort to shirk the otherwise nondischargable Equalization Divorce Decree

owed to White and, when combined with the Debtor's pre-petition conduct, reveals a clear pattern of deception, dishonesty, and bad faith necessitating dismissal pursuant to 11 U.S.C. § 1307(c).

A bankruptcy Court may dismiss a Chapter 13 Petition For Cause if it finds the Petition was filed in bad faith. Matter of Lisse, 921 F3rd 629, 639 (7th Cir. 2019)

The Seventh Circuit has held that "cause" under Section 1307(c) encompasses bad faith or lack of good faith – as to the commencement of a Chapter 13 bankruptcy. *See In re Smith*, 286 F.3d 461, 465 (7th Cir. 2002); *Matter of Love*, 957 F.2d 1350, 1354-59 (7th Cir. 1992) (stating that "[t]he finding of a lack of good faith in filing the petition under Section 1307(c) can lead to dismissal and termination of the bankruptcy proceedings. . . or it can lead to an order to convert the case and proceed under Chapter 7[,]" and that "good faith under Section 1307(c) should be determined by looking to the totality of circumstances" that focuses on 'whether the filing is fundamentally fair to creditors and, more generally, is the filing fundamentally fair in a manner that complies with the spirit of the Bankruptcy Code's provisions". A good faith and related fundamental fairness inquiry are "both subjective and objective" matters." *Love*, 957 F.2d at 1357. Some factors to consider include "(a) the nondischargeability of debt; (b) the time of the filing of the petition; (c) how the debt arose; (d) the debtor's motive for filing the petition; (e) how the debtor's actions affected creditors; (f) the debtor's treatment of creditors both before and after the petition was filed; and (g) *whether the debtor has been forthcoming with the bankruptcy court and the creditors.*" *In re Sidebottom*, 430 F.3d 893, 899 (7th Cir. 2005) (emphasis added).

The Seventh Circuit has made it clear that truthfulness in debtor's bankruptcy schedules is especially critical in Chapter 13. *See Smith*, 286 F.3d at 468-69 (providing that "[c]omplete and truthful disclosure is particularly important in a Chapter 13 case because, since creditors do not vote on the plan, there is no disclosure statement as such, and parties in interest and the court must evaluate the debtor's proposal in a short period of time based on facts mostly revealed by the debtor" (quoting 5 *William L. Norton, Jr., Norton Bankruptcy Law & Practice*, § 122 at 18-19 (2d ed.1997))); *Love*, 975 F.2d at 1358 (paying special attention to the "gravity of [one particular] omission" on the debtor's schedules, and the important implications it had for his proposed Chapter 13 plan distributions). Bankruptcy courts inside an outside the Seventh Circuit have followed in our Circuit Court's footsteps. *See In re Wheeler*, 503 B.R. 694, 697 (Bankr. N.D. Ind. 2013) (stating that the "proper functioning of the bankruptcy system depends upon the complete and accurate disclosure of information concerning the debtor's assets, liabilities, income, expenses and financial affairs[,]" and, thus, a "chapter 13 debtor's obligation to disclose information is certainly not less than of a chapter 7 debtor[;] all material information must be disclosed[; and a] matter is material if it relates to the debtor's assets, liabilities or financial affairs[, and] the issue is best viewed from the perspective of the trustee and creditors[, i.e., i]s it the kind of thing they would want to know?").

The Decree provides for six (6) bank accounts which do not appear in the Bankruptcy and total $318,632.02 [Ex. 1, ¶ 17].

The Decree references an ATB Financial Guar. Investment Certificates and a Clarica Annuity belonging to Debtor which does not appear in the Bankruptcy. [Ex.1 ¶ 17; Ex. 2, ¶¶ 1-6].

Debtor further admits a 50% ownership interest in NP One, LLC but asserts a valuation of such interest at $0.00-a stark contrast to the valuation of $336,983.52 provided in the Decree, equating to a 50% interest value of $168,491.76 [Ex. 1, ¶¶ 17, 34-36].

Debtor is also the vice president of NP Zeta Corp. as evidenced by the uncontroverted records of the Indiana Secretary of State. [Ex. 4]. Such, however, does not appear in the Debtor's Bankruptcy. [See, generally, Doc. 1].

