

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

In re:

Linda Kay Wigdahl, BKY No.3-97-804
a/k/a Linda Kay Van Beck-Wigdahl,
a/k/a Linda Kay Van Beck,

Debtor.

This matter came before the Court on confirmation of Debtor's Chapter 13 plan. An objection to confirmation was made by Carriage House Condominium Association (Carriage House) on the basis that the Debtor is ineligible to be a debtor in Chapter 13 pursuant to 11 U.S.C. Section 109(g)(2). Appearances are as noted on the record. Based on the Federal and Local Rules of Bankruptcy Procedure, the Court now makes this ORDER.

I.
FACTS

The essential facts are not in dispute. On January 26, 1996, the Debtor filed for Chapter 13 bankruptcy protection, Case No. 3-96-435. Carriage House filed a motion for relief from the automatic stay based on the Debtor's post-petition default on association dues. The relief from stay motion was resolved through a stipulation in which Carriage House agreed to "withdraw" the motion in return for the Debtor curing the default and paying Carriage House's attorney fees. The stipulation was approved by Court order on January 10, 1997. The order provided a provision allowing Carriage House to obtain expedited relief should the Debtor default again or a "drop dead" clause. On January 23, 1997, the Debtor requested and obtained a dismissal of the bankruptcy case. She was not in default on the Carriage House obligation at the time.

On February 7, 1997, the Debtor filed another Chapter 13 case, Case No. 3-97-804. The Debtor indicated through her affidavit dated April 16, 1997 that the purpose of filing the new case was to address issues of additional debt she had incurred during the pendency of her previous Chapter 13 case, tax liability, and to address liability arising out of a car accident in which she was involved. She was current on the Carriage House debt at filing of the second petition.

The Debtor seeks confirmation of her Chapter 13 plan, which contains the treatment of the Carriage House claim as provided in the

stipulation agreed upon in the earlier case. Carriage House is objecting to confirmation on the basis that the Debtor does not qualify as a debtor under 11 U.S.C. Section 109(g)(2).(F1)

II. ANALYSIS

The issue presented is solely whether the Debtor is eligible to be a debtor under Chapter 13 pursuant to 11 U.S.C. Section 109(g)(2). This section provides:

Notwithstanding any other provision of this section, no individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if . . . the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

The burden of establishing eligibility to be a debtor under the bankruptcy code lies with the party filing the bankruptcy petition. In re Montgomery, 37 F.3d 413, 415 (8th Cir. 1994).

Several different approaches have been taken by courts in order to determine whether a person is eligible for bankruptcy under Section 109(g)(2).

Some courts have taken the "jurisdictional" or "mandatory" approach which provides that the determination for eligibility under Section 109 is purely jurisdictional and a court does not have the authority to exercise any discretion. See, In re Keziah, 56 B.R. 551 (W.D.N.C. 1985); In re Smith, 58 B.R. 603 (W.D. Penn. 1986). This approach is not recognized in the Eighth Circuit which has taken the position that Section 109 is not meant to restrict the jurisdiction of the federal courts, as it is a determination for eligibility for bankruptcy relief not jurisdiction. In re Montgomery, 37 F.3d 413, fn. 5.

Another approach involves the examination of the legislative history behind Section 109. This approach focuses on the legislative goal behind Section 109 of curbing the abuse of multiple filings under the bankruptcy code. The actions of the party filing for bankruptcy protection are examined to determine if the subsequent filing was abusive in terms of the abuses Congress was attempting to protect against by enacting this provision. See, In re Santana, 110 B.R. 819 (W.D. Mich. 1990); In re Patton, 49 B.R. 587 (M.D. Ga. 1985).

The Bankruptcy Appellate Panel of the Ninth Circuit has taken an approach in which the court examines the results of a mandatory application of

Section 109(g)(2); and, does not permit an application of the section which would produce illogical or unjust results. In re Luna, 122 B.R. 575 (9th Cir. B.A.P. 1991).

Courts have also viewed the status of the relief from stay motion at the time of the voluntary dismissal of the case in order to determine whether Section 109(g)(2) should apply. If the relief from stay motion was no longer pending at the time of the dismissal because it had been resolved in some manner, then, according to these courts, it would not be appropriate to dismiss the case under Section 109(g)(2). In re Milton, 82 B.R. 637 (S.D.Ga. 1988).

While the situation presented in this case essentially could be resolved the same under any of the aforementioned applicable approaches, this Court finds the best approach to resolving this issue is the "plain meaning" or "causal" approach. This approach requires an examination of the language of Section 109(g)(2) and a determination of the plain meaning of the language. In this case, at issue is whether "the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title." The instrumental language under this approach is the determination of the meaning of "following". The Copman court held that "[t]he word 'following' in the statute requires some relationship between the timing of the Section 362 request and the voluntary dismissal." In re Copman, 161 B.R. 821, 823 (E.D. Missouri 1993). The Copman court went on to state, "by requiring that the debtor both 'request' and 'obtain' the dismissal after the request for relief, the statute requires a causal connection such that the request for relief triggers the dismissal." Id.

This approach was also adopted by the Duncan court which stated:

Copman's reading of the statute most accurately reflects the legislative intent that motivated adding this subsection to the Bankruptcy Code in 1984. Absent a causal relationship, there is no abuse to curb and no purpose to be served by keeping the former debtor out [of] bankruptcy for 180 days. In re Duncan, 182 B.R. 156, 159 (W.D.Virg. 1995).

The Duncan court went on to examine the definition of the word "following" from many different sources when it reached its conclusion that the, "natural and common understanding of the word 'following' includes a suggestion that there is some causal relationship between the thing coming before and the thing coming after." Id.

This Court too, concludes that the word "following" requires a causal connection between the dismissal of the case and the relief from stay motion. The burden is on the debtor to show that no such connection exists. Here, the debtor has met this burden.

The Debtor cured the default in her outstanding obligation to Carriage House, and consented to an order being entered with the "drop dead" clause in the earlier case. She settled the relief from stay motion with Carriage House causing it to "withdraw" the relief from stay motion.

The Debtor has established that she dismissed her case not because of any impending fear of foreclosure by Carriage House or because of its relief from stay motion, but because of her desire to include additional debts in the plan. She has at all times remained current under the stipulation, and proposed a plan in this case treating the claim as provided in the stipulation. This Court finds that there is no connection between the relief from stay and dismissal in the earlier case. Therefore, the Debtor has established her eligibility as a debtor under Section 109(g)(2).

III.
DISPOSITION

Based on the forgoing analysis, it is hereby ORDERED that the Debtor is eligible to be a debtor under 11 U.S.C. Section 109(g)(2).

Dated: July 1, 1997 By the Court:

Dennis D. O'Brien
Chief United States
Bankruptcy Judge

(1)1. While at issue is whether Ms. Wigdahl actually qualifies as a "debtor", for simplicity this Court will refer to her throughout this order as "the Debtor".