Charles M. Walker
U.S. Bankruptcy Judge
Dated: 4/19/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:	)	
	)	Case No: 3:18-bk-07493
Edward George Faria,	)	Chapter 13
	)	Honorable Charles M. Walker
Debtor.	)	
	)	

ORDER DENYING RELIEF REQUESTED IN
DEBTOR'S AFFIDAVIT AND OBJECTION
TO ORDER DENYING CONFIRMATION AND DISMISSING CASE
WITH SANCTIONS

THIS MATTER is before the Court on the Debtor's filing docketed as an Affidavit and Objection ("Objection") (ECF No. 50) to the Order Denying Confirmation and Dismissing Case with Sanctions ("Order") (ECF No. 40). Although an affidavit and objection to an order do not require a ruling from the Court, as explained below, and in an abundance of caution given the Debtor's history in the Bankruptcy System, this Court will issue the following ruling according to Federal Rule of Bankruptcy Procedure 8002(b)(1).

BACKGROUND

Mr. Faria first came under the jurisdiction of this Court on April 19, 2011 when he caused to be filed a voluntary petition for relief under Chapter 13[1] and he has since worn out his welcome several times over. He filed that first bankruptcy case with the assistance of counsel, but the representation did not last long.[2] Seven days after the filing, counsel moved to withdraw as

[1] 11 U.S.C. § 704; 11 U.S.C. § 101 *ff*. Any reference to "section," "the Code," or "the Chapter" is a reference to the Bankruptcy Code unless another reference is stated.

[2] Case No. 3:11-bk-04019.

attorney for the debtor due to a conflict of interest. While that motion was pending, Mr. Faria filed the first of the 84 documents and pleadings he would record with this Court over the next eight years, in five different bankruptcy cases – actually, I should say five *separate* bankruptcy cases, because they were not at all different from each other in what Mr. Faria sought to accomplish with each and every case.

The first document Mr. Faria filed was an expedited motion to withdraw his Chapter 13 bankruptcy filing. (ECF No. 22). In the motion, Mr. Faria properly cites to the Local Rules of this Court,[3] and two cases from the Tennessee Appellate Court.[4] He followed with a Notice of Voluntary Dismissal (ECF No. 26), properly citing the same case law regarding his *pro se* litigant status and treatment. The plan in this case sought to provide $0 to the secured creditor, the mortgage company.

In his second petition for relief under Chapter 13, filed October 26, 2012, [5] Mr. Faria, acting *pro se*, filed a "bare bones" petition[6] followed 12 days later by a Motion for Extension of Time (ECF No. 8) to file his schedules, statement of financial affairs, and plan. The Motion for Extension was filed and noticed properly pursuant to LBR 9013-1[7], and included a proper citation to § 521(i)(3). When the Motion for Extension was denied on December 10, 2012 (ECF No. 16), Mr. Faria filed a Motion for Reconsideration on December 20, 2012 (ECF No. 22) which contained a Brief in Support ("Brief") as an attachment. The Brief contained sections identified as

[3] LBR 9075-1 regarding expedited motions (Case No. 3:11-bk-04019, ECF No. 22, p.1).

[4] *Whitaker v. Whirlpool Corp*., 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000), and *Paehler v. Union Planters Nat'l Bank, Inc.,* 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997), for the premise that "*pro se* litigants are entitled to fair and equal treatment by the courts." (Case No. 3:11-bk-04019, ECF No. 22, p.1).

[5] Case No. 3:12-bk-09850.

[6] "Bare bones" filing is a term of art referring to a bankruptcy filing wherein only the petition for relief is filed.

[7] LBR 9013-1 governs motion practice and requires a proper form of notice, a deadline to respond, and a hearing date if a timely response is filed.

