

Dated: August 10, 2023
The following is ORDERED:



A handwritten signature in black ink, appearing to read "Denise E. Barnett".

Denise E. Barnett
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:

Parrias Aerial Parker,
Debtor.

Case No.: 23-22806
Chapter 13

ORDER DENYING MOTION TO IMPOSE AUTOMATIC STAY

This case came before the Court on August 8, 2023, at 10 a.m., on Parrias Aerial Parker's ("Debtor's") *Verified Motion to Impose Automatic Stay*. For the reasons explained in this order, the Court finds that the Motion to Impose the Stay was untimely filed and concludes the motion should be denied.

On December 29, 2022, Debtor filed a Chapter 13 petition, commencing case number 22-25703 ("2022 Case"). The 2022 Case was dismissed on May 31, 2023. On June 9, 2023, Debtor filed a new Chapter 13 petition, commencing the present Chapter 13 case.¹ On July 20, 2023,

¹ ECF No. 1.

about forty-one (41) days after the petition date of the present case, Debtor filed the Motion to Impose Stay.²

Pursuant to subsection 362(c)(3)³ of the Code, the automatic stay terminates on the thirtieth (30th) day in a newly filed case when one filed case was pending and then dismissed within one year of the newly filed case. Upon notice and hearing, the bankruptcy court may extend or continue the automatic stay as outlined in subsection 362(c)(3). However, the hearing on the motion to extend the automatic stay must be completed before the expiration of the 30-day period.⁴

² ECF No. 22.

³ Section 362(c)(3)(A) and (B) of the Bankruptcy Code reads:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

...

(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;

(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) (2023) (emphasis added).

⁴ *In re Franklin*, 627 B.R. 661, 662 (Bankr. E.D. Mich. 2021) (“Under 11 U.S.C. § 362(c)(3)(B), in order for the Court to extend the automatic stay, a hearing on a motion to extend the automatic stay must be completed within 30 days after the filing of the case.”); *see also In re McKeal*, 14-62113, 2014 WL 6390712, *2 (Bankr. N.D. Ohio Nov. 14, 2014) (“If the debtor provides notice and hearing within the thirty-day window, and also convinces the court ‘that the filing of the later case is in good faith,’ the automatic stay may be extended beyond the thirty-day deadline.”).

Additionally, pursuant to subsection 362(c)(4)(A)(i)⁵ of the Code, individual debtors with 2 or more cases dismissed within the year, the automatic stay remains terminated unless a motion to impose the stay is filed within 30 days of the petition date.⁶

Here, Debtor's 2022 Case was pending and then dismissed May 31, 2023, within the year of the filing of the present case. The automatic stay remained in place for 30 days after the petition date. On the thirtieth (30th) day, the automatic stay was terminated with respect to the Debtor. This Court is not able to extend the automatic stay that has been terminated with respect to the Debtor or reimpose the automatic stay. Any motion to extend or reimpose the stay should have been filed before the expiration of the 30-day period. Debtor's Motion to Impose Stay was untimely filed outside of the 30-day deadline and should be denied.

Accordingly, it is **ORDERED**:

The *Verified Motion Impose Automatic Stay* is denied.

⁵ 11 U.S.C. § 362(c)(4)(A)(i) (2023) (emphasis added).

⁶ Section 362(c)(4)(A) and (B) of the Bankruptcy Code reads:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

...

(4)(A)(i) 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), they stay under subsection (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, 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[.]

Copies to be served on:

Debtor

Debtor's attorney

Chapter 13 Trustee

All creditors on the Matrix