

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF ARKANSAS
LITTLE ROCK DIVISION**

IN RE: CAROLYN TALLEY, Debtor

**4:06-bk-11899 E
CHAPTER 13**

ORDER DENYING MOTION TO EXTEND AUTOMATIC STAY

Now before the Court is the Debtor's *Motion to Extend the Automatic Stay* filed on June 12, 2006 (the "**Motion to Extend**"). The Debtor filed bankruptcy under Chapter 13 on May 16, 2006. The Debtor previously filed bankruptcy on June 7, 2005. That case was dismissed on March 16, 2006.

Pursuant to 11 U.S.C. § 362(c)(3)(A), if a debtor has had a pending case dismissed in the one-year period prior to filing the current case, the automatic stay terminates with respect to such debtor on the thirtieth day after the filing of the later case with respect to a debt or property securing such debt (unless the prior case was dismissed under 11 U.S.C. § 707(b)). Upon motion of a party in interest, the automatic stay may be extended "after notice and a hearing *completed before the expiration of the 30-day period*" if certain conditions are met. 11 U.S.C. § 362(c)(3)(B) (emphasis added).

The Debtor filed her Motion to Extend on June 12, 2006,¹ along with a *Notice and Opportunity to Object* giving creditors and parties in interest 20 days to object.² The twentieth day

¹Debtor's motion provides no explanation as to why the motion was filed too late to protect the Debtor's interests.

²There is no requirement that a debtor use a twenty day response time; in fact, the notice on the Court's website (www.areb.uscourts.gov) informing parties that they may "negative notice" a motion to extend the automatic stay specifically provides: "**In the case of motions filed under § 362(c)(3), which must be heard within 30 days of the bankruptcy filing, such motions should be filed with the bankruptcy petition and should provide a 15 day response time.**" (Emphasis added.)

after June 12, 2006, falls on Sunday, July 2, 2006. Accordingly, creditors would have until Monday, July 3, 2006, to file objections.³ However, the thirtieth day after the Debtor's current bankruptcy case was filed will fall on Thursday, June 15, 2006. Accordingly, the automatic stay will expire (as limited by § 362(c)(3)(A)⁴) that day. Pursuant to the notice mailed out by Debtor's counsel, no order will be entered extending the automatic stay before it expires. Further, Debtor's counsel did not notify the Court of the motion or otherwise request an emergency hearing be held prior to the expiration of the stay.⁵ Although the prayer for relief in Debtor's motion asks for a hearing to be

³Rule 9006(a) provides, in part:

In computing any period of time prescribed or allowed by these rules or . . . by any applicable statute, the day of act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, . . . in which event the period runs until the end of the next day which is not one of the aforementioned days.

⁴Some bankruptcy courts have examined the meaning of § 362(c)(3) and determined to what extent the stay expires on the thirtieth day following the bankruptcy filing. *See e.g., In re Harris*, ___ B.R. ___, 2006 WL 1195396 (Bankr. N.D. Ohio 2006) (concluding that § 362(c)(3)(A) does not terminate the entire automatic stay but only any action taken with respect to a debtor and any action taken with respect to any lease of the debtor); *In re Bell*, 2006 WL 1132907 (Bankr. D. Colo. 2006) (not intended for publication) ("Its termination of the automatic stay after thirty days is limited to actions taken against the Debtors, not property of the estate. Furthermore, it is applicable only to a prepetition 'action taken with respect to a debt or property securing such debtor or with respect to any lease.' Thus, it applies only to the continuation of actions commenced against a debtor prepetition."); *In re Paschal*, 337 B.R. 274 (Bankr. E.D.N.C. 2006) (holding same as *Bell*); *In re Moon*, 339 B.R. 668 (Bankr. N.D. Ohio 2006) (concluding that the automatic stay only expires as to debts or property of the debtor and not with respect to property of the estate); *In re Jones*, 339 B.R. 360 (Bankr. E.D.N.C. 2006) ("To summarize, the court holds that § 362(c)(3)(A) terminates the stay with respect to actions taken against the debtor and against property of the debtor, but does not terminate the stay with respect to property of the estate."); *In re Johnson*, 335 B.R. 805, 806 (Bankr. W.D. Tenn. 2006) ("[w]hen read in conjunction with subsection (1), . . . the plain language of § 362(c)(3)(A) dictates that the 30-day time limit only applies to 'debts' or 'property of the debtor' and not to 'property of the estate.'"). This Court has not yet determined this issue.

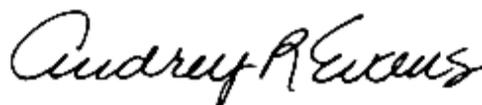
⁵The Court does not intend to imply that a request for an emergency hearing would have necessarily been appropriate; noticing such a hearing would create an almost insurmountable

set at the Court's earliest convenience, the *Notice of Opportunity to Object* filed by Debtor is inconsistent with asking for a hearing. Because the Court may only extend the automatic stay after notice has been provided and a hearing completed *before* the expiration of the automatic stay, and the Debtor's Motion to Extend was filed just three days before the automatic stay will expire, the Debtor's Motion to Extend must be **DENIED**.⁶

For these reasons, it is hereby

ORDERED that the Debtor's Motion to Extend filed on June 12, 2006, is hereby **DENIED**.

IT IS SO ORDERED.



HONORABLE AUDREY R. EVANS
UNITED STATES BANKRUPTCY JUDGE

DATE: June 14, 2006

cc: Clarence Cash, attorney for Debtor
Debtor
Chapter 13 Trustee
U.S. Trustee
all creditors per matrix

problem. However, the Court would have considered any such request if it met the noticing requirement and alleged circumstances justifying such a request.

⁶The Court notes that Debtor has not asked to impose a stay under 11 U.S.C. § 362(c)(4). This Court has held that a stay may be imposed under § 362(c)(4) even if the Debtor has only had one other bankruptcy pending in the prior year; however, a motion to impose the stay under § 362(c)(4) must be filed within thirty days of the bankruptcy filing. *In re Beasley*, 339 B.R. 472 (Bankr. E.D. Ark. 2006) (Evans, J.); *In re Wright*, 339 B.R. 474 (Bankr. E.D. Ark. 2006) (Evans, J.). See also *In re Berry*, 340 B.R. 636 (Bankr. M.D. Ala. 2006).