Definitions, Statement of Facts, Argument and Points of Authority, and Conclusion. In the Brief, he cited[8] to a case from the Bankruptcy Court for the Western District of Texas for the reconsideration requirement that one of the grounds set forth in Federal Rule of Civil Procedure 60(b) be asserted in the motion, as well as a U.S. Supreme Court case regarding due process.[9] In the Motion for Reconsideration, Mr. Faria also correctly referred to a U.S. Supreme Court case regarding his *pro se* litigant status,[10] and cited to § 521(i)(3) in support of his request for an extension to file required documents under § 521(a)(1). Mr. Faria was seeking an extension to January 13, 2013 to file his schedules – 79 days after the filing of the petition. His motion was denied.

Upon the Trustee's motion, the case was dismissed for unreasonable delay for failing to comply with the filing requirements of Federal Rule of Bankruptcy Procedure 1007 and 3015. Mr. Faria responded with an Objection to the Order Dismissing (ECF No. 40) wherein he cited to 11 cases in his argument that he established excusable neglect and therefore, his case should not be dismissed. FED. R. CIV. P. 60(b)(1). The Court dismissed the case on January 18, 2013. The proposed plan in the case provided for $0 to the mortgage company.

Mr. Faria filed his third *pro se* petition for relief under Chapter 13 with this Court on June 27, 2017.[11] In his rebuttal to Select Portfolio's[12] objection to confirmation (ECF No. 44), and

[8] Any reference to "cited" or "citing" is a description regarding the use of format used to identify authority in legal pleadings, and in no way indicates or refers to the legitimacy of Mr. Faria's position.

[9] *In re Gonzalez*, 372 B.R. 837 (Bankr. W.D. Tex. 2007) citing *In re Rankin*, 141 B.R. 315, 319 (Bankr. W.D. Tex. 1992); and *Brock, Secretary of Labor v. Roadway Express, Inc*., ___ U.S.___, 107 S. Ct. 1740, 1747, 95 L. Ed. 2d 239 (1987), respectively.

[10] "*Haines v. Kerner,* 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972) stating wherein the court has directed that those who are unschooled in law making pleadings shall have the court look to the substance of the pleadings rather than the form." (Case No. 3:12-bk-09850, ECF No. 22, p.1).

[11] Case No. 3:17-bk-04384.

[12] Select Portfolio is the secured creditor holding a mortgage on Mr. Faria's residence.

his supporting Memorandum of Law (ECF No. 45), Mr. Faria cited to Title 15 of the U.S. Code in asserting allegations under the Fair Debt Collection Practices Act ("FDCPA").[13]

When his case was dismissed on the Trustee's motion for failure to comply with § 1325(b) by not providing for the secured creditor, Mr. Faria filed an objection to the dismissal (ECF No. 40) and cited to Federal Rule of Civil Procedure 52 seeking an amendment to the Court's findings of fact and conclusions of law, as well as citing to Federal Rule of Civil Procedure 59 seeking a new trial. In his 40-page pre-hearing statement (ECF No. 97), Mr. Faria included a copy of the FDCPA to support his position, and in his 34-page supplemental filing he included exhibits wherein he properly cited to and quoted federal case law regarding fraud under the FDCPA (ECF No. 100).

Just as in the current case, Mr. Faria filed his Notice of Appeal of the Order Denying Confirmation and Dismissing the Case while his Motion for Reconsideration was pending. Mr. Faria represented himself on appeal to the Middle District of Tennessee, and when the bankruptcy order was affirmed, he again appeared *pro se* in his appeal to the Sixth Circuit.[14] In both matters, Mr. Faria prosecuted his appeal according to the applicable rules, and filed briefs in support of his position. The plan in this case provided for $0 to the mortgage company. This was the basis for dismissal and the issue on appeal, concerning the feasibility of a plan that does not comply with § 1325(b) by failing to provide for the secured creditor.

While the appeal was pending, Mr. Faria filed his fourth *pro se* petition for relief under Chapter 13 on May 2, 2018.[15] Again, he filed a plan (ECF No. 4) and an amended plan (ECF No.

[13] 15 U.S.C. § 1692.

