

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

| | | |
|-----------------------|---|--------------------------|
| In re |) | CASE NO., 24-00383-5-DMW |
| |) | CHAPTER 13 |
| PHILIP EMIABATA |) | |
| SYLVIA EMIABATA |) | |
| Plaintiff/Debtors |) | |
| v. |) | |
| DAVID M. WARREN |) | |
| U.S. BANKRUPTCY JUDGE |) | February 9, 2024 |
| Petitioner |) | |

FILED

FEB 20 2024

STEPHANIE J. BUTLER, CLERK
U.S. BANKRUPTCY COURT
EASTERN DISTRICT OF NC

**PLAINTIFF/DEBTORS NOTICE OF APPEAL TO THE UNITED STATES DISTRICT
COURT FOR EASTERN DISTRICT OF NORTH CAROLINA RALEIGH DIVISION
ORDERS DATED February 7, 2024., BY U.S. Bankruptcy Judge David M. Warren**

Plaintiff/Debtors Philip and Sylvia Emiabata, ("PLAINTIFF-APPELLANTS")) in here appeal the orders of **Judge David M. Warren**. Plaintiff-Appellants elect to have their appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel, for the following reasons

(a) Order dated February 7, 2024, Doc. 13, Order Dismissed Plaintiff/Debtors Voluntary Petition with prejudice and Impose Addition Bar on Re-Filing. Without due process et al.

In here basically, following reasons Plaintiff-Appellants appeal the Order

1. **Bias:** Characters assassination of Plaintiff-Appellants, by the Honorable Judge inside the court, and one-sided, which is prejudices to Plaintiff-Appellants
2. **Error:** Conflicting statements, unreasonable rulings

rc'd by Dist Court 2/14/2024

3. Violation General Order of Reference entered on August 3, 1984 by the United States District Court for the Eastern District of North Carolina.

4. **Error:** Ignoring and suppressing evidence; and facts in light most favorable to the plaintiff-appellants

5. **Contrary ruling(s) to Supreme Court Law:** Federal Rules of Civil Procedure/Federal Rules of Bankruptcy Procedure and case law

6. **No Fair Due Process:** in violation of Federal Rule of Civil Procedure. . . etc.

7. **Obstructive-Interference:** with Plaintiff-Appellant case and prima facies claims

8. **Direct prejudicial action/statements:** in this case and this case is prematurely dismissed By violating 28 U.S.C. § 157(b)(2) **which the court has the authority to hear and determine pursuant to 28 U. S. C. § 157(b)(1).** . . NO DUE PROCESS.

9. Interfering with Plaintiffs-Appellants Constitutional and Civil Right to seek redress in a Court of law.

10. Open Abuse of Discretion.

11. Egregiously Granting Motion To Dismiss without Facts Finding, hence given Plaintiff-Appellants Two houses to the Tortfeasors Creditor who unlawfully taking Plaintiff-Appellants properties without, Bare Minimum Compensation to Plaintiff-Appellants et al.

Plaintiff-Appellants appeal the following order to United States District Court Judge's:

All Order's that denied Plaintiff-Appellants ("Debtors") motions as seen in the Bankruptcy Court Proceeding Docket., here in-incorporation with reference.

Respectfully submitted

Pro se Plaintiffs-Appellants:

(1) PHILIP EMIABATA.....

(2) SYLVIA EMIABATA.....

2940 Market St NE 408 Washington, DC 20018. Telephone 203-610-9605 et al.

Email Address: philipemiabata@yahoo.com

FeeDueINST, FinMgmt, RepeatPACER, DISMISSED, RefilingBar, FeeDue

U.S. Bankruptcy Court
Eastern District of North Carolina
OTHER DIVISION
Bankruptcy Petition #: 24-00383-5-DMW

Assigned to: Judge David M. Warren
Chapter 13
Voluntary
Asset

Date filed: 02/06/2024
Debtor dismissed: 02/07/2024
Joint debtor dismissed: 02/07/2024
341 meeting: 03/07/2024

Debtor disposition: Dismissed for Other Reason
Joint debtor disposition: Dismissed for Other Reason

Debtor
Sylvia N Emiabata
857 Post Road #139
Fairfield, CT 06824
FAIRFIELD-CT
(203)610-9605
SSN / ITIN: xxx-xx-6781
Tax ID / EIN: 97-4289043
dba Philema Brothers

represented by **Sylvia N Emiabata**
PRO SE

Joint Debtor
Philip O. Emiabata
857 Post Road #139
Fairfield, CT 06824
FAIRFIELD-CT
(512)791-2395
SSN / ITIN: xxx-xx-5591
Tax ID / EIN: 97-4289043
aka Phil Osacar Emiabata
dba Philema Brothers

represented by **Philip O. Emiabata**
PRO SE

Trustee
Michael Burnett
Office of the Chapter 13 Trustee
P.O. Box 61039
Raleigh, NC 27661-1039
919-876-1355

| Filing Date | # | Docket Text |
|-------------|----------------------|----------------------------------------------------------------------------------------------------------------------------|
| 02/06/2024 | <u>1</u> (13 pgs) | Chapter 13 Voluntary Petition filed by Sylvia N Emiabata, Philip O. Emiabata (Felder-Campbell, Jade) (Entered: 02/06/2024) |



SO ORDERED.

