UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

IN RE: HELEN JOHNS, Case No. 08-24311-pp

Debtor. Chapter 13

ORDER DENYING MOTION TO CONTINUE THE AUTOMATIC STAY

The debtor filed her Chapter 13 petition in the above-captioned matter on April 25, 2008. On May 8, 2008, she filed a motion asking the Court to continue the automatic stay beyond 30 days, pursuant to 11 U.S.C. § 362(c). She needed to file this motion because, in the one-year period prior to April 25, 2008, she had had another Chapter 13 case pending (case no. 07-22471-svk), and that case had been dismissed.

On May 21, 2008, the Court held a hearing on the motion to continue the stay. The debtor testified. Creditor Identical Eagles, LLC objected to the motion.

At the conclusion of the hearing, the Court found that the debtor had not proven by clear and convincing evidence that she had had a change in her circumstances sufficient to rebut the statutory presumption of bad faith, and denied the motion to continue the stay.

Counsel for the debtor then argued that the result of the Court's order should be that the stay terminated only as to the property "of the debtor," and not as to the property of the estate. Counsel indicated that a number of courts–in fact, the majority of courts that had ruled on the issue–had drawn this conclusion from the fact that § 362(c)(3)(A) states that the stay shall terminate "with respect to the debtor" after 30 days. Counsel for Identical Eagles, LLC responded that other courts–admittedly the minority–had reached a different conclusion.

The Court asked the parties to brief the issue, and they did so. The Court reviewed those briefs prior to a hearing scheduled for July 9, 2008 on Identical Eagles, LLC's motion to dismiss and its objection to confirmation of the debtor's Chapter 13 plan.

On July 9, 2008, the Court issued an oral ruling on the question of whether its denial of the motion to continue the stay terminated the stay as to the estate, or as to the debtor. As it indicated at that hearing, the Court finds that its decision denying the motion to continue the stay terminates the stay as to the property of the estate.

The Court acknowledges that the majority of decisions on this issue have construed the "with respect to the debtor" language to terminate the stay only with

respect to any property of the debtor. *See, e.g.*, In re Stanford, 373 BR. 890, 894 (Bank. E.D.Ark. 2007); In re Holcomb, 380 BR. 813, 816 (B.A.P. 10th Cir. 2008). The Court, however, is persuaded by the reasoning in In re Curry, 362 B.R. 394 (Bank. N.D.Ill. 2007), and the arguments in Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bank. L.J. 201 (2008).

The Court does *not*, like the majority courts, find the language of § 362(c)(3)(A) "plain" or "clear." It states that the stay "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 . . . ." It is unclear to this Court why Congress modified the word "stay" by adding the "with respect to any action taken" language, when § 362(a) defines the automatic stay. It is unclear to this Court why the majority finds it clear that the phrase "with respect to the debtor" should be read to mean "with respect to *the property of* the debtor," when that is not what the statute says. An alternate reading, as the two authorities cited above point out, is that Congress meant to ensure that in cases where debtors file jointly, the stay terminates only as to the debtor who had a filing dismissed in the previous year, and not to any joint debtor who had not suffered such a dismissal. And of course, the fact that experienced, capable, intelligent bankruptcy judges have come to differing conclusions about the meaning of the phrase begs the question–if the language is so clear, and so plain, why are there so many decisions interpreting it, and why do they come to different conclusions?

Because the language is not clear to this Court, the Court finds it appropriate to look to the legislative history of the provision. As Professor Bartell discusses in her article, it is clear that Congress amended § 362 to provide punishment for serial bankruptcy filers. Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bank. L.J. at 222-23. Interpreting the "with respect to the debtor" language in such a way as to avoid terminating the stay with respect to the property of the estate flies in the face of this intent. Id. at 226.

Further, this interpretation results in a disparity between treatment of serial Chapter 7 filers and serial Chapter 13 filers. Professor Bartell notes that in Chapter 13, all of the property of the debtor–including after-acquired property–becomes "property of the estate." Thus, under the majority interpretation, a serial Chapter 13 debtor would rarely, if ever, lose the protection of the stay under § 362(c)(3), while serial Chapter 7 debtors would lose that protection with respect to certain property. Id.

For all of these reasons, the Court concludes that § 362(c)(3)(A) requires that the stay terminate entirely for a debtor who has had a case dismissed in the year prior to filing, and who fails to rebut the presumption of bad faith established by that statute. Because the Court determined that this debtor failed to rebut that presumption, the stay terminated–in its entirety–thirty (30) days after this debtor filed her Chapter 13 petition.

# # # # #