

JUN 1 2 2006

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

United States Bankruptcy Court
Columbia, South Carolina (30)

IN RE:

William L. Franklin

Debtor

C/A No.: 06-01730-hb
Chapter 13

ORDER

ENTERED

JUN 1 2 2006

D.L.L.

This matter came before the court for hearing on the Debtor's motion for an order finding that 11 U.S.C. § 362(c)(3) does not apply in this case, or in the alternative, for an order extending the automatic stay pursuant to § 362(c)(3). After a review of the pleadings, court records, and arguments of counsel, the Court finds and concludes as follows:

The Debtor herein filed a voluntary Chapter 13 petition on April 27, 2006. The Debtor has had two previous Chapter 13 cases, case number 03-07410, filed on June 18, 2003 and dismissed on April 4, 2004 and case number 04-06452, filed June 2, 2004 and dismissed on April 11, 2005, but not closed by the court until June 10, 2005. Case number 03-07410 was dismissed and closed more than one year prior to the filing of this case. Case number 04-06452 was dismissed more than one year prior to the filing of this case, but was not closed until later and therefore was still open within the one year period immediately preceding this case.

11 U.S.C. § 362(c)(3) provides that

if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed ... (A) the stay under subsection (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...."

Through counsel, the Debtor took the position that after the entry of the order dismissing case number 04-06452 on April 11, 2005, that case was no longer pending within the meaning and

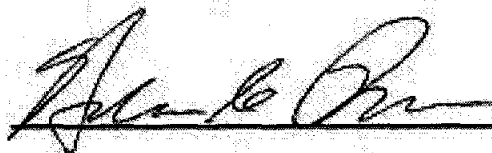
intent of § 362(c)(3), and that all remaining activity in the case after dismissal was of a routine administrative, ministerial nature, and that therefore § 362(c)(3) does not apply in this case. Out of an abundance of caution, the Debtor alternatively sought extension of the stay as to all creditors if the Court were to find § 362(c)(3) applicable to this case.

The threshold issue is whether the Debtor's prior case was "pending" within the meaning of § 362(c)(3) when the case was dismissed more than one year before the current case, but was closed within that year. This question came before the United States Bankruptcy Court for the Eastern District of North Carolina in the case of In re Moore, 337 B.R. 79 (E.D.N.C. 2005), and was thoroughly analyzed by Judge Small. In that case the court relied on the plain meaning of the word "pending," along with policy considerations, to determine that a case is no longer pending once it has been dismissed. Regarding the plain meaning of the word "pending," the court analyzed the Black's Law Dictionary definition and the interpretation of the word in other, more litigated sections of the Bankruptcy Code. The North Carolina court determined that "pending" meant "not dismissed." Id. at 81. Policy considerations reinforced this finding in that the debtor no longer has the benefit of the automatic stay after the earlier of closing or dismissal, pursuant to § 362(c)(2), and dismissal typically precedes closing. Moreover, while the debtor may have some control over the date of dismissal (if a voluntary dismissal is filed), the debtor has no control over the date of closing. Based on this analysis, Judge Small concluded that if a case is dismissed that the date of dismissal not the date of final case closing was the relevant date to determine if a case was "pending" within the applicable time periods for the purposes of applying § 362(c)(2). Id. This Court believes Judge Small's analysis to be correct. See also In re Easthope, No. 06-20366, 2006 WL 851829 (Bankr. D. Utah Mar. 28, 2006).

Based on the foregoing, this Court finds that the Debtor's prior case was no longer "pending" for purposes of § 362(c)(3) as of the date the case was dismissed, regardless of when the case was closed by the court. Therefore, no motion to extend the stay is necessary because the stay does not terminate in this case pursuant to § 362(c)(3). The alternative motion to extend the stay is therefore moot.

IT IS THEREFORE ORDERED that 11 U.S.C. § 362(c)(3) does not apply to this case, that the automatic stay does not terminate on the thirtieth day after filing, and that the motion to extend the stay, being moot, is unnecessary.

AND IT IS SO ORDERED

A handwritten signature in black ink, appearing to read "John L. Brown", is written over a horizontal line.

UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
June 12, 2006