SIGNED this 7 day of February, 2024.

A handwritten signature in cursive script, reading "David M. Warren".

David M. Warren
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION**

IN RE:

CASE NO. 24-00383-5-DMW

**SYLVIA N. EMIABATA
PHILIP O. EMIABATA**

CHAPTER 13

DEBTORS

ORDER DISMISSING CASE *NUNC PRO TUNC* WITH PREJUDICE

This matter comes before the court *sua sponte* upon the Voluntary Petition for Individuals Filing for Bankruptcy ("Petition") filed by Sylvia N. Emiabata and Philip O. Emiabata ("Debtors") on February 6, 2024. Based upon the filed case information in this and other federal districts, the court makes the following findings of fact and conclusions of law:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) which the court has the authority to hear and determine pursuant to 28 U.S.C. § 157(b)(1). The court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157(a) and 1334 and the General Order of Reference entered on August 3, 1984 by the United States District Court for the Eastern District of North Carolina.

2. The Debtors filed the Petition to seek relief under Chapter 13 of the United States Bankruptcy Code. The Petition is at least the eighteenth petition filed by either one or both of the Debtors in various federal districts, with all prior petitions having been dismissed for cause.

3. The Petition is the Debtors' first filing in this district, and venue does not appear to be proper under 28 U.S.C. § 1408. The Petition reflects that the Debtors share a mailing address in Connecticut, the female Debtor has a physical address in Texas, and the male Debtor has a physical address in Washington, D.C.

4. On June 23, 2023, the United States Bankruptcy Court for the District of Columbia ("D.C. Court") entered an Order Granting Motion to Dismiss with Prejudice for Four Years ("D.C. Dismissal Order"), which dismissed a Chapter 13 case filed by the male Debtor and barred him from filing a petition within any federal jurisdiction for a period of four years from the date of the D.C. Dismissal Order. *In re Emiabata*, No. 23-00090-ELG, ECF 30 (Bankr. D.D.C. June 23, 2023).¹

5. On November 1, 2023, the United States Bankruptcy Court for the District of Delaware entered an Order ("Delaware Dismissal Order"), which dismissed a Chapter 13 case filed by the Debtors as being in violation of the D.C. Dismissal Order and barred the Debtors from filing a petition within any federal jurisdiction for a period of four years from the date of the Delaware Dismissal Order. *In re Emiabata*, No. 23-11654-BLS, ECF 22 (Bankr. D. Del. Nov. 1, 2023). Specifically, the Delaware Dismissal Order orders "that should the Debtor [sic] file a bankruptcy petition, in any District, in violation of this Order, the automatic stay of 11 U.S.C. § 362 shall not go into effect and such filing shall be deemed a nullity." *Id.* at 2.

¹ The D.C. Court denied two requests made by the male Debtor for reconsideration of the D.C. Dismissal Order. See *In re Emiabata*, No. 23-00090-ELG, ECF 46 (Bankr. D.D.C. Sept. 15, 2023); *In re Emiabata*, No. 23-00090-ELG, ECF 51 (Bankr. D.D.C. Oct. 20, 2023).

6. The Debtors filed the Petition in violation of the D.C. Dismissal Order and the Delaware Dismissal Order; therefore, the Petition is a nullity and is subject to dismissal *nunc pro tunc* to the date of the Petition. *See Casse v. Key Bank Nat'l Assoc'n (In re Casse)*, 198 F.3d 327, 342 (2nd Cir. 1999) (finding that bankruptcy court may treat a petition filed in violation of a ban as void *ab initio*). The case should be dismissed with an extension of the prohibition of future bankruptcy filings by the Debtors; now therefore,

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. This case be, and hereby is, dismissed *nunc pro tunc* to February 6, 2024 with prejudice to the Debtors being able to file a bankruptcy petition under any chapter of the United States Bankruptcy Code in any federal district for a period of five years from the date of this Order; and

2. If either of the Debtors files a subsequent bankruptcy petition in violation of this Order, then the court may hold that Debtor in contempt and impose sanctions including, but not limited to, directing the United States Marshals Service to locate, arrest, and detain in custody that Debtor and produce him or her before the court to explain the repeated failure to comply with orders of this and other bankruptcy courts.

END OF DOCUMENT