

8-30-07

UNITED STATES BANKRUPTCY COURT
 NORTHERN DISTRICT OF GEORGIA
 ATLANTA DIVISION

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|-------------------|---|-----------------------|
| IN RE: |) | CHAPTER 13 |
| |) | |
| JAMES E. THORNTON |) | CASE NO. 07-70002-MHM |
| |) | |
| Debtor |) | |

ORDER DENYING MOTION TO REIMPOSE AUTOMATIC STAY

This case commenced June 28, 2007. Debtor had one prior case that had been filed February 2, 2007, and dismissed April 30, 2007. On August 16, 2007, Debtor filed a motion to reimpose the automatic stay of 11 U.S.C. §362(a). Although the motion does not mention §362(c)(3), the undersigned assumes that Debtor believes the automatic stay terminated pursuant to that section 30 days after this case was filed.

Effective October 17, 2005, amendments to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") added provisions to 11 U.S.C. §362 to limit the application of the automatic stay in bankruptcy cases filed following one or more prior bankruptcy cases filed by the same debtor within the preceding twelve months. Specifically, if a debtor had one prior case pending within the preceding twelve months, §362(c)(3) provides:

- (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;
- (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing

completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed....

In the instant case, Debtor failed to satisfy the procedural requirements in §362(c)(3)(B); specifically, Debtor failed to file a motion and obtain a hearing on the motion within the applicable 30-day period. The failure to comply with the time limitations set forth in §362(c)(3) deprives debtors of the right to seek an uninterrupted extension of the automatic stay under that portion of the statute. *Whitaker v. Baxter*, 341 BR 336 (Bankr. S.D. Ga. 2006)(J. Dalis); *In re Reed*, Case No. G05-25051-REB [Dkt. 19] (Bankr. N.D. Ga., Feb. 28, 2006). Accordingly, Debtor is not entitled to relief under §362(c)(3).¹

¹ Debtor also does not mention §362(c)(4), which provides:

- (A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case;...
- (B) if, with 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;
- (C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect....

In the case of *In re Toro-Arcila*, 334 B.R. 224 ((Bankr. S.D. Tex. 2005), the court held that a debtor who failed to comply with the procedural requirements of §362(c)(3) could nevertheless obtain reimposition of the stay under §362(c)(4), even though only one prior case had been pending during the preceding 12 months. This court finds *Toro-Arcila* unpersuasive. Section 362(c)(4) is not available to a debtor who fails to comply with the procedural requirements of §362(c)(3). Accord *Whitaker v. Baxter*, 341 BR 336 (Bankr. S.D. Ga. 2006)(J. Dalis); *In re Reed*, Case No. G05-25051-REB [Dkt. 19] (Bankr. N.D. Ga., Feb. 28, 2006).

A significant line of cases holds, however, that §362(c)(3) applies to the debtor and property of the debtor but not to property of the estate; therefore, “reimposition” of the stay is unnecessary.² *In re Paschal*, 337 B.R. 274(Bankr. E.D. N.C. 2006) (J. Small); *In re Jones*, 339 B.R. 360 (Bankr. E.D. N.C. 2006); *In re Baldassaro*, 338 B.R. 178 (Bankr. D. N.H. 2/24/06); *In re Johnson*, 335 B.R. 805 (Bankr. W.D. Tenn. 2006); *In re Charles*, 332 B.R. 538 (Bankr. S.D. Tex. 2005); *In re Moon*, 2006 WL 787793 (Bankr. N.D. Ohio, March 28, 2006); *In re Moore*, 337 BR 79 (Bankr. E.D. N.C. 2005). *Jumpp v. Chase Home Finance LLC*, 356 B.R. 789(1st Cir. BAP 2006). The undersigned agrees. *In re Ajaka*, 2007WL 1856938 (Bankr. N.D. Ga. 2007). As §362(c)(3) does not apply to terminate the stay as to property of the estate, the relief debtor seeks is unnecessary. Accordingly, it is hereby

ORDERED that Debtor’s motion to reimpose the stay is denied as unnecessary.

IT IS SO ORDERED this 30th day of August, 2007.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

² In a Chapter 13 case, all Debtor’s property is property of the estate except Debtor’s exempt property and, under some circumstances, even exempt property may be subject to the bankruptcy court’s jurisdiction if it is also disposable income. *See Watters v. McRoberts*, 167 BR 146 (S.D. Ill. 1994); *Hagel v. Drummond*, 184 B.R. 793 (9th Cir. BAP 1995); *Stuart v. Koch*, 109 F. 3d 1285 (8th Cir.1997); *Freeman v. Schulman*, 86 F. 3d 478 (6th Cir. 1996); *In re Tolliver*, 257 B.R. 98 (Bankr. M.D. Fla. 2000).