UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
RAYMOND WULLSCHLEGER and	)	
BETTY A. WULLSCHLEGER,	)	CASE NO. BK92-80882
	)	
DEBTOR	)	CH. 11

MEMORANDUM

On July 2, 1992, a hearing was held on the Motion to Dismiss and Request for Expedited Hearing ("Motion") filed herein by Bank of Leigh, one of the creditors herein ("Bank"). The Bank appeared by its attorney of record, Steven J. Woolley of Polack, Woolley & Forrest, P.C.; the Debtors appeared by their attorney of record, Teresa Colombo; and Metropolitan Life Insurance Company, another creditor, appeared by its attorney, Bradley D. Holtorf. The office of the United States Trustee appeared by way of one of the attorneys, Jerry L. Jensen. By consent of the parties, the Motion is deemed to include a request for sanctions against the Debtors as more fully set forth in the Joint Preliminary Pre-Trial Statement on file herein. Evidence was submitted and oral arguments made.

Background

This matter was submitted to the Court on documentary evidence, including depositions, bankruptcy schedules, transcripts of Section 341 hearings, various affidavits, a statement of uncontroverted facts included in the Joint Pre-Trial Statement and on oral arguments presented by the parties.

Ruling

This case shall be dismissed for cause as a bad faith filing and debtors shall be sanctioned by being prohibited from refiling for 180 days and being assessed, as a judgment, the fees and expenses incurred by the Bank in all three cases.

Findings of Fact

1. On November 5, 1990, the District Court of Stanton County, Nebraska, in a case styled Bank of Leigh, Plaintiff v. Raymond O. Wullschleger and Betty A. Wullschleger, Defendants, Case No. 4742 ("Bank's Foreclosure Lawsuit"), entered a Decree and Foreclosure and Order of Sale ("Bank's Foreclosure Decree"),

whereby the mortgage given to Bank by the Debtors covering the following-described real estate ("Real Estate"):

The West One-half of Section 15, Township 21 North, Range 1 East of the 6th P.M., Stanton County, Nebraska,

was foreclosed and ordered to be sold as upon execution.

2. An execution sale of the Real Estate was scheduled within Bank's Foreclosure Lawsuit for April 2, 1991, but was not held due to the Debtors' filing, on March 28, 1991, of a voluntary petition under Chapter 12 of the Bankruptcy Code ("First Bankruptcy Filing").

3. The first bankruptcy filing was dismissed by order of this Court dated August 23, 1991 (the "Dismissal Order"). This Court entered the Dismissal Order due to its determination that the Debtors were not qualified to file the First Bankruptcy Filing under Chapter 12 of the Bankruptcy Code since they did not have any farm related income in 1990.

4. On the 14th day of November, 1991, the District Court of Stanton County, Nebraska, in a case styled Metropolitan Life Insurance Company, Plaintiff v. Raymond O. Wullschleger and Betty A. Wullschleger, Defendants, Case No. 4799 ("Metropolitan's Foreclosure Lawsuit"), entered a decree of foreclosure, whereby the mortgage given to Metropolitan by the Debtors covering the Real Estate was foreclosed in order to be sold as upon execution.

5. Metropolitan's mortgage is a first mortgage lien on the Real Estate. The Bank's mortgage is a second mortgage lien on the Real Estate.

6. The execution sale of the Real Estate within the Bank's Foreclosure Lawsuit was rescheduled for February 11, 1992, but the sale was not held due to the filing, on February 10, 1992, of the Debtors' second voluntary petition under Chapter 12 of the Bankruptcy Code ("Second Bankruptcy Filing").

7. The Second Bankruptcy Filing was dismissed on April 20, 1992, pursuant to the Debtors' written request for the same which was filed after Metropolitan and the Bank filed a Joint Motion to Dismiss and Request for Sanctions against the Debtors and their then bankruptcy counsel, not the attorney who now represents the Debtors, but before hearing was held on that joint motion.