[14] *See Faria v. Hildebrand*, No. 3:17-cv-01383, 2018 WL 3157072 (M.D. Tenn. June 27, 2018), and *Faria v. Hildebrand* (*In re Faria*), No. 18-5780, 2019 WL 366938 (6th Cir. Jan. 17, 2019), respectively.

[15] Case No. 3:18-bk-03010.

19) that did not provide for the secured creditor. When the Trustee moved to convert the case to one under Chapter 7 wherein Mr. Faria's assets would be liquidated, Mr. Faria voluntarily dismissed the case in the face of the Trustee's motion and retained his property.

This brings us to the current case, Mr. Faria's fifth bankruptcy filing – also filed while the appeal in his third case was pending, also filed *pro se*, and also proposing a plan that does not provide for the secured creditor. In this case, Mr. Faria objected to the claims of Select Portfolio and the Internal Revenue Service (ECF No. 35). He also filed a Notice of Payment Under Protest, citing to a U.S. Supreme Court case and to Title 15 of the United States Code, and stating that he made a payment to the Trustee "under protest" and the Trustee failed to make "a counter offer to the payment." (ECF No. 38).

The Trustee moved to dismiss for failure to confirm a plan. When Mr. Faria did not amend his plan after the Sixth Circuit ruling in his third case,[16] and sought to confirm the plan in violation of that ruling, this Court granted the motion to dismiss with sanctions. In its discretion and based on its finding that Mr. Faria acted in bad faith in prosecuting a plan in violation of the Sixth Circuit ruling, this Court imposed a five-year bar to refiling as a sanction. (ECF No. 40). Mr. Faria filed the Objection that is the subject of this ruling.

In his Objection, Mr. Faria cited to and quoted sections of Title 15 several times, as well as a U.S. Supreme Court case regarding his *pro se* status. Noteworthy here is his conclusion wherein he moves this Court to rule on his Objection and set aside the order denying confirmation and dismissing the case with sanctions. Noteworthy because he capitalizes and bolds the words **MOVES**, **RULE**, and **SET ASIDE** (emphasis included) – the four words that transform the

[16] *Faria v. Hildebrand* (*In re Faria*), No. 18-5780, 2019 WL 366938 (6th Cir. Jan. 17, 2019) (affirming that a plan that does not provide for his secured creditor is not feasible).

Objection into a motion under Rule 60(b). Absent those four words, this is merely an objection to an order that contains no basis for relief and would require no action by this Court. Nothing else in the Objection even remotely approaches such a motion. This is questionable because Mr. Faria is so experienced in motions for reconsideration and appeals. Nevertheless, in an attempt to address any possible issues that may further offer Mr. Faria opportunity to hinder and delay his creditors, the Court will consider the Objection as a motion under Rule 60(b) made applicable here by Federal Rule of Bankruptcy Procedure 9024.

Statutory Predicate

As noted above, the four words emphasized in the conclusion of Mr. Faria's Objection transform it into a motion under Rule 60(b), which provides:

> **(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> **(1)** mistake, inadvertence, surprise, or excusable neglect;
> **(2)** newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> **(3)** fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> **(4)** the judgment is void;
> **(5)** the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> **(6)** any other reason that justifies relief.

FED. R. CIV. P. 60(b).

Bankruptcy judges exercise broad discretion when considering Rule 60(b) motions and such relief is appropriate only in extraordinary circumstances. *Ryt v. Peace (In re Peace),* 581 B.R. 856, 858 (B.A.P. 6th Cir. 2018) citing *Bavely v. Powell* (*In re Baskett*), 219 B.R. 754, 757 (B.A.P. 6th Cir. 1998).

Rule 60(b) lists the reasons a party may seek relief from a judgment, and in order to obtain that relief, the movant must demonstrate the timeliness of the request, exceptional circumstances that would warrant such relief, and lack of prejudice to the opposing party. *In re Gibson and Epps, L.L.C.*, 468 B.R. 279, 290 (Bankr. E.D. Tenn. 2012). The relief afforded under Rule 60(b) is appropriate in only two circumstances: when a party makes an excusable litigation mistake or when a mistake of law or fact is contained in the final ruling. *Id*.

