



SO ORDERED,

**Judge Neil P. Olack
United States Bankruptcy Judge
Date Signed: October 29, 2019**

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:

RUBY J. PARKS,

CASE NO. 19-03502-NPO

DEBTOR.

CHAPTER 13

ORDER DENYING AMENDED MOTION TO EXTEND AUTOMATIC STAY

This matter came before the Court for hearing on October 28, 2019 (the “Hearing”), on the Amended Motion to Extend Automatic Stay (the “Motion”) (Dk. 8)¹ filed by Ruby J. Parks (the “Debtor”); the Trustee’s Objection to Amended Motion to Extend Automatic Stay (the “Trustee’s Objection”) (Dkt. 14) filed by James L. Henley, Jr., the chapter 13 trustee (the “Trustee”); and the Objection to Amended Motion to Extend Automatic Stay (the “Citigroup’s Objection”) (Dkt. 16) filed by Citigroup Mortgage Loan Trust Inc. Asset-Back Pass-Through Certificates Series 2007-AMC4, U.S. National Bank Association (“Citigroup”) in the Debtor’s Current Case. At the Hearing, Tylvester O. Goss represented the Trustee, Robert Rex McRaney, Jr. represented the Debtor, and Elizabeth Crowell Price represented Citigroup. The Trustee objected to the Motion

¹ Citations to the record are as follows: (1) citations to docket entries in the above-referenced bankruptcy case (the “Debtor’s Current Case”) are cited as (Dkt. ____); (2) citations to docket entries in other bankruptcy cases are cited by the case number followed by the docket number.

based on 11 U.S.C. § 362(c)(3).² (Dkt. 14). At the Hearing, the Trustee informed the Court that the Trustee and Debtor’s counsel came to an agreement regarding the Trustee’s Objection. The Hearing was held only on the Motion and the Citigroup’s Objection. At the conclusion of the Hearing, the Court denied the Motion and sustained the Citigroup’s Objection. This Order memorializes that bench ruling.

Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to this proceeding pursuant to 28 U.S.C. § 1334. These matters are core proceedings under 28 U.S.C. § 157(b)(2)(A) and (G). Notice of the Motion and Hearing was proper under the circumstances.

Facts

The Debtor filed a chapter 13 voluntary petition (the “Petition”) (Dkt. 1) in the Debtor’s Current Case on October 2, 2019. On October 9, 2019 the Debtor filed a Motion to Extend Automatic Stay (Dkt. 7). On that same day, the Debtor amended the Motion to Extend Automatic Stay (Dkt. 7) with the Motion pending before the Court. (Dkt. 8). Citigroup objected to the Motion on the ground that the Debtor’s Current Case “was presumptively not filed in good faith and was also to delay, hinder or defraud [Citigroup] with multiple bankruptcy filings.” (Dkt. 16 at 2).

The electronic court filing system confirms the grounds of their objections and reveals that the Debtor has filed ten (10) bankruptcy cases in the U.S. Bankruptcy Court for the Southern District of Mississippi.³ A list of the Debtor’s filing history is provided below:

² Hereinafter, all code sections refer to the United States Bankruptcy Code found at Title 11 of the United States Code, unless otherwise noted.

Name	Case No.	Case Title	Chapter / Lead BK case	Date Filed	Party Role	Date Closed
PARKS, RUBY J (pty) (7 cases)	03-03892-ee	RUBY J PARKS	7	07/01/03	Debtor	01/15/04
	09-01780-ee	RUBY J PARKS	13	05/22/09	Debtor	07/14/09
	13-03056-ee	RUBY J PARKS	13	10/08/13	Debtor	08/11/14
	15-01647-ee	RUBY J PARKS	13	05/22/15	Debtor	12/09/15
	18-03213-NPO	RUBY J PARKS	13	08/20/18	Debtor	05/30/19
	19-01477-NPO	RUBY J PARKS	7	04/17/19	Debtor	08/20/19
	19-03502-NPO	RUBY J PARKS	13	10/02/19	Debtor	N / A
PARKS, RUBY J. (pty) (1 case)	01-03001-ee	RUBY J. PARKS	13	05/31/01	Debtor	08/06/03
PARKS, RUBY J. (pty) (1 case)	00-01025-ee	RUBY J. PARKS	13	03/01/00	Debtor	08/30/01
Parks, Ruby J (pty) (1 case)	15-03557-ee	Ruby J Parks	13	11/14/15	Debtor	08/05/16

Other than the Debtor's Current Case, she has had two (2) other cases pending in the last twelve (12) months. The Debtor filed a voluntary chapter 13 petition (18-03213-NPO Dkt. 1) on August 20, 2018 that was dismissed for failure to make plan payments on June 1, 2019. (18-03213-NPO Dkt. 49). On April 17, 2019, the Debtor filed a voluntary chapter 7 petition (19-01477-NPO Dkt. 1), which was dismissed on August 20, 2019. (19-01477-NPO Dkt. 19). The chapter 7 trustee's report classifies the 19-01477-NPO case as a no-asset case with \$248,100.00 in abandoned assets. Of the Debtor's five (5) most recent bankruptcy filings, four (4) cases were dismissed for failure to make plan payments. (18-03213-NPO Dkt. 32; 15-03557-ee Dkt. 30; 15-01647-ee Dkt. 27; 13-03056-ee Dkt. 39).