8. On or about April 28, 1992, the Bank filed a Petition in Replevin in the District Court of Stanton County, Nebraska, styled Bank of Leigh, Plaintiff. v. Raymond O. Wullschleger, Betty A. Wullschleger and Ronald Wullschleger, Defendants, Case No. 4886 ("Replevin Lawsuit"). A Temporary Order in Replevin was entered in the Replevin Lawsuit on or about April 30, 1992,

whereby the hearing on the Bank's application for immediate possession of the personal property described within the Replevin Lawsuit was fixed for Monday, May 18, 1992, at 9:00 o'clock A.M., in Stanton, Nebraska (the "Replevin Hearing").

9. The Replevin Hearing was not held due to the Debtors' filing of this Chapter 11 Bankruptcy Proceeding on May 15, 1992. A consent order was entered within the Replevin Lawsuit on May 15, 1992, specifying, in pertinent part, that the Bank will be entitled to obtain possession of the Debtors' farm equipment and machinery immediately upon obtaining relief from the bankruptcy stay or upon the dismissal of this bankruptcy proceeding.

10. Debtors' signed and sworn bankruptcy schedules and statement of affairs were filed within the First Bankruptcy Filing (the "First Bankruptcy Schedules"). In pertinent part, the First Bankruptcy Schedules state and show the following:

a. Schedule B-2(m) reported two promissory notes totalling $22,925.00 from Debtors' son as assets of the estate.

b. Schedule B-2(r) specified that the Debtors owned no interest in insurance policies.

c. Schedule B-2(t) specified that the Debtors owned no stock and interests in incorporated or unincorporated businesses.

d. In answer to question 1 of the Statement of Financial Affairs, the Debtors stated that they were engaged in farming.

11. The sworn statements and representations set forth by the Debtors in the First Bankruptcy Schedules as set forth in the immediately preceding paragraph were false. The two promissory notes shown as assets were never legally enforceable since, as Debtor Raymond Wullschleger admitted in his April, 1992, deposition, no money was ever due under the notes. Within that same deposition, Raymond Wullschleger admitted that he and his wife had each owned separate life insurance policies for many years, and the schedules filed within this Chapter 11 proceeding finally disclosed the existence of those policies and the cash values of each. In his 1991 deposition, Raymond Wullschleger admitted that he owned stock in Maple Valley Co-op worth approximately $3,200.00, Farmers Grain Co-op in Humphrey, Madison Farmers Co-op and Stanton Farmers Co-op. Finally, the Debtors had zero farming income in 1990 and were not engaged in farming in either 1990 or 1991.

12. Both Raymond Wullschleger and Betty Wullschleger, in their separate depositions taken in 1991, falsely testified that

they expected to be paid under the two notes identified in Paragraph 10.a. above. During his sworn testimony at the § 341 hearing held in this Chapter 11 proceeding, Raymond Wullschleger compounded his false statements by stating that the notes were then still outstanding, obviously implying that the notes evidenced valid and enforceable obligations. As stated above, it was not until his deposition was taken in April, 1992, that he finally admitted that no money was ever due under the notes.

13. In their depositions taken on July 10, 1992, both of the Debtors admitted that they had an oral agreement with their son, reached in the spring of 1990, to cash rent their farmland to their son. During this deposition, Raymond Wullschleger testified that in the spring of 1991 his then attorney advised the Debtors to call the money due from their son "custom farming income" instead of "cash rent," and both Debtors falsely stated many times during the 1991 depositions that their 1990 business relationship with their son was based on a custom farming agreement.

14. Also within the 1991 deposition, Raymond Wullschleger insisted that he owned the 1990 crops even though, at the same time, he claimed he custom farmed his own land for his son. Those statements are false. In the deposition taken in April, 1992, of the Debtors' son, Ronald Wullschleger, the son stated that he was the owner of the 1990 crops grown on his father's land and that he, the son, paid for the 1990 crop insurance for the crops grown on his father's land. Raymond Wullschleger's above-enumerated statements are also in conflict with his own testimony elsewhere in the 1991 deposition whereby he stated that the 1990 crop grown on his land was delivered to the elevator in his son's name and the 1990 ASCS payment for crops grown on his farmland was made payable to his son. In further support of the son's claim of ownership of the 1990 crops, on his 1990 income tax return the son reported as income the sale proceeds from the 1990 crops grown on the father's land and deducted the expenses paid in 1990 that related to the crops grown that year on the father's land.

