

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: STANLEY REESE

**4:02-bk-10999 E
CHAPTER 13**

ORDER GRANTING MOTION TO DISMISS

On August 20, 2002, the Court heard creditor Sedrick Mays' Motion to Dismiss debtor Stanley Reese's chapter 13 case. Sedrick Mays appeared through his attorney, M. Randy Rice. Debtor appeared through his attorney, Marva J. Davis. Natasha Graf, Esq. was also present on behalf of the standing Chapter 13 Trustee, Joyce B. Babin (the "**Trustee**"). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), and the Court has jurisdiction to enter a final judgment in this case.

On April 3, 2001 Debtor purchased a homemade barbeque pit and mobile concession stand (the "**Collateral**") from Sedrick Mays d/b/a/ Kitchen Express, Inc. ("**Mays**") for \$11,000.00 pursuant to a contract which required Debtor to make a \$3,600.00 down payment and monthly installments of \$350.00. The Collateral was to be returned to Mays if Debtor missed three payments.

Debtor filed a chapter 13 plan *pro se* on January 29, 2002. He subsequently filed deficient schedules and a deficient statement of financial affairs. Debtor's first meeting of creditors was held March 21, 2002, and the Trustee filed an Objection to Confirmation of Plan on March 22, 2002. Debtor subsequently hired counsel. On April 9, 2002, Debtor filed a complaint against Mays for turnover of the Collateral which he alleged, and Mays admitted, had been repossessed on April 8, 2002. Debtor also amended his list of creditors to add Mays to his matrix as a secured creditor on April 9, 2002. On April 25, 2002, the Court entered an order sustaining the Trustee's objection and

giving the Debtor 30 days to modify his plan. The Trustee's office treated the April 9, 2002 addition to creditors as a modification and filed another Objection to Confirmation of Plan on May 29, 2002. The Court sustained the Trustee's objection and ordered the Debtor to modify his plan within 30 days by order dated August 1, 2002. The Court's records and files indicate that as of September 3, 2002, the Debtor has not amended his plan.

Although the Court's records and files do not reflect that Debtor's complaint against Mays for turnover of the Collateral was resolved, Debtor testified that he is now in possession of the Collateral. On April 17, 2002, Mays moved for relief from stay alleging that Debtor failed to license and insure the Collateral and had omitted his interest in the Collateral and debt to Mays in his bankruptcy schedules. Mays also objected to confirmation of Debtor's plan. On May 14, 2002, the Court entered an agreed order withdrawing May's motion for relief from stay upon conditions which required Debtor to immediately obtain insurance on the Collateral. The Order also provided that Mays was entitled to *ex parte* relief from stay if Debtor allowed the insurance to lapse. The Court also entered an agreed order sustaining Mays' objection to confirmation of Debtor's plan on May 14, 2002, whereby Debtor was given 30 days to amend his plan to reflect a monthly payment of \$350.00 to Mays to be treated as code 21 priority in order to provide adequate protection to Mays.

On June 7, 2002 Mays filed a Motion to Dismiss alleging that Debtor filed the Chapter 13 bankruptcy in bad faith. Mays alleges that Debtor failed to insure and license the Collateral and that Debtor has failed to amend his plan as required by the Court's May 14, 2002 orders. At the hearing on this matter, the Debtor testified that he has not yet amended his plan. Debtor also testified that he has not made a plan payment since May 2002. Debtor testified that he has obtained insurance on the Collateral, and submitted proof of insurance as evidence. Debtor testified that he has not licensed the collateral because he does not have the right information to transfer title to the Collateral

to his name; however, Debtor also testified that the title has been signed over by Mays.

Pursuant to 11 U.S.C. § 1307(c), a chapter 13 case may be dismissed or converted to a chapter 7 case, whichever is in the best interest of creditors, for cause. Cause may include a finding of “bad faith.” See *In re Penny*, 243 B.R. 720, 726 (Bankr. W.D. Ark. 2000). Cause also includes “unreasonable delay by the debtor that is prejudicial to creditors” under § 1307(c)(1). In this case, the Debtor has failed to amend his plan despite three court orders directing him to do so. Furthermore, the Debtor has not made a plan payment since May 2002. Finally, the Debtor has failed to license the Collateral as required by the agreed order withdrawing May’s motion for relief from stay on conditions. The record developed during the hearing, as recited in this Order, provides convincing evidence of cause for dismissal of the Debtor’s bankruptcy case.

For the reasons stated herein, Mays’ Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE:

cc: Ms. Marva J. Davis, attorney for Debtor
Mr. M. Randy Rice, attorney for Mays
Ms. Joyce B. Babin, Chapter 13 Trustee
U.S. Trustee