SO ORDERED.

SIGNED this 12 day of October, 2021.

Austin E. Carter
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

In re:	)	
	)	Case No. 21-10184-AEC
Stacy L. Heard,	)	
	)	Chapter 12
Debtor.	)	
	)	

ORDER ON DEBTOR'S MOTION TO CONTINUE CONFIRMATION HEARING AND FIRST STATE BANK OF BLAKELY'S MOTION TO DISMISS

Before the Court is the Debtor's *Amended Motion to Continue Confirmation Hearing* (Doc. 71), which is objected to (Doc. 67) by First State Bank of Blakely (the "Bank"). As a further response, the Bank filed a *Motion to Dismiss* this bankruptcy case (Doc. 68). Both matters came on for hearing on August 18, 2021. The Debtor testified at the hearing.

I. Findings of Fact.[1]

A. *Previous Case*

The Debtor filed his previous Chapter 12 petition on February 18, 2019 (Case No. 19-10187). Included among the Debtor's assets are 652.45 acres in Miller

[1] To the extent any of the Court's findings of fact constitute conclusions of law, they are adopted as such. To the extent any conclusions of law constitute findings of fact, they are so adopted.

County (the "Miller Property" or the "Property"), which serves as a portion of the collateral for his obligations to the Bank. In his Schedules, the Debtor listed the Miller Property as having a combined total value of $983,095 (87.45 acres valued at $105,597; 565 acres valued at $877,498) (Doc. 11 at 1–2). The Debtor filed his initial Chapter 12 Plan on June 21, 2019 (Doc. 32). The value of the Miller Property is listed at the same value shown in his Schedules, $983,095 (*Id.* at 8).

In February 2020, the Debtor filed his First Amended Plan (Doc. 74). As stated in that amended plan, the value of the Miller Property increased to $1,267,066 (*Id.* at 7). The Debtor also amended his Schedule A/B to reflect this change in value of the Miller Property (Doc. 77 at 3). In March 2020, the Debtor filed his Second Amended Plan, in which the value of the Miller Property remained set at $1,267,066 (Doc. 85 at 7).

The Court held a valuation hearing (on Debtor's motion at Doc. 80) on September 3, 2020.[2] At the hearing, the Court heard the testimony of the Bank's appraiser, James E. Cook, the Debtor's appraiser, Starla Penela, and the Debtor himself. Cook testified that that Miller Property was worth $2,285,000. Penela valued the Property at $1,264,000. Both the Debtor and Penela testified at length about the condition of the Property, including the particularly of its different soil types, wet conditions, and unusable areas. The Court entered an order setting the value of the Miller Property (for the purposes of the Debtor's plan) at $2,183,500, on September 11, 2020 (Doc. 125), after announcing the rationale for that decision orally.[3]

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[2] The valuation hearing was originally scheduled for April 9, 2020. Due to the COVID-19 pandemic, the Court entered administrative orders that limited the ability to conduct in-person hearings for an extended period of time. Many of the delays in the Debtor's previous case can be attributed to the pandemic.

[3] The Court announced that, although it found Cook's testimony more persuasive than Penela's, it was discounting by $101,500 the value arrived at by Cook, due to the testimony of the Debtor and, to a lesser degree, Penela, as to the nature and characteristics of the Property, including its wet, unusable areas.

The Debtor filed his Third Amended Plan in October 2020 (Doc. 131), in which he listed the value of the Miller Property at the same value set by the Court's order, $2,183,500 (*Id.* at 7). In November 2020, the Debtor filed his Fourth Amended Plan (Doc. 137), with the Miller Property still valued at the amount set by the Court (*Id.* at 7). In this Plan, the Debtor proposed a partial surrender of the Miller Property: 472.5 acres, with a fair market value of $1,621,000 (*Id.*).