15. In his 1991 deposition, Raymond Wullschleger testified that he owned the 1991 crop growing on his land. That sworn statement was false as shown by any or all of the following:

a. In his 1992 deposition, Raymond Wullschleger admitted that he does not have any bills, invoices, bills of sale, elevator receipts, etc., pertaining to the 1991 crop; that he did not keep any record of the expenses for the 1991 crop; and that his son received and kept the money from the sale of the 1991 beans grown on the father's land.

b. The signed and sworn Statement of Financial Affairs filed by the Debtors in this Chapter 11 proceeding states that the Debtors had no farm income in 1991.

c. The son, Ronald Wullschleger, in his 1992 deposition testified that he transferred $23,500.00 received by him from the sale of the crops grown on his father's land in 1991 to his father to help show that his father qualified for Chapter 12 bankruptcy; that the crops grown in 1991 on his father's land belong to the son; that the father had no ownership interest in those 1991 crops; that the son paid for all of the expenses on the 1991 crop; that the son purchased the 1991 crop insurance; that the son paid the father rent for the son's use of the father's machinery utilized in the care of the 1991 crops; that the father transferred to the son the 1991 ASCS payment payable to the father because it was the son who had farmed the ground and the father was not entitled to the money; that the son repaid the father for repair costs advanced by the father in 1991 on machinery utilized by the son; and that all bills and invoices pertaining to the 1991 crop were charged solely to the son.

16. In her 1991 deposition, Betty Wullschleger testified that it was her husband, Raymond, and not her son, Ronald, who farmed the land in 1991. In his 1992 Chapter 12 § 341 hearing testimony, Raymond Wullschleger testified that he actually conducted the 1991 farming operation. Both sworn statements are false as shown by Ronald Wullschleger's 1992 deposition, wherein he stated that his father transferred the 1991 ASCS payment to him since he, and not his father, actually farmed the ground in 1991 and, as a result, he was entitled to the money.

17. In his 1991 deposition, Raymond Wullschleger testified under oath that he had an operating loan from his son to conduct the 1991 farming operation and that he had given his son a $23,000.00 note in April, 1991. Those statements were false as shown by any one or more of the following:

a. In his 1992 deposition, Raymond Wullschleger testified that there was no such promissory note but that there was a written loan agreement between he and his son pertaining to the 1991 crop.

b. In his 1992 deposition, Ronald Wullschleger testified that the UCC-1 Financing Statement given by his parents, the Debtors herein, to him as the secured party is the only written document relating to the alleged 1992 loan transaction between he and his father; that there was no written loan agreement; that

> the just referenced UCC-1 Financing Statement was prepared by the Debtors' then bankruptcy attorney and was given solely for the purpose of providing the Debtors with a document to be used to support the Second Bankruptcy Filing by the Debtors; that he did not loan any money to his parents in 1991 and that there was no loan agreement between them; that the only reason he gave his father the $23,500.00 was to help show that the father qualified for Chapter 12 bankruptcy; and that the $1,410.00 interest payment purportedly made by his father as shown on Schedule B of the son's 1991 Federal Income Tax Return was, in fact, never paid by the father or received by the son and was reported on the tax return because the father wanted "to show that he owed [the son] interest for an operating note."

18. During his sworn testimony given at his § 341 hearing held in 1992 for his Second Bankruptcy Filing, Raymond Wullschleger testified that the corn and beans grown on his land in 1991 were stored in his name at the elevator in Madison, Nebraska. That statement is false as shown by Ronald Wullschleger's 1992 deposition wherein he stated that he delivered the corn and beans to the elevator in his own name and that the checks from the elevator for the purchase of the crops were not made payable to the father.