The ten (10) bankruptcy cases are all an attempt to save the Debtor's homestead and seven (7) acres located at 181 Midway Estates Drive, Terry, Mississippi 39170 (the "Residence")

³ The Court takes judicial notice of the docket entries in the Debtor's prior bankruptcy cases. FED. R. EVID. 201; FED. R. BANKR. P. 9017.

(19-01477-NPO Dkt. 13).⁴ (9:36:29 – 9:36:32).⁵ On Schedule A/B: Property filed in the immediately preceding bankruptcy case, the Debtor lists the current value of the Residence at \$240,000.00 (19-01477-NPO Dkt. 13 at 3). The Debtor lists Citigroup's \$350,000.00 secured claim against the Residence on her Schedule D: Creditors Who Have Claims Secured by Property. (19-01477-NPO Dkt. 13 at 12).

The Debtor testified at the Hearing that a change in her financial situation will allow her to make the proposed plan payments of \$3,180.00 a month. (9:51:20 – 9:51:23). First, the Debtor has rented a room in the Residence for a five year period that pays \$800.00 a month. (9:51:40 – 9:51:55). Second, the Debtor's insurance business has increased because of additional companies furnishing leads. (9:36:50 – 9:36:55). The Debtor testified the leads have created a \$2,300.00 increase in her monthly income for the last two months. (9:52:15 – 9:52:50). Third, the Debtor continues to deliver magazines for the *Jackson Free Press*, which produces \$480.00 a month in income. (9:37:10 – 9:37:40). Finally, the Debtor draws \$1,057.00 in social security benefits each month. (9:37:00 – 9:37:06).

Based on the Debtor's testimony, her monthly income averages \$6,137.00.⁶ In the most recent previous filing, however, the Debtor listed her current monthly income as only \$2,680.00. (19-01477-NPO Dkt. 14 at 2). The Debtor solely relies on her testimony to prove a \$3,457.00 increase in her monthly income. The Debtor did not present any documents to account for this

⁴ The Debtor has not filed her schedules in the Debtor's Current Case.

⁵ The Hearing was not transcribed. Citations to the Hearing are to the timestamp of the audio recording.

⁶ The Debtor also testified that her attorney planned to pursue alimony payments from her ex-spouse of \$1,000.00 per month. (9:53:22 – 9:53:45). The Court found this income too speculative to include in the analysis.

substantial change in her current monthly income from her reported income three months ago, and the Debtor's testimony was largely approximations. (19-01477-NPO Dkt. 14).

Discussion

Section 362(c)(3) limits the duration of the automatic stay to thirty (30) days in a case filed by a debtor who has had a prior case dismissed within the year preceding the filing of the second case. 11 U.S.C. § 362(c)(3). Section 362(c)(3)(B) provides that upon a motion, and after notice and a hearing completed within the 30-day period, the Court may extend the automatic stay if the debtor demonstrates the filing of the later case was in good faith. 11 U.S.C. § 362(c)(3)(B). A presumption of bad faith exists as to the later bankruptcy case if the initial bankruptcy case was dismissed because of the debtor's failure to perform the terms of a confirmed plan. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). In determining whether the case has been filed in good faith, the Court shall consider whether the moving party has rebutted the presumption set out in § 362(c)(3)(C) that the case was not filed in good faith by clear and convincing evidence. 3 COLLIER ON BANKRUPTCY ¶ 362.06[3][b] (16th ed. 2019). In making this determination, the Court should consider the totality of the circumstances. *In re Ferguson*, 376 B.R. 109, 121 (Bankr. E.D. Pa. 2007).

In the Debtor's Current Case, the Debtor seeks to extend the 30-day automatic stay as to all of her creditors. While the Debtor testified that a change in financial circumstances allows her to make the payments, the Court finds that the Debtor did not rebut the presumption of bad faith by clear and convincing evidence. The Debtor has filed ten (10) bankruptcy cases over a period of nineteen (19) years in an attempt to keep the Residence she built in 1996, four (4) years before the first case. The Debtor has not been successful in the nine (9) previous filings. While the

Debtor testified she is confident in the continued success of her insurance business, the Court did not find the Debtor's testimony convincing. The Debtor's change in financial circumstances is recent, and the Debtor did not present any evidence that the situation will continue to improve. Additionally, in at least four (4) of the Debtor's previous filings, the cases were dismissed for failure to make plan payments. Taking into consideration the Debtor's expenses and the purported increase in her monthly income over a short period of time, the Court cannot find the Debtor's filing in good faith. The Debtor did not meet the burden of proof under § 362(c)(3).

Conclusion

IT IS, THEREFORE, ORDERED that the Motion hereby is denied, and Citigroup's Objection is sustained.

##END OF ORDER##