



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

**Date: October 29, 2014**

**W. Homer Drake  
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION**

<b>IN THE MATTER OF:</b>	:	<b>CASE NUMBER</b>
	:	
RONALD WAYNE HOUCHINS,	:	14-11928-WHD
	:	
	:	IN PROCEEDINGS UNDER
	:	CHAPTER 13 OF THE
DEBTOR.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Motion for Stay Pending Appeal filed by Ronald Houchins (hereinafter the "Debtor"). Debtor seeks entry of a stay pending his appeal of an order entered by this Court on September 29, 2014, which denied his motion to extend the automatic stay pursuant to section 362(c)(3) of the Bankruptcy Code (hereinafter the "Order"). Accordingly, this matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. See 28 U.S.C. § 157(b)(2)(A) & (G); § 1334.

### PROCEDURAL HISTORY

On August 29, 2014, Debtor filed *pro se* a voluntary petition under Chapter 13 of the Bankruptcy Code (hereinafter the "Petition"). In the Petition, Debtor disclosed having filed Case Number 13-76236-JRS on December 3, 2013 (hereinafter the "Prior Case"). According to this Court's records, the Prior Case was dismissed on April 14, 2014. *See* Case No. 13-76236-JRS (Dkt. No. 28).

On September 15, 2014, Debtor filed in the above-captioned case his Motion to Extend the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3) (hereinafter the "Extension Motion"). In the Extension Motion, Debtor stated that the automatic stay provided by section 362(a) of the Bankruptcy Code would "terminate on September 28, 2014 without further order of" the Court and moved the Court to extend the stay. *See* Case No. 14-11928-WHD (Dkt. No. 15).

Section 362(c)(3)(A) provides that, in a bankruptcy case filed by an individual debtor who has had a bankruptcy case pending within the preceding 1-year period that was dismissed, "the stay under subsection [362](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." 11 U.S.C. § 362(c)(3)(A). Pursuant to section 362(c)(3)(B), "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 seeking the extension] demonstrates that the filing of the later case is in good faith as to the creditors to be stayed." 11 U.S.C. § 362(c)(3)(B) (emphasis added).

In accordance with section 362(c)(3)(B), therefore, the Court could have granted the relief requested by Debtor only by holding a hearing on notice to affected parties within the 30-day period, which Debtor represented would terminate on September 28, 2014. For this reason, the Court construed the Extension Motion to be a request for an expedited hearing to be held on or before September 28, 2014 and scheduled a hearing September 26, 2014. An order and notice of the hearing was sent to Debtor at his residence, as he was proceeding *pro se*. See Case No. 14-11928-WHD (Dkt. Nos. 18 & 20).

On September 26, 2014, Debtor failed to appear for the hearing on the Extension Motion. Counsel for Adam M. Goodman, the standing Chapter 13 trustee (hereinafter the "Trustee") appeared in opposition to the Extension Motion. The Court denied the Extension Motion for want of prosecution. See *id.* (Dkt. No. 21).

On October 14, 2014, Debtor filed a notice of appeal, through which he seeks review of the Order. He has designated Wells Fargo Bank, N.A. (hereinafter "Wells Fargo"), rather than the Trustee, as the appellee. Concurrently therewith, Debtor filed the instant motion in which he seeks a stay during the pendency of his appeal (the "Stay Motion"). According to the certificate of service filed with the Stay Motion, Debtor has not served the Stay Motion upon the Trustee or any creditor other than Wells Fargo. See

*id.* (Dkt. Nos. 25 & 26).

On October 20, 2014, the Court dismissed the above-captioned case for failure to pay the filing fee. *See id.* (Dkt. No. 33) (hereinafter the "Dismissal Order"). As of this date, Debtor has not sought reconsideration or appellate review of the Dismissal Order.

#### CONCLUSIONS OF LAW

Pursuant to Federal Rule of Bankruptcy Procedure 8005, a party "must ordinarily" seek a stay of a judgment or order pending an appeal from the bankruptcy court in the first instance. FED. R. BANKR. P. 8005. The bankruptcy court may "suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest." *Id.* To obtain such relief, the movant "must clearly establish: (i) that the movant is likely to prevail on the merits of its appeal, (ii) that the movant will suffer irreparable injury if a stay or other injunctive relief is not granted, (iii) that other parties will suffer no substantial harm if a stay or other injunctive relief is granted, and (iv) in circumstances where the public interest is implicated, that the issuance of a stay or other injunctive relief will serve, rather than disserve, such public interest." *Tooke v. Sunshine Trust Mortgage Trust*, 149 B.R. 687, 689 (M.D. Fla.1992); *see also In re McKenzie*, 2009 WL 6499259, at \*1 (Bankr. N.D. Ga. Nov. 2, 2009) (Bonapfel, J.). Although "[t]he moving party must show satisfactory evidence on all four criteria," *In re Bilzerian*, 276 B.R. 285 (M.D. Fla. 2002), the movant's "likelihood of prevailing on the merits of the

appeal is 'generally the most important of the four criteria' required for a stay, and the Court 'must ordinarily find that the appealed decision was clearly erroneous,'" *In re Tiliakos*, 2013 WL 3943502, at \*2 (Bankr. M.D. Fla. July 25, 2013). After considering Debtor's motion, the Court concludes that Debtor has failed to establish all of the necessary requirements for obtaining a stay pending appeal.