The confirmation hearing was held on December 3, 2020. The Court declared that it would confirm the Plan based on the announced terms of an agreement that resolved the Bank's objection, along with a proffer of evidence from the Debtor. On January 5, 2021, the Court held a telephonic "final disposition" hearing because no confirmation order been uploaded to the Court's electronic filing system. At that hearing, it was reported that the Debtor was refusing to sign, and had backed out of, the announced agreement with the Bank and had dismissed his counsel, Lawton Heard, via email on December 28, 2020. In response to that communication, Heard filed a Motion to Withdraw as debtor's counsel (Doc. 146).

Subsequently, the Bank filed a Motion to Enforce an Agreement (Doc. 151), and the Debtor filed an Emergency Motion to Voluntarily Dismiss Case (Doc. 170). The Court held a hearing on these motions on February 3, 2021. On that same date, the Debtor withdrew his Fourth Amended Plan (Doc. 173). After the hearing, the Court entered an order granting the Debtor's motion to dismiss due to binding Eleventh Circuit precedent. *See Cotton v. Bank South, N.A. (In re Cotton)*, 992 F.2d 311 (11th Cir. 1993) (holding that debtor had right to immediate dismissal under section 1208(b) and that, upon his request for dismissal, bankruptcy court lost jurisdiction over any controversy between debtor and creditor bank, including whether settlement agreement was enforceable). The dismissal order was entered on February 8, 2021 (Doc. 177).

B. *Current Case*

On March 5, 2021, the Bank sent to the Debtor a notice of default and notice of foreclosure sale to be conducted on April 6, 2021.[4] The collateral scheduled for foreclosure includes the Miller Property. To stop the foreclosure, the Debtor filed this case on March 24, 2021. In his Schedules, the Debtor values the Miller Property at a combined total amount of $983,095 (87.45 acres valued at $105,597; 565 acres valued at $877,498) (Doc. 19 at 1–2). This is the same value the Debtor listed for the Miller Property in the Schedules filed in his previous case.

On May 13, 2021 (seven weeks after filing this case), the Debtor filed an application to employ Penela as an appraiser. (Doc. 39). The Court's order approving the employment was entered on May 21, 2021 (Doc. 46). On June 16, 2021, the Debtor's counsel advised the Bank's counsel in an email that she was "getting the motion for valuation and plan ready to file next week." (Doc. 67 at 6; Doc. 48 at 41).[5] Debtor's counsel also stated in that email that she was "waiting to see what [Penela] came up with" and that she would contact the Bank's counsel once she received Penela's appraisal. (*Id.*).

The following week, on June 22, 2021, the Debtor filed his Chapter 12 Plan (Doc. 54).[6] In his Plan, the Debtor values the Miller Property at $1,108,064 (*Id.* at 8).[7] At the hearing, the Debtor testified that this amount is the County's appraised tax value for the Property.

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[4] A copy of the foreclosure notice was attached to the Bank's Motion to Dismiss. (Doc. 68 at 8–10). Although a copy of the notice was not admitted into evidence, the Debtor's counsel acknowledged it during the hearing.

[5] At the hearing, Debtor's counsel agreed to the authenticity of the June 16 email.

[6] June 22, 2021 was the last day available for the Debtor's filing of a plan under 11 U.S.C. § 1221.

[7] The Plan also sets the value of the farm equipment at $60,000 (Doc. 54 at 7). The Debtor had previously valued this equipment at $118,550 in Schedule A/B (Doc. 19 at 11). In his previous case, the Debtor had consistently valued his farm equipment at $118,550 (*See* Case No. 19-10187; Docs. 11 at 10; 32 at 8; 74 at 7; 77 at 10; 85 at 7; 131 at 7; 137 at 7).

The Plan bifurcates the Bank's total real estate-based claim of $2,804,985.95, with a secured claim of $1,265,350 and an unsecured claim of $1,539,635.95 (*Id.*).[8] For the secured claim, the Plan provides for annual installment payments of $93,120.00, including 4% interest per annum, for an amortized twenty-year term beginning on January 15, 2022 (*Id.*). For the unsecured claim, the Plan merely calls for payments made "from time to time . . . as Debtor's disposable [i]ncome permits." (*Id.* at 10).