19. Also during the § 341 hearing held on the Second Bankruptcy Filing, Raymond Wullschleger testified under oath that he sold the corn grown in 1991 on his land and paid the money to his son in repayment of his son's operating loan. That statement is false as shown by his son's 1992 deposition wherein the son stated that it was the son who delivered the corn and beans grown on the father's land in 1991 to the elevator in the son's name; that the checks issued by the elevator for the purchase of those crops were not made payable to the father; that the son did not loan any money to his parents in 1991 and there was no loan arrangement between those parties; and that the only reason the son gave his father the $23,500.00 from the sale of the 1991 crops was to help show that the father qualified for Chapter 12 bankruptcy. It is noted at this point that the father, immediately upon receipt of the $23,500.00 from his son, wrote a check back to his son in the exact same amount.

20. During the § 341 hearing held within the Second Bankruptcy Filing, Raymond Wullschleger testified under oath that he was engaged in a farming operation, that 50% of his income came from farming, and that he earned a net profit of $743.00 from his 1991 farming operation. Those statements were false as shown by the Debtors' answers to questions one and two of the Statement of Financial Affairs filed within this Chapter 11 bankruptcy proceeding whereby the Debtors state that they

received no farm income in 1991. Further support for the falsity of those statements is found in the sworn testimony and statements enumerated in all of the subparagraphs to paragraph 15 above.

21. Raymond Wullschleger's sworn statement in his 1992 deposition that there was a written loan agreement between he and his son for the 1991 crop was false as shown by the testimony of Ronald Wullschleger in his 1992 deposition that there was no such written loan agreement.

22. In his 1992 deposition, Raymond Wullschleger testified that he owed his son $23,500.00 as a result of loans made by the son to the father to allow the father to operate the farm in 1991, that full amount was repaid by the father to the son from the sale of the corn grown on the father's land and that he and his son exchanged checks in late December, 1991, for the purpose of allowing the father to repay the loan to the son. Those statements are false as shown by the fact that the son, in his 1992 deposition, testified that the only reason he gave the $23,500.00 check to his father was to make it appear that his father qualified for Chapter 12 bankruptcy but that, in reality, the father did not owe the son any money at all for the 1991 farming operation, the son did not loan any money to his parents in 1991 and there was no loan arrangement between them in 1991.

23. In his 1992 deposition, Raymond Wullschleger testified that he gave his son check no. 11195 in the amount of $1,330.87 to pay for seed corn, that the check was actually written out by the son but it was he, the father, who added the "for seed" notation on the check. The Debtor's statement of the purpose of the check is false. As admitted by the father in his 1992 deposition, the amount of the check is exactly equal to the ASCS payment received in 1991 by the father, and as shown by the son's 1992 deposition, the father transferred that ASCS payment to his son because it was the son and not the father who farmed the ground and was, therefore, entitled to the money.

24. In his 1992 deposition, Raymond Wullschleger testified that he owned the beans grown on his land in 1992, but that statement is probably false since, as further testified to by Raymond Wullschleger in his 1992 deposition, it was his son who received and kept the money from the sale of those beans. It is further noted that the $23,500.00 check referred to previously from the son to the father came solely from the sale of corn, not from the sale of beans. All proceeds from the sale of beans grown on the father's land in 1991 were kept by the son and no part thereof was ever transferred to the father.

25. Debtors' signed and sworn bankruptcy schedules and statement of affairs were filed within the Second Bankruptcy

Filing (the "Second Bankruptcy Schedules"). In pertinent part, the Second Bankruptcy Schedules state and show the following:

a. That the Debtors received farm income in 1991.

b. That the Debtors owned no interest in insurance policies.

c. That the Debtors owned no stock and interests in incorporated or unincorporated businesses.

d. That the Debtors owed no delinquent real estate taxes to Stanton County, Nebraska.

26. The sworn statements and representations made by the Debtors in the Second Bankruptcy Schedules as set forth in the immediately preceding paragraph are false. As previously set forth at length, the Debtors had no farm income in 1991, they owned two life insurance policies, they owned stock in various grain cooperatives, and as admitted by Raymond Wullschleger in his § 341 hearing held within the Second Bankruptcy Filing, the delinquent real estate taxes owed to Stanton County, Nebraska, as reported on his First Bankruptcy Schedules had not been paid.