Rule 9024 incorporates Rule 60, making it applicable in bankruptcy proceedings, with some exceptions not relevant to this case. FED. R. BANKR. P. 9024.

Significant to this matter is Rule 8002, specifically sections (a)(1) and (b)(1):

> **(a) In general**
> **(1) Fourteen-day period**
> Except as provided in subdivisions (b) and (c), a notice of appeal must be filed with the bankruptcy clerk within 14 days after entry of the judgment, order, or decree being appealed.
> . . .
> **(b) Effect of a motion on the time to appeal**
> **(1) In general**
> If a party files in the bankruptcy court any of the following motions and does so within the time allowed by these rules, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:
> **(A)** to amend or make additional findings under Rule 7052, whether or not granting the motion would alter the judgment;
> **(B)** to alter or amend the judgment under Rule 9023;
> **(C)** for a new trial under Rule 9023; or
> **(D)** for relief under Rule 9024 if the motion is filed within 14 days after the judgment is entered.

FED. R. BANKR. P. 8002.

The significance of this rule will be addressed below, but it is important to note at this juncture that 8002(b)(1)(D) imposes a strict jurisdictional deadline. *See Allen v. Loveridge*, 223 F. App'x 770 (10th Cir. 2007); *see also In re Caterbone*, 640 F.3d 108 (3d Cir. 2011); *Abraham v. Aguilar (In re Aguilar)*, 861 F.2d 873, 874 (5th Cir. 1988).

DISCUSSION

Bad Faith: *Pro Se*

As a preliminary matter, courts should apply "less stringent standards to filings by *pro se* litigants." *Cusano v. Klein (In re Cusano)*, 431 B.R. 726, 736 (B.A.P. 6th Cir. 2010). However, this sympathy has limits, and courts should not lower standards for litigants due to their *pro se* status in the presence of bad faith. *Id.* While it is true that Mr. Faria is a *pro se* litigant, his record in this Court indicates that he has a grasp of the law far above the typical *pro se* litigant, and his actions within the Bankruptcy System have only served to further his obvious intent to abuse the protections provided by the Code. As one example, Mr. Faria filed five Chapter 13 cases all proposing a plan that violates the same section of the Code.[17] Even after the appellate courts ruled in his own case that this was a violation of the Code, he still sought to proceed with no chance of confirmation and no distribution to his creditors.

As this Court previously found, Mr. Faria is neither a good-faith debtor nor a typical *pro se* litigant. Even setting aside Mr. Faria's continuous ploys to abuse the Bankruptcy System, this Court must still uphold the law and apply procedural rules equally to all, even *pro se* litigants. *In re Linder*, 215 B.R. 826, 831 (6th Cir. 1998) citing *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991) (affirming dismissal of appeal where *pro se* appellant failed to comply with Rule 8002), *Owens v. United States Bankruptcy Court* (*In re Owens*), 129 F.3d 1264 (6th Cir. 1997) (relying on *Jourdan* in affirming a district court's dismissal of a *pro se* appeal where the appellant failed to timely file the appeal under Rule 8002); *Jones v. Phipps*, 39 F.3d 158, 163 (7th Cir. 1994) ("[*P*]*ro se* litigants are not entitled to a general dispensation from the rules of procedure or court imposed deadlines.").

[17] § 1325(a).