On June 28, 2021, the Court entered an order scheduling the hearing on confirmation to occur on August 18, 2021 (Doc. 55).[9] On August 9, 2021, the Debtor filed his Motion to Continue the Confirmation Hearing, requesting a postponement from August 18 to an undetermined date in October, as well as to schedule a valuation hearing for some time in late September or early October (Doc. 66 at 1).

The Bank filed its objection to the Motion on the grounds, among others, that the Debtor's Motion was not filed for a legitimate purpose, but rather was filed in an improper effort to delay foreclosure (Doc. 67 at ¶ 11). On that same day, the Bank filed its Motion to Dismiss this case (Doc. 68). In its Motion, the Bank asserts that the value of the Miller Property was determined by Court order in the Debtor's previous Chapter 12 case and that such value is fixed by the doctrine of *res judicata* (*Id.* at ¶ 12).[10] The Bank argues that "cause" under 11 U.S.C. § 1112(b)[11] exists to the dismiss the case due to the Debtor's lack of good faith in filing his petition and

[8] The amount of the secured claim is based on the value the Debtor set for the Miller Property as well as 51.19 acres in Baker County (valued at $108,400) and 3.67 acres in Calhoun County (valued at $48,886) (Doc. 54 at 8). The Bank has raised no issue as to the valuation of the Baker or Calhoun County properties.

[9] This hearing was scheduled beyond the 45-day requirement of 11 U.S.C. § 1224, due to Court's calendar for Albany Division cases.

[10] The Bank also notes that it has received no payment from the Debtor since the filing of his previous case in February 2019, but no evidence was offered on this point and the Debtor did not stipulate thereto (*see* Doc. 68 at ¶ 17).

[11] All statutory references herein are to Title 11 of the United States Code (the "Bankruptcy Code") unless otherwise specified.

that he has "continued to act in bad faith by abusing the bankruptcy process and creating delays merely to avoid foreclosure." (*Id*. at ¶ 19).

On August 11, 2021, the Debtor filed an amended Motion to Continue the Confirmation Hearing (Doc. 71). In the amended Motion, the Debtor asserts the following reasons to continue the confirmation hearing: (1) Penela "is unable to timely complete the appraisal;" (2) as a result, the Debtor seeks to employ Lawrence Saucer to appraise the real estate, noting his experience in appraisals and testifying in bankruptcy court, and that he requires more time to conduct his appraisal which he plans to start on September 2, 2021; (3) the Debtor plans to hire Terry DeMott of DeMott Auction to complete an updated appraisal of equipment; and (4) due to these valuation issues, the case is not ready for confirmation (Doc. 71 at ¶ 2–5). Five days later, on August 16, 2021, the Debtor filed an application to employ Lawrence Saucer (Doc. 75).

At the hearing, the Debtor argued that the Court should continue the confirmation hearing because additional time was needed to complete a revised valuation of the Miller Property. The Debtor insists that recently obtained[12] drone footage, which shows aerial views of the property, and the testimony of a new appraiser would convince the Court that the wet, unusable areas on the property are so significant that the value should be considered less than the $2,183,500 found by the Court in September 2020 in the previous case.

As to the drone footage, the Debtor testified that this footage would show that the wet areas on the Miller County property remain flooded for longer periods of times than Cook testified to in the previous case and that such flooding is expanding into additional acreage. The Debtor also theorized that the cause of the flooding is from water reaching the surface from the aquifer, possibly due to years of

[12] Under cross examination, the Debtor testified that the drone footage was completed about two weeks prior to the date of the hearing.

over-irrigation, as opposed to rainwater. Regarding the need for a revised valuation of the property, the Debtor testified that he had only recently identified Saucer as a more-suitable appraiser than Penela. The Debtor further testified that, after filing this case, he first spoke to Penela in May or June 2021, and that she told him that she was not comfortable giving witness testimony at a hearing in this case.

