



SO ORDERED,

**Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: October 5, 2022**

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:

**KELVIN A. SLEDGE,

DEBTOR.**

**CASE NO. 22-01482-JAW

CHAPTER 13**

**ORDER DENYING MOTION TO IMPOSE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362(c)(4)(B); GRANTING DAIMLER'S
REQUEST FOR COMFORT ORDER; AND OVERRULING
DAIMLER'S OBJECTION TO CONFIRMATION OF THE PLAN AS MOOT**

This matter came before the Court for hearing on September 26, 2022 (the "Hearing"), on the Motion to Impose Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4)(B) (the "Motion to Impose Stay") (Dkt. #25) filed by the debtor, Kelvin A. Sledge (the "Debtor"); the Response to Debtor's Motion to Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4)(B) (the "Response to Motion to Impose Stay") (Dkt. #39) filed by Daimler Truck Financial Services, USA LLC ("Daimler"); the Declaration in Support of Motion to Impose Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4)(B) (the "Declaration") (Dkt. #26)¹ filed by the Debtor; the Request by Party in Interest for an Order Confirming the Absence of Automatic Stay (the "Request for Comfort Order") (Dkt. #24) filed by Daimler; the Response to Request by Party in Interest for an Order Confirming the Absence of Automatic Stay (Dkt. #31) filed by the Debtor; and Objection to Confirmation of the

¹ The Debtor filed the Declaration twice, first as an exhibit to the Motion and second as a separate filing.

Plan (Dkt. #40) filed by Daimler² in the above-referenced chapter 13 bankruptcy case (the “Current Bankruptcy Case”).

Procedural History

The Debtor twice previously filed petitions for bankruptcy relief under chapter 13. The Debtor first sought chapter 13 relief on March 26, 2020 (the “First Prior Bankruptcy Case”).³ The Court dismissed the First Prior Bankruptcy Case on September 15, 2021, for failure to make plan payments.⁴ Two weeks later, the Debtor again filed for chapter 13 relief on October 1, 2021 (the “Second Prior Bankruptcy Case”).⁵ On July 12, 2022, the Second Prior Bankruptcy Case was also dismissed for failure to make plan payments.⁶ The Current Bankruptcy Case was commenced on July 28, 2022 (Dkt. #1).

Debtor’s Motion for Continuation of Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3)(B)

On July 29, 2022, the Debtor filed his Motion for Continuation of the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3)(B) (the “Motion for Continuation of Stay”) (Dkt. #10). Daimler responded by filing its Response to Debtor’s Motion for Continuation of the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(3)(B) (Dkt. #23). The Court issued an order denying the Motion for Continuation of Stay on August 25, 2022. (Dkt. #25).

Debtor’s Pending Motion to Impose Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4)(B)

On August 19, 2022, and before the notice period had expired on the Motion for Continuation of Stay (Dkt. #10), the Debtor changed course by filing the instant Motion to Impose Stay (Dkt.

² The Trustee also filed an Objection to Confirmation (Dkt. #41) which was reset for a hearing on October 17, 2022.

³ *In re Sledge*, No. 20-01132-JAW (Dkt. #1).

⁴ *In re Sledge*, No. 20-01132-JAW (Dkt. #80).

⁵ *In re Sledge*, No. 21-01633-JAW (Dkt. #1).

⁶ *In re Sledge*, No. 21-01633-JAW (Dkt. #35).

#25) pursuant to 11 U.S.C. § 362(c)(4)(B), arguing that the Debtor is entitled to a stay based on his good faith in filing the Current Bankruptcy Case. (Dkt. #25). Daimler filed its Response to Motion to Impose Stay (Dkt. #39) arguing that the stay never came into effect in the Current Bankruptcy Case under 11 U.S.C. § 362(c)(4)(A)(i) and that the Debtor cannot overcome the presumption that arose under 11 U.S.C. § 362(c)(4)(D)(i) that he filed the Current Bankruptcy Case in bad faith.