27. The schedules filed within this Chapter 11 proceeding show that the Debtors' total monthly expenses exceed their total monthly income by $307.89, before taking into account any farm operation related income and expenses. In an attempt to justify the filing of this chapter 11 proceeding, counsel for the Debtors at the time of the argument on the Motion informed the Court that the income to make the payments under the proposed plan to the Debtors' creditors would come from cash rent paid by the Debtors' son for the use of the farmland, and in support thereof, introduced into evidence as Exhibits 22 and 23 the Debtors' disclosure statement and proposed plan of reorganization. A review of the disclosure statement fails to disclose any reference to the proposed lease of the land to the son. To the contrary, Article II of the proposed plan of reorganization specifies the following:

> The Debtors shall continue to raise crops and livestock, to generate revenues to service their debts. In addition, to the extent the Debtors deem it advisable, they may participate in appropriate government programs, may obtain additional long or short term financing, and may purchase, sell, rent or lease any property to generate additional revenues to service their debts.

The above reference to the Debtors' reservation of a right to lease "any property" is the only reference contained in the plan to the lease of their property.

28. The Bank has been damaged as a result of the Debtors' successive bankruptcy filings. No payment has been made on either the Bank's debt or Metropolitan's debt by the Debtors for in excess of three (3) years. That combined debt has increased from $196,253.47 on March 28, 1991, the date of the First Bankruptcy Filing, to $234,122.78 as of September 1, 1992, for a total increase of $37,869.31. As previously stated, the Bank's mortgage on the Debtors' farmland is junior to Metropolitan's first mortgage thereon. Utilizing the Debtors' stated value of their farmland of $229,000.00, there was, as of the date of the First Bankruptcy Filing, sufficient value in the real estate to pay delinquent real estate taxes of approximately $13,500.00, Metropolitan's first mortgage thereon, and the Bank's second mortgage thereon, with equity of $19,246.53 remaining. However, as of September 1, 1992, the Bank is undersecured by $18,889.78 before deductions are made for additionally assessed real estate taxes and interest accruing on the real estate taxes that are delinquent. Interest accrues on the mortgage debt of the Debtors to the Bank at the variable rate specified by the mortgage note. That rate was equal to 11.5% per annum or $21.81 per day at the time of the hearing on the Motion.

29. The Bank has further been damaged by the Debtors' successive bankruptcy filings as a result of the attorney fees and expenses incurred by the Bank and paid in the amount of $20,216.61 through and including April 30, 1992, plus all fees and expenses incurred by the Bank in relation to this matter since that date.

Conclusions of Law and Discussion

1. Debtors have filed three (3) bankruptcy cases within fourteen months, each on the eve of state court proceedings initiated by the Bank to sell or take possession of its collateral. All of those bankruptcy filings were done for the sole purpose of interfering with the Bank's state court rights.

2. The Debtors were not qualified to file the two Chapter 12 bankruptcies, but, notwithstanding that fact, falsely and fraudulently arranged their affairs to make it appear as though they did qualify.

3. The Debtors have on numerous occasions, within the context of their two Chapter 12 bankruptcy filings, knowingly and fraudulently made false declarations, verifications or statements under penalty of perjury and knowingly and fraudulently made false oaths.

4. The Debtors' claim that it was their then bankruptcy counsel who told them to falsify documents and give false testimony is not a defense to their actions. They each knew and understood the false and fraudulent nature of their actions,

claims and testimony. Even if it was their attorney who told them to claim that their 1990 income was based on custom farming, the Debtors knew that the true agreement between them and their son was for payment by the son of cash rent, and the Debtors, therefore, knew that they were not telling the truth under oath concerning that matter. The Debtors cannot use as a defense that they acted on the advice of counsel. In Re Taylor, 884 F.2d 478, 483 (9th Cir. 1989); Matter of DePoy, 29 Bankr. 471, 476 (Bankr. N.D. Ind. 1983).

