

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

**IN RE: MILDRED A. WEBB
DEBTOR**

**4:03-bk-15082-E
Chapter 13**

**NOTICE AND ORDER TO SHOW CAUSE
WHY DEBTOR SHOULD NOT BE HELD IN CRIMINAL CONTEMPT**

This Notice and Order to Show Cause serves as notice of the essential facts constituting criminal contempt alleged against Debtor for the filing of her tenth (10th) bankruptcy petition in apparent violation of the Court's previous order prohibiting further bankruptcy filings by Debtor. On June 3, 2003, the Court heard a Motion for Retroactive Annulment of the Automatic Stay and for Ratification of Foreclosure Sale and an Objection to Confirmation of Plan filed by Bank of America Mortgage ("BOA"). The Court also heard a Motion to Dismiss with a bar to refile filed by the United States Trustee ("U.S. Trustee"). In his motion, the U.S. Trustee, through the Assistant U.S. Trustee, Charles Tucker, also requested that Debtor be held in contempt of a previous order of this Court, as further described below. BOA appeared through its attorney Kimberly Burnette of Wilson & Associates, P.L.L.C. The Standing Chapter 13 Trustee, Joyce Bradley Babin, was also present. Debtor was not present. Because this action is before the Court on the U.S. Trustee's Motion, it is governed by Rules 9020 and 9014.¹

According to court files and records, this is Debtor's tenth bankruptcy case since 1998.² The

¹ All references to rules in this order pertain to the Federal Rules of Bankruptcy Procedure unless otherwise noted.

² As announced by the Court during the June 3, 2003 hearing, the Court takes judicial notice of all documents in Debtor's current case and previously filed bankruptcy petitions. *See* Fed.R.Evid. 201; *In re Henderson*, 197 B.R. 147, 156 (Bankr. N.D. Ala. 1996) ("The court may take judicial notice of its own orders and of records in a case before the court, and of documents filed in another court.") (citations omitted); *see also In re Penny*, 243 B.R. 720, 723 n.2 (Bankr.

following is a chronology of the bankruptcy filings by Debtor, all of which were under chapter 13 of the Bankruptcy Code:

<u>Case Number</u>	<u>Date Filed</u>	<u>Disposition</u>
1. 98-41351	03/17/98	Dismissed 07/16/99 for failure to make payments into plan
2. 99-45708	12/17/99	Dismissed 04/30/00 for failure to make payments into plan
3. 00-43171	07/24/00	Dismissed 08/30/00 for failure to file schedules and plan
4. 00-45712	12/12/00	Dismissed 01/4/01 for failure to file schedules
5. 01-42256	04/17/01	Dismissed 05/22/01 for failure to pay filing fee
6. 01-44832	08/28/01	Dismissed 10/11/01 for failure to pay filing fee
7. 02-11295	02/05/02	Dismissed 03/20/02 for failure to pay filing fee
8. 02-17778	07/16/02	Dismissed 08/27/02 for failure to pay filing fee
9. 02-23337	11/19/02	Dismissed 01/30/03 for cause and with prejudice

In the order dismissing Debtor's ninth bankruptcy petition, the Court found that Debtor's repeated filings demonstrated an abuse of the bankruptcy process, as well as an inability and a lack of intent to reorganize. The Court barred Debtor from receiving a discharge of any debts that were included or should have been included in her bankruptcy schedules accompanying her ninth filing. The Court also barred Debtor from filing another case under the Bankruptcy Code for a period of two (2) years from the date of the entry of the dismissal order. That order was entered on January 30, 2003. Debtor was served a copy of that order by first class mail on February 1, 2003. Despite the bar to refiling another petition under the Bankruptcy Code, Debtor filed the instant bankruptcy case

W.D. Ark. 2000).

on April 29, 2003, minutes prior to the completion of a foreclosure sale on her property.³

