

# NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF: )  
 )  
MARK ALLEN COMPTON ) CASE NO. 09-11841  
 )  
 )  
Debtor )

## DECISION AND ORDER

At Fort Wayne, Indiana, on June 18, 2009

This case, which is the second bankruptcy the debtor has filed during the past year, was commenced on April 29, 2009. The debtor also filed a motion to continue the automatic stay in the event it would terminate after thirty days. 11 U.S.C. § 362(c)(3)(A). The matter is before the court on the debtor's motion to continue the automatic stay. The motion suffers from a number of deficiencies.

To begin with, the motion to continue the stay was filed on May 13, 2009, two weeks after the case was commenced. The court cannot act upon such a motion without holding a hearing on some kind of notice to creditors, and it believes that at least fifteen days notice is required. See, Fed. R. Bankr. P. Rule 4001. In light of this, the court could not possibly give creditors and parties in interest appropriate notice of a hearing on the debtors' motion and still complete that hearing before the automatic stay expired. See e.g., In re Williams, 346 B.R. 361, 370 ("it is incumbent upon [the debtor] to insure that his motion is filed and heard within the thirty day window."); In re Whitaker, 341 B.R. 336 (Bankr. S.D. Ga. 2006); In re Norman, 346 B.R. 181 (Bankr. N.D. W.Va. 2006); In re Garrett, 357 B.R. 128 (Bankr. C.D. Ill. 2006). The motion came too late. See, In re Whitaker, 341 B.R. 336 (Bankr. S.D. Ga. 2006); In re Norman, 346 B.R. 181 (Bankr. N.D. W.Va. 2006); In re

Smith, 2007 WL 2459250 (Bankr. M.D. N.C. 2007). To compound this problem, debtor's counsel served notice of the motion, giving all creditors and parties in interest until June 12, 2009, to object to it. Not only is this type of motion not subject to the notice and opportunity to object procedure of N.D. Ind. L.B.R. B-2002-2, see, In re Pratt, 2007 WL 2413010 (Bankr. N.D. Ind. 2007), but the deadline by which creditors were told they could object to the motion was after the stay expired, and once the debtor told creditors they had until June 12, 2009 to object, the court could not very well act prior to that time. Cf., In re Wright, 339 B.R. 474 (Bankr. E.D. Ark. 2006); In re Berry, 340 B.R. 636 (Bankr. M.D. Ala. 2006); In re Williams, 346 B.R. 361 (Bankr. E.D. Pa. 2006); In re Whitaker, 341 B.R. 336 (Bankr. S.D. Ga. 2006) (court has no authority to reinstate or reimpose the automatic stay). Furthermore, given the circumstances surrounding the termination of the debtor's prior case, the provisions of § 362(c)(3) do not apply, making the present motion unnecessary. See, N.D. Ind. L.B.R. B-1002-1(c). For all of these reasons, the debtor's motion to continue the automatic stay, filed on May 13, 2009, is DENIED.

SO ORDERED.

/s/ Robert E. Grant  
Judge, United States Bankruptcy Court