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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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In re: Anita Kramer Meshkatal,

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No. CV-08-1155-PHX-DGC

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Debtor/Appellant,

)

No. 2:07-bk-05071-PHX-JMM

No. BAP-AZ-08-1130

11

vs.

)

ORDER

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Fidelity Express Network, Inc.; and
Fidelity National Financial, Inc.,

)

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Appellees.

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Appellant Anita Meshkatal appeals from an order dismissing her chapter 11
bankruptcy case. Dkt. #7. Appellant’s husband, Farid Meshkatal, has joined the appeal.
Dkt. #9. Appellees Fidelity Express Network, Inc. and Fidelity National Financial, Inc. have
elected not to file a response. Dkt. #13. For reasons stated below, the Court will affirm the
order of dismissal.¹

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I. Background.

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WWAS Holdings, Pty, Ltd. (“WWAS”) sought to foreclose on a deed of trust against
the Meshkatal’s primary residence located in Paradise Valley, Arizona. Dkt. #7 at 5. The
foreclosure proceedings were automatically stayed on August 31, 2007, when Mr. Meshkatal
filed a chapter 11 bankruptcy petition. No. 2:07-bk-04382-RJH, Dkt. #1. The petition was
dismissed on September 7, 2007. *Id.*, Dkt. #11.

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¹The request for oral argument is denied because the Meshkatal’s have thoroughly
discussed the law and evidence and oral argument will not aid the Court’s decision. *See*
Mahon v. Credit Bur. of Placer County, Inc., 171 F.3d 1197, 1200 (9th Cir. 1999).

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1 One month later, Appellant filed a chapter 11 bankruptcy petition. No. 2:07-bk-
2 05071-JMM, Dkt. #1. WWAS filed a motion to lift the automatic stay. *Id.*, Dkt. ##44.
3 United States Bankruptcy Judge James Marlar granted the motion on April 9, 2008. *Id.*,
4 Dkt. ##119-20.

5 Appellees, who have a \$13 million judgment against the Meshkatais (*see id.*, Dkt. #44,
6 Ex A at 3), filed a motion to dismiss the bankruptcy case for cause. *Id.*, Dkt. #137. Judge
7 Marlar issued an order granting the motion on May 6, 2008. *Id.*, Dkt. #147. The order
8 contains the following provision:

9 If the Debtor and/or her husband, Farid Meshkatai, file any future
10 petition for relief under any chapter of title 11 of the United States Code, then:
11 (i) the venue for the filing of such petition shall be the United States
12 Bankruptcy Court for the District of Arizona; (ii) if the petition is filed in any
13 other district, then the venue of such case shall be transferred to the United
14 States Bankruptcy Court for the District of Arizona; and (iii) without further
15 Order, the Clerk of the United States Bankruptcy Court for the District of
16 Arizona immediately shall assign such case to the Honorable James M. Marlar
17 for all proceedings.

18 *Id.* ¶ 2. The Meshkatais challenge this provision. Dkt. #155; No. CV-08-1155, Dkt. ##7, 9.

19 **II. Standard of Review.**

20 Under 11 U.S.C. § 105(a), bankruptcy courts “may issue any order, process, or
21 judgment that is necessary or appropriate to carry out the provisions of [title 11].” *See In re*
22 *Hessinger & Assocs.*, 192 B.R. 211, 216 (N.D. Cal. 1996). In ruling that future bankruptcy
23 filings by the Meshkatais are to be assigned to him, Judge Marlar presumably relied on the
24 equitable power granted him under § 105(a). *See* Dkt. #7 at 4. Courts “review final rulings
25 on § 105(a) injunctions for an abuse of discretion.” *In re First Alliance Mortgage*, 264 B.R.
26 634, 644 (C.D. Cal. 2001); *see In re Reinertson*, 241 B.R. 451, 454 (9th Cir. BAP 1999).
27 ““A court abuses its discretion when it bases its decision on an erroneous conclusion of law
28 or when the record contains no evidence on which it could rationally base its decision.””
In re Sierra Fin. Servs., Inc., 290 B.R. 718, 726 (9th Cir. BAP 2002) (citation omitted).

29 **III. Appellant.**

30 Appellant does not dispute that where a bankruptcy petition is filed in bad faith, the
31 bankruptcy judge has authority to order that all of the debtor’s future bankruptcy filings be

1 assigned to him. Appellant contends that Judge Marlar abused his discretion, however,
2 because his finding that Appellant “failed to ratchet down her standard of living” after filing
3 bankruptcy “does not equate to egregious conduct and there is nothing in the record to
4 support the life-time requirement to be bound by venue in the District of Arizona, let alone
5 one particular Judge.” Dkt. #37 at 10.

6 The Court disagrees. In granting WWAS’ motion for relief from the automatic stay,
7 Judge Marlar specifically found that Appellant’s bankruptcy filing was a transparent attempt
8 to stall the foreclosure proceedings without payment to WWAS and that such cases are
9 “subject to dismissal as bad-faith filings[.]” No. 2:07-bk-05071-JMM, Dkt. #119 at 3.
10 Judge Marlar also found that Appellant maintained a “pampered and self-indulgent lifestyle”
11 that “does not appear conducive to the ‘belt-tightening’ expected of most debtors.” *Id.*

12 Those findings are supported by the record. Appellant’s proposed bankruptcy plan
13 was not effective in part because she is unemployed and her “sole income comes from
14 unidentified trusts or funds sent to her by her husband from mysterious or undisclosed
15 sources.” *Id.* at 2-4 & n.1. In February 2008, Appellant received \$27,000 in income and
16 spent nearly the entire amount on such things as a nanny and a personal trainer, shopping
17 trips to department stores, landscape and pool maintenance, computer, cable, and cell phone
18 expenses for herself and her children, and pet expenses. *Id.*, Dkt. #119 at 2-3; Dkt. #80. The
19 following month’s expenses totaled nearly \$29,000, including ski vacations, yoga classes,
20 pedicures, and garden services. *Id.*, Dkt. #135. Notably, Appellant acknowledges that
21 despite her substantial monthly income, she filed bankruptcy for the sole purpose of stopping
22 WWAS’ foreclosure proceedings. *Id.*, Dkt. 44 at 3-5; No. CV-08-1155, Dkt. #7 at 5, ¶ 2.