Bad Faith: Factors

A debtor's intent to abuse the bankruptcy process is a key factor in determining the existence of bad faith. *In re Cusano*, 431 B.R. at 735 (citing *Alt v. United States (In re Alt)*, 305 F.3d 413, 419 (6th Cir. 2002)). Determining the existence or absence of good faith is fact specific and the Sixth Circuit has instructed the bankruptcy courts to consider the totality of the facts. *Id.*

Similarly, in the context of § 1307(b), that inquiry includes factors such as the timing of the Chapter 13 petition, the debtor's motive in filing the petition, the effects on creditors of the debtor's actions, and the debtor's treatment of the creditors before and after the petition was filed. *Id.* A debtor's intent to abuse the bankruptcy process heavily implicates a finding of bad faith. And while the bad faith inquiry is largely seen in the context of §§ 1112 and 1307, the finding of bad faith plays a role in the determination of whether a motion under Federal Rule of Civil Procedure 11(b) is objectively unreasonable. *Blachy v. Butcher*, 129 F. App'x 173, 180-81 (6th Cir. 2005) (affirming the district court's finding that filing a meritless Rule 60(b) motion that has largely been used to vex and unreasonably multiply litigation proceedings lacked a good-faith basis). Accordingly, provisions have been enshrined under both Rule 11(b) and Federal Rule of Appellate Procedure 38 to sanction such bad actors. *See B & H Med., L.L.C. v. ABP Admin., Inc.*, 526 F.3d 257, 271 (6th Cir. 2008).

The Debtor's history provides the facts to be considered in a bad faith determination. Mr. Faria has a long history in the Middle District of Tennessee. He has filed numerous bankruptcy petitions and several appeals to the higher courts – each time finding nothing but failure and accomplishing nothing but delay.

Of course, numerous filings do not necessarily imply a lack of good faith. Yet, as this Court has found previously, his treatment of his creditors and his continued proposal of plans that

this Court and the appellate courts have found to be not feasible and a violation of the Code, make it hard to find a shred of good faith. Rather, Mr. Faria continues to delay and vex his creditors in a currently successful attempt to avoid paying what is rightfully due.

In this objection, Mr. Faria indicates he seeks the relief afforded under Rule 60(b), but he does not assert any of the grounds for relief as articulated in subsections (b)(1), (2), or (3) – curious given his experience in filing a motion for reconsideration in his second case citing 11 cases in support of his "excusable neglect" assertion. FED. R. CIV. P. 60(b)(1).

Subsections (4) and (5) are not applicable here, and even if this Court were to consider his Objection as a motion under the Rule 60 "catch-all" in (b)(6) of "any other reason justifying relief," he must have articulated an extraordinary circumstance. Mr. Faria's only assertion is that he is a *pro se* debtor. This does not rise to the level required for the exceptional relief requested. *Pro se* debtors are not all that uncommon. Furthermore, Mr. Faria's status as a *pro se* debtor has not deterred or hampered his abilities to champion his interests in this Court – as evidenced by his abundant filings and ability to remain in his residence some nine years after his last mortgage payment was tendered.

Assertions for Rule 60(b) relief must be made within a *reasonable* time. FED. R. CIV. P. 60(c)(1) (emphasis added). A determination as to what constitutes "reasonable time" is a fact-specific determination subject to the discretion of this Court. *In re Teligent, Inc*., 303 B.R. 728 (Bankr. S.D.N.Y. 2004). This is a bad-faith serial filer, that history has shown has only sought to wreak havoc with federal law in this Court at the expense of his creditors. "Reasonable" is not a finding that will be made in any context as it relates to this Objection. There is no reasonable time for a bad faith filing.

Moreover, in his latest Objection, Mr. Faria specifically emphasized "**MOVES**," "**RULE**," and "**SET ASIDE**," indicating to this Court that he was seeking calculated relief. Why would a *pro se* litigant file such an Objection? Why emphasize those particular words? History indicates it is because he believes that the Federal Rules of Appellate Procedure 4(a) would provide him with additional time to file an appeal in the district court while relief sought in the Objection is pending. Additional time that results in the delay and aggravation of his creditors. And if this were a purely civil matter, Mr. Faria would have been successful, but this in fact is a fatal misstep in his continued objective to prolong proceedings and further hinder his creditors. Mr. Faria has forgotten that this is the Bankruptcy Court, and here the Federal Bankruptcy Rules apply.