As to timing, "[a]lthough filing immediately after the entry of an unfavorable judgment may be viewed as a sign of bad faith, waiting to file until the eve of ...execution on a judgment may be viewed just as unfavorably." *Smith,* 848 F.2d at 821. Such evinces little more than the "debtor's desire to use bankruptcy procedures to avoid paying a debt rather than for rehabilitation." *Id.*

Pursuant to Rule 201 of the Federal Rule of Evidence, made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 9017, the Court may take judicial notice of documents "not subject to reasonable dispute [and] ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

Specifically, "a court is entitled to take judicial notice of matters in the public record." See Palay v. U.S., 349 F.3d 418, 425 n.5 (7th Cir. 2003). "Public records include public court documents. Henson v. CSC Credit Servs., 29 F.3d 280, 284 (7th Cir. 1994). Indeed, it is well settled that federal courts "may take notice of proceedings in other courts, both within and without the federal judicial systems, if those proceedings have a direct relation to matters at issue." In re Harvey, 2020 Bankr. LEXIS 665, *4 (Bankr. W.D. Wisc. 2020).

Accordingly, the Court finds that Exhibits 1 and 2 to White's Dismissal Motion are official public records of pending court proceedings appropriate for judicial notice pursuant to Rule 201 of the Federal Rules of Evidence. Further, the Court appropriately takes judicial notice of the Chronological Case Summary of Cause No. 45C01-2105-DN-000358, pending in the Circuit Court of Lake County, Indiana.

Additionally Exhibit 4 to White's Dismissal Motion is an official public record from the Indiana Secretary of State appropriate for judicial notice pursuant to Rule 201 of Federal Rules of Evidence.

Finally, Exhibit 3 to White's Motion to Dismiss represents evidence of an adjudicative fact (i.e. the existence of assets and accounts not scheduled in the Debtor's Bankruptcy) which was neither objected to nor disputed in this matter. [See, generally, Trans.]. Further, Debtor did not dispute the authenticity or veracity of the document. The Court therefore takes judicial notice pursuant to Federal Rule of Evidence 201.

Accordingly, the Court takes judicial notice of all exhibits proffered by White in the Dismissal Motion, as well as the Chronological Case Summary referenced at the September 18, 2024 hearing, and submitted via the *Tender of Exhibit Referenced During Hearing on Creditor's Motion to Dismiss Bankruptcy or, Alternatively, Objection to Confirmation of Chapter 13 Plan* [Doc 66]. [Trans. p.10. In 4-9].

Pursuant to the Decree of Dissolution entered in the Divorce proceeding, the lake Circuit Court of Lake County awarded of sixty percent (60%) of the marital estate to White while leaving forty percent (40%) to Debtor. [Ex. 1, ¶ 16].

Such deviation from the standard 50/50 division presumption was based upon the Court's finding that the Debtor "presented one of the most severe cases of obstructionism during the entirety

of this proceeding . . . This behavior has delayed these proceedings, adding time and expense to [White's] prosecution, and has inhibited the Court's ability to adequately determine and value the parties' marital estate." [Ex. 1, ¶ 3].

The Decree specifically allocated all assets, including multiple BMO-related accounts, business interests, employment, etc. of the Debtor and ordered an equalization payment to be paid by Debtor to White in the sum $302.200.47 together with additional attorney fees (the **"Equalization"**). [Ex. 1. ¶ 17].

The Equalization and findings of the Decree were subsequently affirmed by the Court's December 13, 2023 *Order from Hearing November 13, 2023* and the corresponding *Stipulations and Agreements (Regarding Motion to Correct Errors)* (the **"Decree Reaffirmation"**). [Ex. 2].

Debtor failed to make any payment(s) towards the Equalization.

Debtor did not appeal the Decree or Decree Reaffirmation.

On February 2, 2024, White initiated collection proceedings on the Decree and Equalization, issuing interrogatories to multiple BMO-related banks, including those referenced in the Decree. [Chronological Case Summary, p. 18].

In response, BMO Financial Group indicated that "Canadian accounts exist in the name of [Debtor]." [Ex. 3].

Less than 72 hours before a scheduled proceedings supplemental hearing, Debtor filed his bankruptcy petition on March 15, 2024 (the **"Bankruptcy"**). [Doc. 1; see, generally, Chronological Case Summary, p. 18].