The Bank argues that the Court should deny the requested continuance and that the case should be dismissed. The Debtor concedes that, if the requested continuance is denied, the Plan as currently presented cannot be confirmed.

II. Conclusions of Law.

A. There is not "cause" to extend the 45-day period for conclusion of confirmation hearing.

Under 11 U.S.C. § 1224, the hearing on confirmation of a plan must conclude not later than 45 days after the plan was filed, "[e]xcept for cause." The Debtor's Plan was filed on June 22, 2021. Forty-five days later occurred on August 6, 2021, but due to the Court's calendaring procedures (holding court in Albany Division cases only one period per month), the Court scheduled the confirmation hearing to occur on August 18, 2021.[13]

The Debtor's amended motion requests a continuance on the grounds that: (1) Penela is unable to timely complete the appraisal; (2) Saucer's employment be approved and time afforded him to complete his appraisal; and (3) the Debtor intends to hire an equipment appraiser.[14] The Debtor requests that the confirmation hearing be continued until October to allow these events to occur, and that a valuation hearing be held prior to confirmation.

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[13] In scheduling the confirmation hearing for August 18, 2021, the Court found "cause" to extend the 45-day period of § 1224, as the first available confirmation date was beyond the 45-day period. (*See* Doc. 55). This is customary in Albany Division cases, due to the Court's travel schedule and the lack of a bankruptcy judge with official duty station in Albany.

[14] At the hearing, the Debtor's counsel also represented that the Debtor had obtained some drone footage of the Miller Property and that the Debtor wanted time to present that footage to the Court as part of re-visiting the valuation of the Property.

As noted by Collier, "cause should be found only in unusual circumstances and extensions of the deadline should not be granted routinely." 8 *Collier on Bankr.* ¶ 1224.01[3] (16th ed. 2021). Collier further points out that legislative history explains that the purpose of the "cause" exception to the 45-day requirement is for the convenience of the court due to things such as case backlogs, although other types of "cause" may be shown. *Id.*

A similar set of circumstances took place in *In re Pertuset*, 492 B.R. 232 (Bankr. S.D. Ohio), aff'd, 485 B.R. 478 (B.A.P. 6th Cir. 2012). There, two chapter 12 debtors, whose previous chapter 12 case had been dismissed on a creditor's motion, filed a new case. At the confirmation hearing of this new, second case, the debtors moved for a continuance of the 45-day confirmation period under § 1224. The debtors argued that they needed additional time to take discovery, file motions concerning disputed claims, identify new witnesses and exhibits, and retain new counsel.

The court held that the debtors had not shown cause for the extension, and denied the motion to continue confirmation. Emphasizing the limited scope of the "cause" exception, the court noted that the debtors had already had ample time to take the actions for which they sought the extension. The court emphasized that the issues facing the debtors' reorganization were not new, but had been known since their previous bankruptcy case. *Id.* at 247-48.

Similarly, in *In re Thao*, No. 06-30019, 2006 WL 4449684 (Bankr. W.D. Mo. Oct. 19, 2006), the debtor sought an extension of the § 1224 confirmation deadline to allow time for resolution of the debtor's adversary proceeding against his largest secured creditor. Noting that the legislative history of § 1224 calls for use of the exception "sparingly," the court held that cause had not been shown. The court also noted the lack of urgency that accompanied the debtor's action in the case. *Id.* at *2 n.6. Other informative decisions include *In re Coleman*, No. 19-10093, 2019 WL

3288396 (Bankr. M.D.N.C. June 21, 2019) (court did not find cause where debtors sought extension of 45-day requirement so they could file amended plan and further establish income stream) and *In re Ryan*, 69 B.R. 598, 599 (Bankr. M.D. Fla. 1987) (proposed extension to afford debtors time to work out issues with creditors and possibly file amended plan did not constitute cause).

