

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-05659

ORDER DENYING MOTION TO EXPEDITE HEARING

The relief set forth on the following pages, for a total of 6 pages including this page,
is hereby ORDERED.

FILED BY THE COURT
11/29/2007



Entered: 11/29/2007

A handwritten signature in black ink, appearing to read "S. R. O.", written over a horizontal line.

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Mary Ivey,

Debtor(s).

C/A No. 07-05659-DD

Chapter 7

**ORDER DENYING MOTION TO
EXPEDITE HEARING**

THIS MATTER is before the Court on Mary Ivey's ("Debtor") Motion to Expedite Hearing ("Motion") filed *pro se* on November 27, 2007. The Debtor asks this Court to expedite the hearing on her Motion to Reconsider Dismissal of Case, filed November 14, 2007. A hearing is set on December 11, 2007 at 9:00 a.m. Debtor's Motion indicates that her truck has been repossessed and will be sold on December 1, 2007 unless she can either (1) pay the creditor \$2,000 or (2) have her case reinstated.¹

Debtor filed her chapter 7 voluntary petition on October 17, 2007 along with the majority of the required schedules and statements. She was informed² by the Court on that same day that remaining to be filed were (1) the copies of her pay advices, (2) a Statement of Increase of income/expenses, and (3) a Statement of Assistance. She was informed that these were due on or before November 1, 2007. On October 29, 2007 Debtor filed the necessary pay advices and her Statement of Assistance but failed to file the Statement of Increase of Income/Expenses.³ On November 2, 2007 the Clerk of Court left a telephonic message with Debtor informing her that the statement should be filed by the end of day. The Debtor did not file the required schedule and her case was dismissed by order dated November 8, 2007.

¹ The Debtor actually requests issuance of an "emergency case number."

² The deficiency notice provided that if the documents were not filed on or before November 1, 2007 that the case would be dismissed without further notice.

³ This schedule is a new requirement of the 2005 Reform Act. *See 11 U.S.C. § 521(a)(1)(B)(vi)*.

The Court next received a letter requesting that the Court reopen Debtor's case. The Court treated the letter as a Motion to Reconsider Dismissal of Case and set it for hearing on December 11, 2007. The letter explained Debtor's circumstances to the Court. While the Court is sympathetic to Debtor's situation, the Court's consideration of the Motion to Reconsider is for another day. The issue before the Court is whether the hearing should be held on an expedited basis. A motion to expedite a hearing must conform to the Court's Local Rule, which states,

A motion for an emergency hearing or a hearing to be held on less than fifteen (15) days' notice should be filed as a separate document from the motion upon which relief is sought and should contain a complete and detailed explanation of the urgency of the request, including the proposed time for scheduling of a hearing, the potential for irreparable harm if relief is not granted, and the efforts made to communicate with other parties in interest to the motion in a good faith attempt to resolve the matter. The movant must contact the courtroom deputy or chambers upon the filing of a motion for an emergency hearing in accordance with Operating Order 04-11, Guidelines for the Filing of Documents. Failure to comply may result in denial of an emergency hearing or other adverse ruling.

SC LBR 9014-1(d).

The letter does appear to contain all the information required by the Local Rule. However, based on the facts set forth in Debtor's Motion and application of the law to those facts, the Court must deny Debtor's Motion to Expedite. Debtor's letter states that the purpose of her request for an expedited hearing is to avoid the sale of her truck, which was repossessed by the lien holder and will be sold on December 1, 2007. The Debtor expresses numerous reasons the truck is needed by her and her family, and if the Court could offer Debtor any relief it may have considered expediting the hearing. Unfortunately, the Court is unable to offer Debtor any relief. The statement of intention filed in this case states, with respect to the truck, that "Debtor will retain collateral and

continue to make regular payments” to Drive Financial Services, the lien holder.

11 U.S.C. § 521(a)(2)⁴ states,

[I]f an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate--

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;

(B) within 30 days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such 30-day period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title, except as provided in section 362(h)

§ 521(a)(2).

Section 362(h)(1) states,

(h) (1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)--

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the

⁴ Further references to the Bankruptcy Code shall be made by section number only.

original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

§ 362(h)(1).

In simpler terms, a debtor has thirty (30) days to file a statement of intention indicating whether debtor intends to surrender or retain property secured by lien.

§ 521(a)(2)(A). If the debtor intends to retain the property the debtor has two choices, either reaffirm the debt or redeem the property. *Id.* Alone § 521 has no effect, but when read in conjunction with § 362 the effect can be the termination of the automatic stay with respect to personal property. *See In re Wilson*, 372 B.R. 816 (Bankr. D.S.C. 2007) (General discussion on the interaction between § 521(a)(2), § 521(a)(6) and § 362(h)).

In the present case the relevant statutes are § 521(a)(2)(A) and § 362(h)(1)(A). Debtor did file her statement of intention within thirty days, but indicated that she would retain the property and continue to make payments. Since the property at issue here is personal property this is not an option. The property must be surrendered, redeemed, or the debt reaffirmed. Section 362(h)(1)(A) specifically states that the automatic stay is terminated as to the personal property if the debtor fails to indicate, timely (i.e., 30 days from time of petition), on the statement of intention “that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem...[or reaffirm].”⁵

Debtor did not comply with § 521(a)(2)(A), therefore § 362(h)(1)(A) would have terminated the stay as to Debtor’s 2003 Dodge Ram on November 16, 2007, thirty (30) days after the petition date had the case not been dismissed. The sole reason stated by Debtor for expedited relief is to prevent the sale of her truck on December 1, 2007. If the

⁵ There are other situations that terminate the automatic stay as to personal property but this is the only one applicable in the present case.

case were reinstated there would be no stay as to the truck and no bar to action by the lien holder to proceed with the sale. Since hearing this matter on an expedited basis would not aid the Debtor in staying the sale of her truck, the Motion to Expedite is denied.

The Motion to Reconsider Dismissal remains on the calendar for December 11, 2007 at 9:00 a.m.

AND IT IS SO ORDERED.

Columbia, South Carolina
November 29, 2007