

**IN THE UNITED STATES BANKRUPTCY COURT
Western District of Tennessee**

In re:
Terence R. Branch,
Debtor

Case No. 05-39958-B
Chapter 13

ORDER ON DEBTOR'S MOTION TO EXTEND AUTOMATIC STAY

The Debtor's motion to extend the automatic stay in this case, pursuant to 11 U.S.C. § 362(c)(3), was filed on November 23, 2005, and a hearing was held on the motion on January 4, 2006. The Debtor had been a debtor in one prior bankruptcy case that was pending and dismissed within one year before the filing of this chapter 13 case on October 11, 2005; therefore, § 362(c)(3) states that the automatic stay terminates "with respect to the debtor on the 30th day after the filing of the later case." Section 362(c)(3)(B) further provides for possible relief from this automatic termination but specifies that the hearing on a motion to extend the automatic stay must be "completed before the expiration of the 30-day period." Obviously, since the motion in this case was not filed within the 30-day period, a hearing on the motion could not be completed within that period.

The literal language of the statute predetermines that this Court may not extend the automatic stay when the motion for extension was not timely filed. However, that does not mean that all is hopeless for this Debtor. First, the literal language of the statute

specifies that the automatic stay only terminates “with respect to the debtor,” implying that the automatic stay remains in effect as to property of the bankruptcy estate until a party in interest successfully moves for relief from the stay or until the stay is otherwise terminated. Judge G. Harvey Boswell from this judicial district has just so held in the case of *Thomas R. Johnson*, chapter 13 case number 05-15655 (Bankr. W.D. Tenn. January 9, 2006). Bankruptcy Judge A. Thomas Small has also interpreted this part of the statute in the same way, *In re Laura McFarland Paschal*, chapter 13 case number 05-06133-5-ATS (Bankr. E.D. N.C. January 6, 2006). In the *McFarland* decision, Judge Small pointed out that Congress knew how to specify that the automatic stay would terminate completely, as it did so in § 362(c)(4)(A)(i). This Court agrees with these two decisions and holds that under § 362(c)(3) the automatic stay terminates at the end of the 30-day period following filing of the case only “with respect to the debtor,” meaning that as to property of the bankruptcy estate a motion for relief from the automatic stay must be filed by a party in interest. This, of course, assumes that the bankruptcy court does not extend the automatic stay “with respect to the debtor” upon a timely motion of that debtor.

In the present case, since the Court cannot extend the automatic stay “with respect to the debtor,” if the Debtor needs protection from creditor actions against him personally outside of the bankruptcy court, the Debtor may need to seek appropriate injunctive relief.

IT IS THEREFORE ORDERED, consistent with the Court’s conclusions of law, that the Debtor’s motion to extend the automatic stay “with respect to the debtor” is DENIED, but the automatic stay remains in effect as to all property of the bankruptcy estate. This Order is without prejudice to the Debtor seeking appropriate injunctive relief as to any creditor actions outside of the bankruptcy court as to the Debtor.

Service List:

Debtor

Bruce A. Ralston, Debtor’s attorney

Chapter 13 Trustee

United States Trustee

All creditors on the matrix and all attorneys of record in case