Pursuant to 11 U.S.C §523(a)(15), the Equalization is a non-dischargeable obligation under Chapter 7; however such may be dischargeable under in a Chapter 13 proceeding. 11 U.S.C § 1328

On September 18, 2024, the Court conducted a telephonic hearing on the Dismissal Motion at which the Debtor testified that he had not paid any sum(s) toward the Equalization despite the passage of time. [Trans. of Motion to Dismiss and Alternatively Objection to Confirmation of Chapter 13 Plan, Sept. 18, 2024 ("Trans."), p. 8, In 3-5].

Debtor further testified that the sole reason he filed the Bankruptcy was to discharge the Equalization. [Trans. p. 6, In 3-18].

The Debtor's inclusion in a Chapter 13 plan of a nondischargeable debt is relevant to whether the plan is fundamentally fair to creditors. *In re Schaitz,* 913 F.2d at 454. Indeed "[b]ankruptcy is a remedy based in equity . . . as such, the good faith standard prevents debtors from manipulating the Code for wrongful purposes." *In re Love,* 357 F.2d at 1358.

White is overwhelmingly the primary creditor, holding over 97% of the total unsecured debt, and the Debtor's filing of the Bankruptcy less than seventy-two (72) hours prior to a scheduled proceedings supplemental hearing to enforce the Equalization forestalled White from questioning Debtor regarding his employment, his assets, and his intent(s) for satisfaction of the Equalization.

Good faith "should not be interpreted to permit manipulation of the statute [Chapter 13] by debtors who default on obligations grounded in dishonesty and who subsequently seek refuge in Chapter 13 in order to avoid, at minimal cost, a nondischargeable debt." *Id.* at 1358-59 (citations omitted).

Although the Debtor contends his pre-petition liquidation of an individual retirement account, otherwise exempt, to satisfy *a separate requirement of the Decree* constitutes evidence of good faith, the Court finds the same both irrelevant and unavailing. [Trans. p. 23, In. 1-4; p. 24, In 4-14; p. 25, In 8-13].

The Court finds that the Bankruptcy represents an attempt "to circumvent pending litigation" functions as "an indication of bad faith" while "[a]nother indication is using the automatic stay as a litigation tactic in a two-party dispute." *In re Posner,* 2019 Bankr. LEXIS 3525, *7 (Bankr. N.D. III. 2019) (holding debtor's bankruptcy petition was filed in bad faith where petition was filed to avoid paying ex-wife equalization payment resulting from divorce decree).

In congruence with established precedent, "it is also bad faith to use bankruptcy as a litigation tactic to postpone enforcement of divorce judgments." *Id.* at *7-*8 (citing *In re Garzon,* 2018 Bankr. LEXIS 3818 (Bankr. N.D. III. Dec. 3. 2018)).

The evidence before the Court establishes that the Bankruptcy is not "fundamentally fair to creditors in a way that is consistent with the Bankruptcy Code," was filed solely as litigation tactic in a two-party dispute and therefore stave off enforcement of the Equalization, and was thus filed in bad faith pursuant to established law. *Hoskins,* 590 B.R. at 846 (Bankr. S.D. Ind. 2018) (citations omitted).

Accordingly, this case shall be dismissed pursuant to § 1307(c) as not being filed in good faith. The last issue is whether this Case Should Be Dismissed with Prejudice as requested by White.

Dismissal with Prejudice is authorized but it is not required. In. Re Hall, 304 F3d 743,748 (7th cir 2002).

Section 105 (a) independently authorizes bankruptcy courts to prohibit bankruptcy refilings In Re Dempsey, 247 Fed. App. 21 (7th cir 2007).

A prohibition to refiling for two years should enable White time to enforce her rights under the Divorce Decree.

It is therefore,

ORDERED, ADJUDGED, and **DECREED,** that this case should be and is hereby **DISMISSED.** And it is Further **ORDERED, ADJUDGED** and **DECREED** that the Debtor should be and is hereby **ENJOINED** from filing another bankruptcy Petition for a period of two years from the date of this Order.

Dated: March 24, 2025

JUDGE, U.S. BANKRUPTCY COURT