5. Even though most, if not all, of the Debtors' false and fraudulent activity and testimony transpired prior to the filing of this Chapter 11 proceeding, the filing of this case constitutes a bad faith filing and must be dismissed for any one or more of the following reasons:

a. This Chapter 11 proceeding is the third bankruptcy proceeding filed within a fourteen-month period for the purpose of frustrating and delaying the enforcement of the secured creditors' rights;

b. The Debtors were not qualified to file bankruptcy under Chapter 12 of the Bankruptcy Code, but did so in 1991 and again in 1992.

c. By their actions within the first two bankruptcy proceedings, the Debtors have revealed themselves to be dishonest and untrustworthy, and as a result, are not entitled to the protection otherwise available from this court of equity;

d. Since the Debtors have made inconsistent and obviously false statements in the first two bankruptcy cases, and have made some inconsistent and apparently incorrect, if not intentionally false, statements in this case, this judge cannot made a factual finding that all the dishonest statements and acts occurred in the previous cases and none in this case. In other words, it is difficult to determine which statements were false and which, if any, were true in each case.

e. The Bank's rights have been prejudiced by the acts of the Debtors as shown by the fact that it is now a partially unsecured creditor when it was a fully secured creditor as of the date of the First Bankruptcy filing.

In the Matter of Marlatt, 116 Bankr. 703 (Bankr. D. Neb. 1990) John C. Minahan, Jr., Bankruptcy Judge, found that a creditor bears a heavy burden to prevail on a motion to dismiss a bankruptcy proceeding based on the Debtors' bad faith or multiple filings. This Court believes that the creditor has met its

burden of proof and this Chapter 11 proceeding must be dismissed. The court in In Re Galloway Farms, Inc., 82 Bankr. 486 (Bankr. S.D. Iowa 1987) found that a Chapter 12 petition should be dismissed as having been filed in bad faith when it was debtor's third bankruptcy petition in seven (7) years with prior petitions having been dismissed for lack of prosecution and lack of good faith, and it was clear that the debtor's purpose in filing the current petition was to frustrate and delay the ability of a secured creditor to enforce its rights.

In the present case, the Debtors have filed three (3) bankruptcy petitions within fourteen months of each other, the first having been dismissed by this Court upon a finding that the Debtors were not qualified to file the same, and the second having been voluntarily dismissed by the Debtors in order to avoid a hearing on the creditor's motion to dismiss and request for sanctions. All three (3) proceedings were filed by the Debtors for the purpose of preventing the Bank from enforcing its state court rights.

6. In determining whether to impose sanctions in the context of the bad-faith filing of a bankruptcy petition, the question is not whether the petition was filed in bad faith, but whether, when looking at surrounding circumstances on an objective basis, the sanctioned parties knew, or reasonably should have known, that the petition was filed in bad faith. In re Rainbow Magazine, Inc., 136 Bankr. 545 (9th Cir. BAP 1992). In the present case, the Court finds that the Debtors' actions as set forth at length within this order were egregious, voluntary and intentional, and that they knew that the petitions were filed in bad faith. As a result, the requested sanctions against them should be imposed.

7. These Debtors have filed three bankruptcy cases within two calendar years to prevent foreclosure. Although filing a bankruptcy petition to prevent foreclosure is not, in and of itself, reprehensible or abusive, bad faith multiple filings merely to forestall foreclosure may be abusive of the court process. In re Walker, 102 Bankr. 612 (Bankr. N.D. Ohio 1989). The Bankruptcy Code at Section 1112(b) provides the authority for the court to dismiss a case for cause. That section includes a non-exclusive list of causal factors. The list does not specifically include "bad faith filing" or "lack of good faith." However, the Code implicitly and explicitly imposes on debtors a duty of good faith in filing and maintaining bankruptcy actions. In re Kinney, 51 Bankr. 840, 845 (Bankr. C.D. Cal. 1985). In each case, the Court must consider all the facts and circumstances concerning the actions of the debtors when making a determination of "good faith" or "bad faith." Kinney, at 845.