Legal Analysis

11 U.S.C. § 362(c)(4)(A)(i) provides in pertinent part that:

if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case.

11 U.S.C. § 362(c)(4)(A)(i). Because the Debtor had two other chapter 13 cases pending within the previous year, both of which were dismissed for failure to make plan payments, the automatic stay is not in effect in the Current Bankruptcy Case, pursuant to 11 U.S.C. § 362(c)(4)(A)(i). It is this ruling that Daimler seeks in its Request for Comfort Order.

However, the Debtor now seeks imposition of the automatic stay as to all creditors pursuant to 11 U.S.C. § 362(c)(4)(B).⁷ Under this section, a debtor may request within the first 30 days following the filing of a case that the court order the stay to take effect in the underlying case as to any or all creditors, but the court may grant such relief only if the debtor demonstrates that the filing of the later case is in good faith. 11 U.S.C. § 362(c)(4)(B). If granted, the stay becomes

⁷ Of the Debtor's creditors, only Daimler opposes the Motion to Impose Stay. Daimler holds a note in the principal amount of \$38,910.00 signed by the Debtor on May 15, 2019, which granted a security interest in a 2013 Freightliner Cascadia. Daimler filed a proof of claim in the amount of \$37,059.77, of which \$30,000.00 is secured. (Cl. #2-1). The Debtor proposes a plan (Dkt. #8) that crams down Daimler's claim to \$15,000.00.

effective only as of the date of the order. 11 U.S.C. § 362(c)(4)(C). A case is presumptively filed in bad faith under certain conditions. 11 U.S.C. § 362(c)(4)(D). If one of these conditions is met, the debtor must show that the pending case has been filed in good faith by clear and convincing evidence. *Id.* Here, the presumption applies because both of the Debtor's Prior Bankruptcy Cases were dismissed for failure to make plan payments. 11 U.S.C. § 362(c)(4)(D)(i)(II).

The Debtor alleges in the Motion to Impose Stay that the Current Bankruptcy Case was filed in good faith as evidenced by his current representation by counsel, and his ability to adequately fund the plan based on the fact he has a new employer. (Dkt. #25 at 1; Dkt. #25-1 at 2). He acknowledged in the Motion to Impose Stay and admitted at the Hearing that his Prior Bankruptcy Cases were dismissed for failure to make plan payments, but he attributed that failure to his former employer's failure to withhold wages properly. He testified that he would be able to make plan payments going forward based on his new employment. (Dkt. #25 at 1; Dkt. #25-1 at 2; Mot. Hr'g at 10:24 (Sept 26, 2022)).⁸

The Court finds that the Debtor has failed to provide clear and convincing evidence that the Current Bankruptcy Case was filed in good faith. The Debtor acknowledged at the Hearing that he is behind on plan payments in the Current Bankruptcy Case. (Mot. Hr'g at 10:25). Moreover, the Debtor admitted that his disposable income had decreased across the pendency of his Prior and Current Bankruptcy Cases. (Mot. Hr'g at 10:29). Thus, the Court declines to impose the automatic stay as to all creditors pursuant to 11 U.S.C. § 362(c)(4)(B) and confirms the absence of the stay under 11 U.S.C. § 362(c)(4)(A)(i).

The resolution of the Request for Comfort Order and the Motion to Impose Stay renders Daimler's Objection to Confirmation of the Plan (Dkt. #40) moot.

⁸ The Hearing was not transcribed. Citations are to the timestamp of the audio recording.

IT IS, THEREFORE, ORDERED that the Debtor's Motion to Impose Stay is hereby DENIED, Daimler's Request for Comfort Order is hereby GRANTED, and no stay is in effect.

IT IS FURTHER ORDERED that Daimler's Objection to Confirmation of the Plan is hereby OVERRULED as moot.

##END OF ORDER##