

30-Day Termination of Automatic Stay Narrowly Interpreted in North Carolina

Posted on Saturday, February 04, 2006

by Sarah Miranda

The Law Firm of Hutchens, Senter, and Britton, P.A. — USFN Member (NC)
Since the revisions to the Bankruptcy Code as a result of BAPCPA (Bankruptcy Abuse Prevention and Consumer Protection Act of 2005), litigation over the automatic stay for repeat filers has become fairly commonplace. One of the new code provisions, 11 U.S.C. § 362 (c)(3)(A), provides for termination of the stay on the 30th day after the filing of the current petition where the debtor had a pending bankruptcy case within the preceding one-year period that was dismissed. As a result, motions to extend the automatic stay are being filed on a regular basis by debtors' counsel in an attempt to extend the stay or distinguish their clients' situations from § 362(c)(3)(A).

One such motion was recently decided by a bankruptcy court in the Eastern District of North Carolina. The uncontested motion resulted in a precedent-setting opinion in this state for application of 11 U.S.C. § 362(c)(3)(A). The decision in *In re Paschal*, Case No. 05-06133-5-ATS, held that the automatic stay only terminates on the 30th day with respect to “actions taken” by creditors prior to the bankruptcy.

11 U.S.C. § 362(c)(3) states in relevant part 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 ... 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.

The court in *Paschal* distinguished the language of § 362(c)(3)(A) from that of § 362(c)(4)(A)(i) (which provides that the automatic stay does not go into effect in situations where the debtor had two or more prior cases pending in the preceding one-year period, but were dismissed). The court pointed out that if Congress had wanted to terminate all protections of the stay, it would have used the plain language of § 362(c)(4)(A)(i). Instead, different language was chosen to describe termination of the stay, and therefore the court concluded that all of the protections of the automatic stay were not meant to be eliminated under § 362(c)(3). Rather, the stay should terminate on the 30th day only as to creditors who have taken some formal action prior to the filing of the current petition. As to all other creditors, the stay remains in full force and effect.

The court defined the word “action” as a formal action, such as a judicial, administrative, governmental, quasi-judicial or other essentially formal activity or proceeding. A foreclosure proceeding would also qualify as an action taken. The court also noted that

the word “taken” implies events that occurred in the past, prior to the debtor’s bankruptcy.

A second and related issue that the court declined to address dealt with the scope of the automatic stay’s termination. Once the stay has lifted as to a creditor that has taken prior action, the question becomes whether the stay terminates completely, as provided in § 362(c)(4)(A), or only as to the debtor. The bankruptcy court in the Western District of Tennessee, citing the *Paschal* decision, answered this in *In re Branch*, Case No. 05-39958-B. The *Branch* court held that under § 362(c)(3), the automatic stay terminates at the end of the 30-day period following the filing of the case only with respect to the debtor. Therefore, as to property of the bankruptcy estate, a motion for relief from the automatic stay must be filed by a party in interest.

A similar decision seems likely to follow in North Carolina given the appropriate facts. If so, a motion for relief from automatic stay will still be necessary in order to obtain relief as to any property of the debtor’s estate, even if the 30-day stay has lifted as to the debtor.

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February e-Update