8. The moving party has requested monetary sanctions and a prohibition on refiling for at least 180 days. The Bankruptcy

Code at Section 349 identifies the effects of dismissal. Section 349(a) makes it clear that a dismissal is without prejudice to a refiling, unless the court, for cause, orders otherwise.

Section 109(g) includes a specific prohibition on refiling of any case under any chapter for 180 days if the case was dismissed for willful failure of the debtors to abide by orders of the court, to appear before the court in proper prosecution of the case, or if the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay.

Section 109(g) seems to be a specific prohibition on refiling resulting from specific findings of the court concerning willful activities of a debtor or a voluntary dismissal by the debtor in the face of a motion for relief from the automatic stay. Section 349(a), on the other hand, appears to give the court authority to dismiss a case with prejudice if the court, for cause, determines such sanction appropriate.

Recently, the United States District Court for the Eastern District of Virginia determined that the provisions of Section 109(g) were not limitations upon the power of the court to prohibit refiling by virtue of a dismissal for cause and specific "non-refiling" sanctions imposed under Section 349(a). In re Jolly, No. 4:92CV53, 1992 WL 187837 (E.D. Va. August 4, 1992). There is some contra authority. See, for example, In re Frieouf, 938 F.2d 1099 (10th Cir. 1991). In Frieouf, the appellate court was not required to determine whether dismissal with prejudice for 180 days or less was permitted, but the court suggested that the sanctions of Section 109(g) were the only sanctions that could be imposed with regard to dismissal, notwithstanding the language of Section 349(a).

As between these two sources of authority, the logic of the Jolly case is more convincing. When a bankruptcy court is faced with numerous bad faith filings, as in this case, it must have a tool to stop the activity that has caused the harm to the creditors in the past. If a court is limited to the simple act of dismissal, without prejudice, unless the debtors fit into the confines of Section 109(g), the court really has no power to protect the system from abuse or the creditors from harm. This case is a good example. The Court dismissed the first Chapter 12 case because it found the Debtors were not family farmers as defined by the Code. Within a very short period of time, the Debtors filed another Chapter 12 case. In both cases, they provided false information to the Court and the creditors. This moving party brought a motion to dismiss and for sanctions, relying upon the evidence it had developed concerning the false information provided by the Debtors. Prior to a hearing on such motion, the Debtors voluntarily dismissed the second Chapter 12 case as is their right under 11 U.S.C. § 1208(b). Both of the

Chapter 12 filings were immediately preceding a scheduled state court action.

After the second case was dismissed over the objections of the Bank and Metropolitan, more state court proceedings were scheduled. On the eve of those proceedings, these Debtors filed another case, this time under Chapter 11. Once again, during their depositions and at other times, they couldn't get their stories straight. The Bank once again filed a motion to dismiss and requested sanctions, including a prohibition on refiling for 180 days. The evidence at the hearing on the motion to dismiss is overwhelming with regard to the bad faith of the Debtors. If this Court is limited to another dismissal without prejudice, the Debtors will be able to once again file a case on the eve of state court actions and frustrate the rights of the creditors.

Because this judge does not believe that such a result is the intent of Congress and because Section 349(a) appears to give the Court broad power with regard to dismissal if the Court finds cause therefor, Section 349(a) shall be interpreted as giving the Bankruptcy Court the power to prohibit refiling for at least 180 days as requested by the moving party.

Decision

1. This Chapter 11 case is dismissed for cause because the Court finds that it and the previous two bankruptcy filings were made in bad faith.

2. The Debtors are hereby prohibited from filing any type of bankruptcy proceeding, except a Chapter 7 petition, for 180 days from and after the date this order is final.

3. The Court shall retain jurisdiction of this case for a limited period to enter judgment in favor of the Bank and against the Debtors jointly and severally for the fees and expenses incurred by the Bank in attempting to protect its interest in all three bankruptcy cases.