This Court has the power to enforce its own orders through criminal contempt proceedings. *See Brown v. Ramsey (In re Ragar)*, 3 F.3d 1174 (8th Cir. 1993); 11 U.S.C. § 105(a); 18 U.S.C. § 401(3). *See also In re Swaffar*, 253 B.R. 441 (E.D. Ark. 2000). Criminal contempt proceedings are appropriate to punish the alleged contemnor and to vindicate the Court's authority. *See United States v. United Mine Workers*, 330 U.S. 258, 302-03 (1947) (citation omitted). Prior to a finding that Debtor is in contempt of the Court's January 30, 2003 Order, it must be proven beyond a reasonable doubt that (1) there was a violation by Debtor (2) of a clear and reasonably specific Order of this court, and (3) the violation was willful. *In re Downing*, 195 B.R. 870, 875 (Bankr. D. Md. 1996) (citations omitted); 18 U.S.C. § 401(3). *See also Wright v. Nichols*, 80 F.3d 1248, 1251 (8th Cir. 1996). In a contempt hearing, Debtor is entitled to the presumption of innocence, proof beyond a reasonable doubt, and "all the protections afforded those accused of a crime." *American Chem. Works Co. v. International Nickel, Inc. (In re American Chem. Works Co.)*, 235 B.R. 216, 221 (Bankr. D. R.I. 1999) (citation omitted).

Contempt of court can be considered serious or petty, depending on the sanction imposed on the contemnor. *See Lucre Mgmt. Group, LLC v. Schempp Real Estate, LLC (In re Lucre Management Group, LLC)*, 288 B.R. 579, 582-83 (D.Colo. 2003) (citations omitted); *In re Caramco, Inc.*, 103 B.R. 113, 117 (W.D.N.C. 1989). Given the circumstances in this case, the Court considers the contempt alleged to be petty. Accordingly, no term of imprisonment, if any, imposed

³ The Court entered a separate Order Granting Motion for Retroactive Annulment of the Automatic Stay and for Ratification of Foreclosure Sale on July 3, 2003, which details the facts surrounding Debtor's latest bankruptcy filing. *See In re Webb*, ___ B.R. ___, 2003 WL 21513200 (Bankr. E.D. Ark. 2003). This opinion is also available at <http://www.arb.uscourts.gov/orders/opinions/evans2.htm>

on Debtor will exceed thirty (30) days and no fine, if any, imposed on Debtor will exceed five thousand dollars (\$5,000), nor will Debtor have a right to trial by jury. *See Lucre Management Group, LLC*, 288 B.R. at 582-83; *Caramco*, 103 B.R. at 117.

The Court requests that the Office of United States Attorney for the Eastern District of Arkansas (“**U.S. Attorney**”) prosecute this alleged contempt. FED. R. CRIM. P. 42(a)(2). If the U.S. Attorney declines to prosecute, the Court will appoint another attorney to prosecute the alleged contempt. The Court urges Debtor to seek representation by an attorney in this matter.

Accordingly, it is hereby

ORDERED that a hearing will be scheduled by a subsequent order and that such hearing will be held at the United States Bankruptcy Courthouse, 300 West Second Street, Little Rock, Arkansas. Debtor Mildred A. Webb is directed to appear at the hearing to be scheduled and show cause why she should not be held in criminal contempt of the Court’s January 30, 2003 Order. It is also

ORDERED that the United States Marshal for the Eastern District of Arkansas or one of his deputies serve a copy of this Order to Show Cause personally on Debtor.

IT IS SO ORDERED.



HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: July 8, 2003

cc:

Mildred A. Webb, *pro se* Debtor (via U.S. Marshal at home and work)
Kimberly Burnett, attorney for Bank of America Mortgage
Charles Tucker, Assistant U.S. Trustee
Joyce Bradley Babin, Standing Chapter 13 Trustee
United States Trustee
H.E. (Bud) Cummins, United States Attorney for the Eastern District of Arkansas