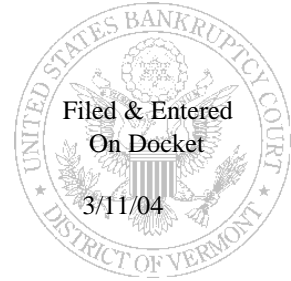


UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

WILLIAM F. BROOKS,
Debtor.

Chapter 13 Case
#04-10296



ORDER
CONDITIONALLY GRANTING RELIEF FROM STAY AND
ADJOURNING HEARING ON EXPEDITED MOTION TO DISMISS FOR SERIAL FILING

WHEREAS, on March 3, 2004, Creditor Village and Town of Ludlow (“the Town”) filed an Expedited Motion to Dismiss Debtor’s Serial Filing – Motion for Relief from Stay (doc. #3) requesting the Debtor’s current chapter 13 case be dismissed for bad faith serial filing and, alternatively, requesting relief from stay regarding property known as Jewell Brook Mill, located in Ludlow (“the subject property”), to allow the Town to proceed with a scheduled tax sale of the subject property; and

WHEREAS, the Town effected service of the Expedited Motion upon the Debtor and, thereafter, the Debtor filed a response, indicating the instant case was not filed in bad faith and requesting a continuance on the hearing of Expedited Motion; and

WHEREAS, the Court held an emergency hearing on the Town’s Expedited Motion on March 4, 2004, at which the Town was represented by Attorney J. Christopher Callahan, the Debtor appeared *pro se*, and the Chapter 13 Trustee appeared via telephone.

UPON CONSIDERATION of the papers, the arguments presented, the relevant statute and case law, THE COURT FINDS that the facts and circumstances before it indicate that the Debtor’s current bankruptcy case may have been filed to frustrate the Town’s scheduled tax sale. This is the Debtor’s third bankruptcy filing. Mr. Brooks filed a chapter 13 case in 1999 (case #99-11125) that was later dismissed. Then, on October 24, 2003, three days prior to a scheduled tax sale by the Town, the Debtor filed a chapter 7 case (case #03-11614). In that case, the Town was granted relief from stay regarding the subject property, the Debtor was granted a discharge, and the case will soon be closed. The present case was filed on March 2, 2004, two days prior to the Town’s scheduled March 4th tax sale of the subject property. This sequence of three bankruptcy case filings, which appears to coincide with the Town’s efforts to enforce its right against the Debtor’s real property, certainly suggests the basis for a finding of bad faith. However, the Debtor has not yet filed a chapter 13 plan, has indicated an intent to retain an attorney, and has not been given an opportunity to present evidence about the reasons for filing these three cases or his ability to propose and consummate a viable chapter 13 plan. Thus, the Court does not have a sufficient record upon which to determine whether this case was filed in bad faith or whether the Town is entitled to the relief it seeks.

The COURT FURTHER FINDS that in a situation where a prior tax sale has been frustrated by a bad faith filing, the Court has the power in such a case, pursuant to 11 U.S.C. §§ 105(a) and 362(d), to authorize a taxing authority to continue a tax sale, as long as such sale is subject to a timely hearing before the Bankruptcy Court to retroactively annual the stay and confirm the tax sale. See In re Ellinwood, 206 B.R. 300, 302 (Bankr. W.D.N.Y. 1997); In re Burton, 195 B.R. 588 (Bankr. W.D.N.Y. 1996); In re Harris, 192 B.R. 334 (Bankr. W.D.N.Y. 1996). In this way, neither the Debtor nor the Town must suffer irreparable harm; the Debtor is given an opportunity to present evidence to demonstrate that this is a good faith filing and the Town is allowed to proceed with its sale (and avoid the costs of having to reschedule the sale). Accordingly,

IT IS HEREBY ORDERED that the Town's Motion for Relief from Stay is **CONDITIONALLY GRANTED**. The Town may proceed with its scheduled tax sale of the subject property, subject to confirmation or annulment of the sale by this Court, with such determination to be made after a hearing to be held on **March 18, 2004, at 3:00 P.M., in Rutland, Vermont**.


IT IS FURTHER ORDERED that the hearing on the Town's Expedited Motion to Dismiss Debtor's Serial Filing shall be adjourned to **March 18, 2004, at 3:00 P.M., in Rutland, Vermont**; and

IT IS FURTHER ORDERED that the Debtor shall promptly file his proposed chapter 13 plan for consideration by the Debtor's creditors and this Court prior to the March 18th continued hearing on the Town's Expedited Motion to Dismiss Debtor's Serial Filing.

IT IS FURTHER ORDERED that if the Town intends to file a proof of claim in this case that it shall file its proof of claim for consideration by the Debtor and this Court prior to the March 18th continued hearing on the Town's Expedited Motion to Dismiss Debtor's Serial Filing.

SO ORDERED.

March 10, 2004



Colleen A. Brown
United States Bankruptcy Judge