4. The Bank's attorney shall, within fourteen days of the date of this order, supplement Exhibit 15 previously admitted into evidence at the time of the hearing on the Motion to the extent he deems necessary by filing with this Court copies of his firm's monthly billings in relation to this matter from and after April 30, 1992, and by providing a copy of the same to the attorney for the Debtors and the Office of the United States Trustee.

5. The Debtors and the United States Trustee shall have fourteen days from and after the filing of any such supplement to Exhibit 15 in which to file their written objection to the reasonableness of the requested fees and expenses, and if such an

objection is filed, a hearing will be scheduled thereon for the purpose of determining the reasonable amount of the fees and expenses paid by the Bank in relation to the Debtors' three bankruptcy proceedings for which a joint and several judgment should be entered against the Debtors in favor of the Bank. If no objection to the reasonableness of the fees and expenses is timely filed, then under separate order, the Court shall enter a joint and several judgment against the Debtors in favor of the Bank in an amount equal to the full amount of the fees and expenses set forth within that Exhibit 15 as supplemented.

6. This case is dismissed as of the date this memorandum and the separate journal entry are filed with the Clerk, subject only to the Court's retention of jurisdiction as mentioned above.

Clerk to give immediate notice to parties listed on journal entry.

DATED: September 8, 1992.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF	)	
	)	
RAYMOND WULLSCHLEGER and	)	
BETTY A. WULLSCHLEGER,	)	CASE NO. BK92-80882 A
DEBTOR(S)	)	
	)	CH. 11
	)	Filing No.
Plaintiff(s)	)	
vs.	)	JOURNAL ENTRY
	)	
	)	
	)	DATE: September 8, 1992
Defendant(s)	)	HEARING DATE: July 2, 1992

Before a United States Bankruptcy Judge for the District of Nebraska regarding Motion to Dismiss and Request for Expedited Hearing.

APPEARANCES

Steven J. Woolley, Attorney for Bank

Teresa Colombo, Attorney for Debtors

Bradley D. Holtorf, Attorney for Metropolitan Life Ins. Co.

Jerry L. Jensen, Office of U.S. Trustee

IT IS ORDERED:

1. This Chapter 11 case is dismissed for cause because the Court finds that it and the previous two bankruptcy filings were made in bad faith.

2. The Debtors are hereby prohibited from filing any type of bankruptcy proceeding, except a Chapter 7 petition, for 180 days from and after the date this order is final.

3. The Court shall retain jurisdiction of this case for a limited period to enter judgment in favor of the Bank and against the Debtors jointly and severally for the fees and expenses incurred by the Bank in attempting to protect its interest in all three bankruptcy cases.

4. The Bank's attorney shall, within fourteen days of the date of this order, supplement Exhibit 15 previously admitted into evidence at the time of the hearing on the Motion to the

extent he deems necessary by filing with this Court copies of his firm's monthly billings in relation to this matter from and after April 30, 1992, and by providing a copy of the same to the attorney for the Debtors and the Office of the United States Trustee.

5. The Debtors and the United States Trustee shall have fourteen days from and after the filing of any such supplement to Exhibit 15 in which to file their written objection to the reasonableness of the requested fees and expenses, and if such an objection is filed, a hearing will be scheduled thereon for the purpose of determining the reasonable amount of the fees and expenses paid by the Bank in relation to the Debtors' three bankruptcy proceedings for which a joint and several judgment should be entered against the Debtors in favor of the Bank. If no objection to the reasonableness of the fees and expenses is timely filed, then under separate order, the Court shall enter a joint and several judgment against the Debtors in favor of the Bank in an amount equal to the full amount of the fees and expenses set forth within that Exhibit 15 as supplemented.

6. This case is dismissed as of the date this memorandum and the separate journal entry are filed with the Clerk, subject only to the Court's retention of jurisdiction as mentioned above.

(X) Clerk to give immediate notice of the Court's ruling to counsel for the debtors, counsel for the Bank, counsel for Metropolitan, and the U.S. Trustee.

BY THE COURT:

/s/ Timothy J. Mahoney
Timothy J. Mahoney
Chief Judge