Here, the Debtor filed his plan on the 90th day after his case was filed, the last day allowed under § 1221. The Court already extended the § 1224 time period by 12 days, due to its internal scheduling procedures. Moreover, the Debtor has failed to act promptly: he filed this case on March 24, 2021, but did not contact Penela, the appraiser from the last case who he intended to use again, until May or June 2021. He did not file the application to employ Penela until May 13, 2021. After learning at that time that Penela was not willing to testify at a hearing, the Debtor did not file an application to employ an alternative appraiser (Saucer) until August 16, 2021. Even though the Debtor testified that he had trouble locating a suitable appraiser after learning of Penela's reluctance to testify, the Court believes that the Debtor has had ample time to have addressed the valuation issue, particularly since the Debtor was aware back in September 2020 that the valuation of the Miller Property was a significant issue he would need to address. Further, if the Debtor had trouble finding a replacement appraiser, then the motion to extend the time under § 1224 should have been filed long ago, rather than only 9 days before the scheduled confirmation hearing (and 48 days after the filing of his Plan).

The Debtor also urges that a continuance is needed so that a current appraisal can be obtained, as the two appraisal reports used in connection with the first bankruptcy case were outdated even as of the evidentiary hearing in that case.[15] However, the Court's valuation decision was based on testimony adduced

[15] The date of Cook's appraisal report is April 15, 2019; the date of Penela's is November 19, 2019. Valuation Hr'g, Sept. 3, 2020 (Case No. 19-10187; Sep. 3, 2020 Hrg. Exs. C1, D4).

and other evidence presented at that September 2020 hearing, and the Order (which was not appealed) concluded that the value was established for purposes of the Debtor's then-pending plan (Case No. 19-10187; Doc. 25). In other words, the Court's valuation was effective as of the date of testimony—September 2020—rather than the dates of the appraisal reports.[16] Moreover, the Debtor has offered no theory as to how the market value of the Property might have changed since the September 2020 valuation finding by the Court. Instead, the Debtor argues only that the Court's previous valuation is not accurate due to the wet and unusable areas of the Property.

The Court does not find cause to continue the confirmation hearing.

B. There is Cause to Dismiss Case.

1. *Bad Faith Filing*

The Bank urges the Court to dismiss this case for cause, under § 1208. Specifically, the Bank argues that the Court should find that the Debtor lacked good faith in filing this case, and is abusing the bankruptcy process and creating delays to avoid foreclosure by the Bank on the Miller Property and other collateral.

The filing of a petition in bad faith constitutes causes for dismissal under § 1208. *In re Betty Jean's Produce, LLC*, No. 05-61223, 2006 WL 6885809, at *2 (Bankr. S.D. Ga. Apr. 18, 2006) ("It is well established that the filing of a Chapter 12 case in bad faith may constitute sufficient cause for dismissal pursuant to Section 1208(c)."). In making this evaluation, a court must determine, "under the totality of circumstances present in the case, whether there has been an abuse of the provisions, purpose, or spirit of the Bankruptcy Code—the question being one of fundamental fairness." *In re Pertuset*, 492 B.R. 232, 255 (Bankr. S.D. Ohio), aff'd,

[16] If the Debtor had issue with the dates of the appraisers' reports, he could have objected on that ground at the September 3, 2020 valuation hearing in the prior case; he did not do so.

485 B.R. 478 (B.A.P. 6th Cir. 2012); *see also In re Carter*, 570 B.R. 500, 515 (Bankr. M.D.N.C. 2017) (court should "consider the debtor's motivations in filing, and to discern whether the debtor sought to abuse the reorganization process, to cause hardship, or to delay creditors by invoking the automatic stay without intent or ability to reorganize.") (citation omitted).

The Debtor argues that he filed the case in good faith, in part because the valuation of the Miller Property in his first bankruptcy case is not *res judicata* in this case. The Court agrees that the determination of value in the first case is not res judicata for purposes of this case. *See, e.g., Md. Nat. Indus. Fin. Corp. v. The Vacuum Cleaner Corp. of Amer. (In re Vacuum Cleaner Corp. of Amer.*, 33 B.R. 701, 704 (Bankr. E.D. Penn. 1983) ("[T]he determination of value is binding only for the purposes of the specific hearing and is not to have a *res judicata* effect.") (citation omitted). The Debtor suggests that, because he filed this second chapter 12 case, he is entitled to approach anew the valuation of the Miller Property.

