

- 5 DEC 2005

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	)	CHAPTER 13
	)	
HERMAN LENORD VAUGHN,	)	CASE NO. 05-85295-MHM
	)	
Debtor.	)	

HERMAN LENORD VAUGHN,	)	
	)	
Movant,	)	CONTESTED MATTER
v.	)	
	)	
ANDY PIPKIN/ HENRY CO. TAX	)	
COMMISSIONER, AT & T,	)	
ATLANTA HEART ASSOCIATES, PC,	)	
GEORGIA DEPT. OF REVENUE,	)	
GMAC MORTGAGE,	)	
GMAC/JP MORGAN,	)	
GOLDMAN SACHS MORTGAGE	)	
COMPANY, HENRY MEDICAL	)	
CENTER, INTERNAL REVENUE	)	
SERVICE, JPMORGAN CHASE BANK,	)	
JEFFERSON CAPITAL SYSTEMS,	)	
NUVELL, SOUTHERN REGIONAL,	)	
and the assigns and successors of each	)	
named Respondent,	)	
	)	
Respondents.	)	

**ORDER GRANTING DEBTOR'S MOTION
TO CONTINUE AUTOMATIC STAY**

On November 1, 2005, Debtor filed this Chapter 13 case and on November 5, 2005, Debtor filed this motion for continuation of the automatic stay [docket #5]. Hearing on Debtor's motion to continue the stay was held November 17, 2005. Present were Debtor, Debtor's attorney

and the Chapter 13 Trustee. Debtor's testimony was presented. The following findings of fact are based upon the record and Debtor's testimony.

Debtor had filed a prior Chapter 13 case, Case No.05-73086-mhm (the "Prior Case") July 19, 2005. The Prior Case was dismissed October 6, 2005, as a result of the Chapter 13 Trustee's Objection seeking proof of postpetition mortgage payments.¹ Therefore, the present case represents the second filing within the preceding twelve month period.

Debtor testified that, during the Prior Case, he did not pay his postpetition mortgage payments as a result of the illness of his wife and the subsequent loss of the wife's income from August 4, 2005 through November 1, 2005. That loss of income meant that Debtor could not maintain both the Plan and mortgage payments.

Debtor seeks continuation of the automatic stay under 11 U.S.C. §362(c)(3)(B) as to all creditors and parties of interest until this case is closed. Section 362(c)(3) provides that the automatic stay of §362(a) will terminate 30 days after the date of filing if an individual debtor has been a debtor in a case under Chapters 7, 11, or 13 within the prior one-year period unless the stay is continued as provided in §362(c)(3)(B). Section 362(c)(3)(B) provides:

[O]n 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 latter case is in good faith as to the creditors to be stayed[.]

¹ During the Prior Case, mortgage creditor Goldman Sachs Mortgage Company filed a motion for relief and that motion was pending at the time the Prior Case was dismissed.

Continuation of the stay requires a showing based upon the four criteria for obtaining an injunction. The four criteria are: (1) the likelihood of success of the instant case; (2) the possibility of irreparable harm to the debtor if the automatic stay is not continued; (3) the balance of harm to the creditors if the automatic stay is continued; and (4) the extent to which the continuation of the automatic stay serves the public interest.

The Chapter 13 Trustee stated that as of the date of the hearing, Debtor is substantially current with his Plan payments. This case is to be funded by an employment deduction order. Therefore, likelihood of success for Debtor in this case is high.

The anticipated mortgage arrearage, which will be paid through the plan, is \$5,775. Debtor's residence would have been lost through foreclosure but for the automatic stay that resulted from the filing of this present Chapter 13 case. Thus, absent continuation of the stay, Debtor will suffer irreparable harm.

A determination and balancing of the possible harm to creditors if the stay is continued is not an amorphous analysis. It is based on an objective comparison of the loss and gain to each respective party. The loss to Debtor is obvious. Debtor would lose his home. The gain or loss to the mortgage creditor is even more easily quantifiable. If the stay is continued and Debtor's reorganization is successful, the mortgage creditor benefits by receipt of payments for any mortgage arrearage through Debtor's Plan and by the receipt of the regular postpetition mortgage payments directly from Debtor. The mortgage creditor will be compensated for the time value of its funds by the continuation of contractual interest. The mortgage creditor retains its lien and retains the right to pursue any postpetition default by the filing of a motion for relief from the stay.

All other creditors and parties of interest benefit by Debtor's interest in protecting his home, which requires Debtor to continue payments under the Plan which, in turn, are disbursed to pay the filed claims as provided in the Plan. The continuation of the automatic stay does not preclude a party from seeking relief from the stay in this case if the facts would support such relief under §362(d). The ability to seek future relief, if and when the circumstances warrant, serves to lessen the degree of any harm to the creditors and parties in interest resulting from granting Debtor's motion for continuation of the stay. Additionally, all creditors and parties of interest retain their right to object to confirmation of Debtor's Plan.

In this preconfirmation period, the creditors' harm will be confined by temporal limits that begin when the case is filed and end on date of Debtor's confirmation hearing. The irreparable harm to Debtor caused by the termination of the stay, however, cannot be undone at the confirmation hearing. Debtor would have no second opportunity to protect his home once it is lost. Therefore, the harm to the creditors and parties in interest is deemed to be less than the harm to Debtor if the stay is not continued.

The public interest is served by Debtor's continuing to pay his creditors through his Plan and by continuing mortgage payment and maintaining his ownership of his real property. Accordingly, it is hereby

ORDERED that the automatic stay provisions of 11 U.S.C. 362(a), and the co-debtor provisions of 11 USC 1301 to the extent that those protections are affected by §362(c), are continued against all creditors and parties in interest until the close of Debtor's case or until otherwise ordered by this Court.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon
Debtor, counsel for Debtor, the Chapter 13 Trustee, U.S. Trustee, and all creditors and parties of
interest.

IT IS SO ORDERED, this the 2nd day of December, 2005.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

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