As a threshold matter, the Court notes that the primary reason not to grant a stay of the Order is that a stay could not serve the purpose of Rule 8005—protecting the rights of the parties. In short, the Court cannot, by staying the Order or by staying further proceedings in this case, stop Wells Fargo from initiating foreclosure proceedings regarding Debtor's property. Debtor's case has been dismissed for reasons unrelated to the entry of the Order, and Debtor has not sought reconsideration of or appealed the Dismissal Order. It is the dismissal of Debtor's case and the complete termination of the automatic stay, rather than the Order that threatens irreparable harm to Debtor's interests. So long as Debtor's case remains dismissed, the Court has no ability to fashion any effective relief pending the appeal of the Order.

Even if this were not the case, however, Debtor has not established the requirements noted above to obtain a stay pending appeal. First, Debtor has not established that, absent a stay, Debtor will suffer irreparable harm. The Court can surmise that, in seeking a stay pending appeal of the Order, Debtor was concerned that Wells Fargo would initiate foreclosure proceedings against his property. Debtor, however, made no assertions to that

effect or any other statements from which the Court could find that any creditor was likely to take an action as a result of the entry of the Order (or even as a result of the termination of the stay by operation of law in accordance with section 362(c)(3)(A)).

Even if Debtor had made such a representation, the Court finds it more probable that Wells Fargo would not have taken any action against property that remained property of Debtor's bankruptcy estate in reliance upon the Order, as two bankruptcy judges and a district court judge within the Northern District of Georgia have held that when the automatic stay "terminates" under section 362(c)(3), the stay does not terminate with regard to actions taken against property of the bankruptcy estate. *See Abernathy, LLC v. Smith*, 2014 WL 4925654 (N.D. Ga. Sept. 30, 2014) (Story, J.); *In re Milledge*, 2008 WL 7866897, at \*2 (Bankr. N.D. Ga. Apr. 10, 2008) (Massey, J.) ("[T]he relief provided in section 362(c)(3)(A) extends only to property of the debtor."); *In re Ajaka*, 370 B.R. 426, 429 (Bankr. N.D. Ga. 2007) (Murphy, J.). A sophisticated and cautious creditor in such a circumstance would likely seek further relief from the stay before initiating a foreclosure sale. Now that Debtor's case has been dismissed and the automatic stay has terminated in its entirety, pursuant to section 362(c)(1) and (2), Debtor *is* at risk of irreparable harm should Wells Fargo take action to foreclose against his property. That harm, however, was not caused by the entry of the Order (or the termination of the stay pursuant to section 362(c)(3)(A)) and it cannot be remedied by the reversal of the Order on appeal. Further, as noted above, with the case dismissed, the Court cannot fashion effective relief through a

stay.

Second, Debtor has failed to demonstrate a likelihood of success on the merits. For similar reasons as those stated above, the Court finds it likely that the District Court reviewing the Order will conclude that Debtor's appeal has been rendered moot by the dismissal of Debtor's bankruptcy case. *See In re Abbott*, 2010 WL 1780059, at \*7-8 (Bankr. S.D.N.Y. May 4, 2010) (denying motion for stay pending appeal of order lifting the automatic stay because debtor could not show likelihood of success on the merits where the appeal was "rendered moot by the issuance of the discharge, which caused the automatic stay to terminate"); *Blocker v. HSBC Bank*, 2010 WL 4683854, at \* (D. Or. Nov. 10, 2010) (dismissing an appeal as moot because "[a]ny relief [the] court could grant in connection with [debtor's] appeals would have no effect on the termination of the stay, and therefore would not be effective").

Debtor appeals from the Order (*i.e.*, this Court's denial of the Extension Motion). Even if the District Court found that the Order should be reversed due to Debtor's lack of notice of the hearing, reversal of the Order cannot repair whatever damage was done by the fact that the automatic stay has terminated (or terminated in part). The termination of the stay complained of by Debtor occurred by operation of the statute—section 362(c)(3)(A)—not as a result of the Order. Even if the District Court reversed the Order and remanded this matter for a rehearing, this Court would lack the authority to extend the automatic stay for two reasons: (1) the Court could not hold a hearing and extend the stay

within the 30-day period, as required by section 362(c)(3)(B), *see In re Ajaka*, 370 B.R. 426, 429 (Bankr. N.D. Ga. 2007) (holding that the debtor was not entitled to relief under section 362(c)(3)(B) where debtor failed to obtain a hearing on the motion within the applicable 30-day period); and (2) as Debtor's case has been dismissed, this Court no longer has any jurisdiction to extend the stay or even to impose a stay with regard to property that is no longer property of the bankruptcy estate, or with regard to actions taken against an individual who is no longer a debtor in bankruptcy. Where reversal of an order cannot render effective relief to the appellant, the appeal is moot and should be dismissed for lack of jurisdiction. *See Blocker v. HSBC Bank*, 2010 WL 4683854, at \*2-3 (D. Or. Nov. 10, 2010)

Because Debtor has failed to demonstrate all of the factors required to obtain a stay, the Court finds that Debtor's Motion for Stay Pending Appeal must be, and hereby is, **DENIED**.

The Clerk is **DIRECTED** to serve a copy of this Order on Debtor, the Chapter 13 Trustee, and Wells Fargo Bank, N.A.

**END OF DOCUMENT**