23 “The Bankruptcy Code was created for the honest debtor.” *In re Yimam*, 214 B.R.
24 463, 466 (Bankr. D. Md. 1997). Because the record supports the finding that Appellant filed
25 bankruptcy in bad faith, Judge Marlar did not abuse his discretion by requiring that all of
26 Appellant’s future bankruptcy filings be assigned to him.

27 Appellant contends that she was not given an opportunity to voice her concerns about
28 the requirement. No. CV-08-1155, Dkt. #7 at 9. The record shows, however, that Appellant

1 filed a written objection to the requirement and submitted a proposed order of dismissal. *See*
2 No. 2:07-bk-05071-JMM, Dkt. ##143-44. Judge Marlar rejected Appellant’s proposed order
3 in favor of the one submitted by Appellees. *Id.*, Dkt. ##142, 147. While Appellant may
4 disagree with that decision, she was not denied an opportunity to object.

5 **IV. Farid Meshkatali.**

6 Mr. Meshkatali contends that by including him in the order of dismissal Judge Marlar
7 exceeded his jurisdiction and denied Mr. Meshkatali due process. Dkt. #9 at 10-15.
8 Mr. Meshkatali does not dispute that he had notice of his wife’s bankruptcy proceedings.
9 Nor does he dispute that only months before his wife’s bankruptcy case was filed, he filed
10 bankruptcy in this District for the sole purpose of thwarting WWAS’ foreclosure effort. *See*
11 *id.*, Dkt. #44 at 7.

12 When debtors “have filed tag-team bankruptcies in order to avoid [a creditor’s]
13 legitimate efforts to recover [its] collateral,” the “multiple filings are evidence of bad faith
14 and evidence of the fact that the [debtors] are abusing the bankruptcy process.” *In re Price*,
15 304 B.R. 769, 773 (Bankr. N.D. Ohio 2004); *see In re McCray*, 342 B.R. 668, 670 (Bankr.
16 D.D.C. 2006); *In re Copeland*, 268 B.R. 273, 278 (Bankr. D. Kan. 2001); *In re Kinney*, 51
17 B.R. 840, 844-45 (Bankr. C.D. Cal. 1985). Judge Marlar specifically found that the
18 Meshkatalis’ successive bankruptcy filings were “just gamesmanship.” No. 2:07-bk-05071-
19 JMM, Dkt. #44, Ex. A at 9.

20 Under § 105(a) of the Bankruptcy Code, Judge Marlar had both “the power and the
21 duty to implement an appropriate order to prevent the continuing abuse of the bankruptcy
22 process by the [Meshkatalis].” *In re Yimam*, 214 B.R. at 466. The Court concludes that
23 Judge Marlar did not commit legal error or otherwise abuse his discretion by ordering that
24 future bankruptcies by Mr. Meshkatali be assigned to him. *See In re Kinney*, 51 B.R. at 845
25 (where multiple bankruptcies were filed by different members of the Kinney family in order
26 to avoid foreclosure “the actions of each family member [would] be imputed to the rest of
27 the family due to the unity of interest and concert of action”); *In re McCray*, 342 B.R. at 670
28 (barring any further bankruptcy by the debtor or her husband from giving rise to an automatic

1 stay against foreclosure proceedings where the McCrays' successive filings were in bad
2 faith); *In re Roeben*, 294 B.R. 840, 848-49 (Bankr. E.D. Ark. 2003) (finding that the debtor
3 and her spouse acted in concert and charging the spouse with constructive knowledge of the
4 bankruptcy proceedings where they previously had filed multiple bankruptcies to avoid
5 foreclosure); *In re Allnutt*, 220 B.R. 871, 890 (Bankr. D. Md. 1998) (permanently enjoining
6 debtor and his spouse from contesting the validity of estate sales).

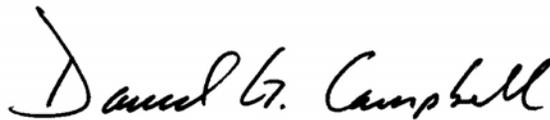
7 **V. Conclusion.**

8 Judge Marlar did not bar the Meshkatais from filing bankruptcy in the future. He
9 ordered that any such cases be assigned to him. Judge Marlar had the authority to impose
10 that restriction under 11 U.S.C. § 105(a), and his decision to impose it was not an abuse of
11 discretion given the evidence of bad faith on the part of the Meshkatais. The Court will
12 affirm the order of dismissal. *See* Fed. R. Bankr. P. 8013. If the Meshkatais file bankruptcy
13 in the future and believe that the case should be transferred from this District or that Judge
14 Marlar should recuse himself, they may file motions seeking such relief.

15 **IT IS ORDERED:**

- 16 1. Judge Marlar's order of dismissal (No. 2:07-bk-05071-JMM, Dkt. #47) is
17 **affirmed.**
18 2. The Clerk is directed to terminate this case.

19 DATED this 16th day of December, 2008.

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David G. Campbell
24 United States District Judge
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