Bad Faith: Further Attempts at Abuse

While the appellate procedural rules might give Mr. Faria 28 days to file a Rule 60(b) motion in order to toll his appeals time frame under Appellate Rule 4(a)(4)(A)(vi), in this Court Rule 9024 and Rule 8002, respectively, apply.

To illustrate Mr. Faria's grasp of the procedural rules and laws of this Court, this Court provides an analysis of how such a motion *could* have continued Mr. Faria's exploitations had this been a federal civil matter instead of a bankruptcy matter: First, while a debtor may file a motion to set aside a bankruptcy court's decision within a year (in some cases), the debtor only has 14 days to file a "timely" appeal of the order. FED. R. BANKR. P. 8002, 9024. This stricter requirement comes from the legislature's recognition of the quick and time-sensitive nature of bankruptcy proceedings. Some circuits have interpreted this rule to be jurisdictional, depriving appellate courts of subject matter jurisdiction over non-compliant appellants. *In re Caterbone*, 640 F.3d 108 (3d Cir. 2011); *Patmon v. Mumina*, 997 F.2d 596 (10th Cir. 1992); *Abraham v. Aguilar (In re*

Aguilar), 861 F.2d 873, 874 (5th Cir. 1988); *Williams v. Samson Resources Corp. (In re Samson Resources Corp.)*, Civ. No. 16-1124 RGA, 2017 WL 3763999 78, at *4 (D. Del. Aug. 30, 2017).[18]

However, if the movant timely files one of four motions, the time to file an appeal is tolled. FED. R. BANKR. P. 8002(b). Under Rule 8002(b)(1)(D), one such motion with a tolling effect is relief under Rule 9024. Rule 9024 is the Bankruptcy Code's equivalent of Rule 60. Under Rule 60(b), the court may, on motion or *sua sponte*, relieve a party of a final judgment or order for six reasons. However, to exercise the tolling effect on the appeals deadline, a Rule 9024 motion *must be timely filed* within 14 days. FED. R. BANKR. P. 8002(b)(1)(D) (emphasis added).

If this were in federal civil court, the deadline would increase to 28 days, thereby making Mr. Faria's appeal notice timely. Therefore, absent the applicable bankruptcy rules, Mr. Faria would have succeeded in his further abuse of the Federal court system.

It is obvious to this Court, given its experience with this debtor, that this was Mr. Faria's plan all along in filing the Objection: to further delay his creditors by tolling the appeal deadline. As has been evident in his numerous motions and appeals, Mr. Faria is not seeking the relief to which honest, but unfortunate debtors are entitled. Rather, Mr. Faria has one goal – to extend litigation as long as possible so that he may continue defrauding his creditors. If not for this misstep, Mr. Faria would have continued his abuse of the Code, avoiding any semblance of good faith. However, his fatal mistake has caused his untimeliness and stopped him in his disreputable pursuits.

[18] Although revisions have been made to Rule 8002, the Advisory Committee notes that changes to the former rule are stylistic, and so should not affect the jurisdictional and tolling effects of the Rule. FED. R. BANKR. P. 8002, Advisory Committee Note (2014).

CONCLUSION

Given Mr. Faria's extensive history with this Court, his ability to negotiate the Bankruptcy System, the bad faith he exhibits in his filings, his clear intent to defraud his creditors, and his unrelenting abuse of this system in his continued ploy to dodge his creditors only goes to show that this Court's initial decision in the Order was the right one. The bar imposed in the Order will prevent Mr. Faria from seeking to have the Bankruptcy Court assist him in his endeavors to abuse the Bankruptcy System to the detriment of his creditors – eight years is long enough. This Objection is found to have been filed in bad faith. Any relief sought in the Objection is **DENIED** on that basis.

This order was signed and entered electronically as indicated at the top of this page.

This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
United States Bankruptcy Court.