



SO ORDERED

A handwritten signature in blue ink that reads "Neil P. Olack".

Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: January 7, 2016

The Order of the Court is set forth below. The docket reflects the date entered.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

JOHN C. CHAUVIN,

CASE NO. 15-03457-NPO

DEBTOR.

CHAPTER 11

ORDER DENYING DEBTOR'S MOTION TO EXTEND AUTOMATIC STAY

This matter came before the Court for a hearing on January 5, 2016 (the "Hearing"), on the Debtor's Motion to Extend Automatic Stay (the "Motion") (Dkt. 15) filed by the debtor, John C. Chauvin (the "Debtor"), and the Response to Debtor's Motion to Extend Automatic Stay (the "Response") (Dkt. 19) filed by the United States of America, Internal Revenue Service (the "Service") in the above-referenced chapter 11 bankruptcy case (the "Current Bankruptcy Case"). At the Hearing, Jim Arnold represented the Debtor, and David N. Usry, Assistant U.S. Attorney, represented the Service.

1. The Debtor first filed a chapter 11 petition for relief (the "First Bankruptcy Case") on June 11, 2015 (No. 15-01862-NPO, Dkt. 1). The First Bankruptcy Case was dismissed on September 11, 2015, for failure of the Debtor, among other things, to pay the U.S. Trustee the quarterly fee pursuant to 28 U.S.C. § 1930(a)(6) and to submit monthly operating reports. (Case No. 15-01862-NPO, Dkt. 39).

2. The Debtor filed the Current Bankruptcy Case on November 5, 2015. (Dkt. 1).

3. Because the Current Bankruptcy Case is the Debtor's second bankruptcy filing within the preceding one (1)-year period, 11 U.S.C. § 362(c)(3)(A) applies. That section provides:

(3) if a single or joint case is filed by or against a 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, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(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.

11 U.S.C. § 362(c)(3)(A). Given that the Second Bankruptcy Case was filed on November 5, 2015, the automatic stay “with respect to the debtor” terminated on December 7, 2015.¹

4. On December 14, 2015, the Debtor filed the Motion asking the Court to extend the automatic stay under 11 U.S.C. § 362(a) as to all creditors pursuant to 11 U.S.C. § 362(c)(3)(B).

That section provides:

(B) on the motion of a party in interest for continuation of the automatic stay and 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 in interest 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).

5. In its Response, the Service opposes the Motion on the ground that the Debtor filed

¹ Because the 30th day after the filing of the Current Bankruptcy Case, December 5, 2015, was a Saturday, the stay continued in effect until the next business day, Monday, December 7, 2015. *See* FED. R. BANKR. P. 9006(a)(1)(C).

the Motion after the termination of the automatic stay on December 5, 2015,² and, therefore, there is no automatic stay to extend in the Current Bankruptcy Case.

Discussion

The Court finds that the Motion should be denied because it was not filed within thirty (30) days after the filing of the Current Bankruptcy Case during which 11 U.S.C. § 362(c)(3)(B) allows the Court to extend the automatic stay if certain conditions are met. The Court, however, disagrees with the Service's interpretation of the scope of the termination of the automatic stay. Although the Service maintained in its Response that there is no automatic stay in the Current Bankruptcy Case, the Court finds that 11 U.S.C. § 362(c)(3)(A) terminated the automatic stay only as to actions against the Debtor or property of the Debtor that is not property of the estate. *See In re Smith*, No. 09-02318-NPO (Dkt. 43) (Bankr. S.D. Miss. Mar. 26, 2010). Accordingly, although the Court denies the Motion, the automatic stay of 11 U.S.C. § 362(a) continues to operate as to actions taken against property of the estate until further order of this Court.

IT IS, THEREFORE, ORDERED that the Motion is hereby denied.

IT IS FURTHER ORDERED that the automatic stay terminated pursuant to 11 U.S.C. § 362(c)(3)(A) on December 7, 2015 with respect to the Debtor and the Debtor's property.

IT IS FURTHER ORDERED that the automatic stay of 11 U.S.C. § 362(a) continues to apply as to property of the estate until further order of this Court.

##END OF ORDER##

² The Service contends that the automatic stay terminated on Saturday, December 5, 2015, but it did not use the method for computing the time period established in FED. R. BANKR. P. 9006(a) when the last day falls on a Saturday, Sunday, or legal holiday. *See supra* note 1.