A similar approach was taken by the debtors in In *In re Cabral*, No. 12-12050-A-12, 2012 WL 8441317 (Bankr. E.D. Calif. Oct. 10, 2012). There, two debtors filed a chapter 12 case, in which they had confirmed a plan that established a value of for the collateral of Bank of America ("BOA") that rendered its claims virtually fully secured.[17] At some time after confirmation, the debtors had problems making their plan payments, and voluntarily dismissed their case under § 1208(b). Approximately one month later, the debtors filed a new chapter 12 case, in which they hoped to accomplish goals different from their first case—rather than treat BOA's claims as fully secured, they intended to bifurcate BOA's claims and strip down its liens under § 506. The debtors filed their plan just before the 90-day

[17] The confirmed plan in the first case established a real property collateral value of 96 cents less than the full amount of BOA's associated claim, and a personal property collateral value of $3,000 less than BOA's associated claim. 2012 WL 8441317, at *7.

deadline of § 1221. Their new plan assigned a significantly lower value to BOA's collateral than as had been established in the first case, via plan confirmation. *Id.* at *6-11. BOA filed an objection to confirmation, along with a motion to dismiss the case as a bad faith filing.

The court recognized that, due to the dismissal of the first case, the parties were no longer bound by the terms of the confirmed plan in that case, including the valuation of BOA's collateral and resulting treatment of its claims. However, the court found that the second case was filed in bad faith, because the debtors (after dismissing their first case) filed it in order to accomplish something—the stripping down of BOA's lien—that they could not have accomplished in the previous case, due to the confirmed plan's providing fully secured treatment of BOA's liens. The court found that the debtors' voluntarily dismissing of the first case in order to file the second case with different treatment of BOA's claims was an improper attempt to manipulate the Bankruptcy Code. *Id.* at *8-11. The court's conclusion nicely summarizes its holding:

> The Debtors in the Second Case seek to value overencumbered collateral secured by the Bank's claims and to lien strip any of the Bank's undersecured claims accordingly. Since the Debtors in the First Case had already valued that collateral at confirmation of the First Plan, they would have been precluded from revaluing collateral by a later plan modification during the First Case based on principles of res judicata. And because res judicata would have acted as a bar to revaluation, their attempt to essentially do the same but in the Second Case—after exercising their absolute right to voluntarily dismiss the First Case—constitutes a manipulation of the Bankruptcy Code. Under the totality of the circumstances, the court finds that the Debtors' second petition was filed in bad faith. Such bad faith represents sufficient cause for dismissal. Therefore, the court will dismiss the Debtors' present chapter 12 case.

In re Cabral, 2012 WL 8441317, at *14.

The similarities between *Cabral* and this case are substantial. Like the debtors in *Cabral*, the Debtor in his first case was bound by a collateral valuation he considered unfavorable. Like the debtors in *Cabral*, the Debtor exercised his right to voluntarily dismiss his first case so that he could attempt a revaluation of the collateral in a new case. However, the Debtor has an aggravating factor that does not appear in *Cabral*—his first case was dismissed while facing a pending motion by the Bank to enforce a settlement agreement, which included use of the Miller Property valuation that the Debtor seeks to avoid. The Debtor dismissed his first case and filed the second in hopes of avoiding both the Property valuation and the potential enforcement of settlement agreement from the first case.[18]

Although the Debtor was aware of the problematic valuation by the Court of the Miller Property since September 2020, he did not contact an appraiser about the Property until May or June 2021, approximately two months or more *after* he filed this petition. Waiting until two months after a case is filed to even begin addressing what you know to be a stumbling block to your reorganization efforts cannot constitute good faith under these circumstances.

