



**IT IS ORDERED as set forth below:**

**Date: October 26, 2009**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_  
IN RE:

CASE NO. 09-74879

Matthew Joseph Chiodo,

CHAPTER 7

Debtor.

JUDGE MASSEY

\_\_\_\_\_  
Matthew Joseph Chiodo,

Plaintiff,

v.

ADVERSARY NO. 09-9033

Safe and Secure Self Storage,

Defendant.

\_\_\_\_\_  
ORDER DENYING PLAINTIFF'S MOTION FOR CONTEMPT  
AND DISMISSING ADVERSARY PROCEEDING

In this adversary proceeding, Plaintiff, the Debtor in this Chapter 7 case, asserts that Defendant violated the automatic stay by scheduling a foreclosure of personal property allegedly belonging to Plaintiff. He seeks sanctions against the Defendant and injunctive relief.

Mr. Chiodo was a debtor in three prior cases that were pending within one year of the filing of the current Chapter 7 case, a fact that is not controvertible and that he conceded at the hearing held on his motion on October 22, 2009. Those cases are No. 08-71380 filed in this Court and dismissed on September 4, 2008, No. 08-95024 filed in this Court and dismissed on February 5, 2009, and No. 09-01692 filed in the U.S. Bankruptcy Court for the Southern District of Iowa and dismissed on May 28, 2009. None of those prior cases (all filed under Chapter 13) were refiled under section 707(b).

Section 362(c)(4) of the Bankruptcy Code provides in relevant part:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(4)(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; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect[.]

11 U.S.C. § 362(c)(4)(A). Subsections (d), (e), (f) and (h) are not applicable to the facts here.

The fact that Mr. Chiodo's prior three cases were under Chapter 13 cases does not render Section 362(c)(4)(a) inapplicable. Under this section as applied to the facts here, no automatic stay ever came into effect in this Chapter 7 case. Hence, Defendant was free to notify Plaintiff of a foreclosure and to take any other action to collect its claim for storage charges pursuant to applicable state law. Since no stay arose in this case, Plaintiff could never prevail on his theory that Defendant violated the automatic stay. For this reason Plaintiff's motion to hold Defendant in contempt for violating the automatic stay and for injunctive relief is DENIED and this adversary proceeding is DISMISSED.

\*\*\*END OF ORDER\*\*\*