Moreover, the measure of whether a case is filed in good faith necessarily requires an assessment of circumstances *at the time the petition is filed*; later events should not be considered. As a result, even if the Court were persuaded by the Debtor's testimony as to his conversations with Penela or about the new drone footage, those events took place after the he filed his second case, and thus are not relevant to an assessment of whether the petition was filed in good faith. *See, e.g., In re Fazzary*, 530 B.R. 903, 906 (Bankr. M.D. Fla. 2015) ("In determining whether a bankruptcy petition was filed in bad faith, courts generally consider the totality of the circumstances surrounding the filing."); *Y.J. Sons & Co. v. Anemone, Inc. (In re*

[18] A second aggravating factor in this case is that the Debtor filed this case 13 days before a foreclosure sale for which the Bank had given notice.

Y.J. Sons & Co.), 212 B.R. 793, 801 (D.N.J. 1997) (determination of bad faith intent of debtor can be found "from the totality of the circumstances surrounding the filing of the case.").[19]

In addition, the Debtor overlooks the fact that, in arriving at the valuation decision in the prior case, the Court considered his testimony and that of Penela as to the wet, unusable areas of the Property. Indeed, in arriving at the Property valuation, the Court expressly stated that it was discounting Cook's valuation on account of such testimony.[20] Hr'g Announcing Order on Valuation of Real Property, Sept. 11, 2020 (Case No. 19-10187; Doc. 124 at 11:13:50 – 11:19:45 AM).

The Court, considering the totality of the circumstances, finds that the Debtor filed this case in bad faith.

The Debtor argues that he is entitled to a new valuation of the Miller Property because the relevant time for valuation of collateral is at the time of confirmation of a plan, which has not yet occurred in this case and which was (at the time of the hearing) 11 months after the Court's valuation of the Property in the prior case. The Court agrees that the relevant time for valuation of property for purposes of plan confirmation is at confirmation, but this principle does not save the Debtor from the Court's conclusion that he filed this case in bad faith, for the reasons stated.

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[19] Courts have also recognized that repeat filings (as the Debtor has done) are a factor to be considered. *See In re AMC Realty Corp.*, 270 B.R. 132, 141 (Bankr. S.D.N.Y. 2001) ("Another factor frequently considered has been whether the case sought to be dismissed in a repeat filing, and if so, the circumstances surrounding the second filing. . . . Repeat filing do not *per se* require dismissal, . . . but, particularly where they are not the consequence of changed circumstances, they warrant special scrutiny.").

[20] At the hearing on the instant Motions, counsel for the Debtor acknowledged that she had not listened to the Court's oral decision on valuation of the Miller Property in the previous case, despite the fact that it is readily available for listening through the Court's CourtSpeak program at no cost to registered ECF users, such as Debtor's counsel.

2. *Denial of Confirmation and Denial of Request for Additional Time.*

There exists a second grounds on which the Court finds cause to dismiss, under § 1208(c)(5), which provides that "cause" includes "denial of confirmation of a plan under section 1225 of this title and denial of a request made for additional time for filing another plan or a modification of a plan." 11 U.S.C. § 1208(c)(5). The Debtor concedes that his current plan cannot be confirmed at this time, and as noted above, the Court has denied the Debtor's request to extend the time for confirmation. The Debtor did not request time to file another plan or modification of his plan. As a result, the elements of § 1208(c)(5) are met. *See In re Pertuset*, 492 B.R. at 253 (court's denial of confirmation and refusal to continue confirmation hearing constitutes cause to dismiss under § 1208(c)(5)).

III. Conclusion.

For the foregoing reasons, the Court ORDERS:

1. The Debtor's Motion to Continue the Confirmation Hearing is DENIED; and
2. This case is DISMISSED.[21]

[END OF DOCUMENT]

[21] The dismissal of this case is without prejudice, but if the Debtor elects to file another case, he should consider the Court's ruling in this Order, in deciding what action to pursue in such case.