

# Not Intended for Publication or Citation

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF: )  
 )  
JAMES CONNERS ) CASE NO. 10-41161  
 )  
 )  
Debtor )

## DECISION AND ORDER

At Fort Wayne, Indiana, on December 20, 2010

This case, which is the second bankruptcy involving the debtor during the past year, was commenced on November 29, 2010. Because his previous case was dismissed during the year prior to the date of the petition, the automatic stay would normally terminate after thirty days. 11 U.S.C. § 362(c)(3)(A). This has prompted debtor’s counsel to file a motion to continue the automatic stay.<sup>1</sup> The court notes, however, that the debtor’s prior case was dismissed when the petition was stricken due to the failure to include any indication that it had been signed by the debtor. See, Fifth Amended Order Authorizing Electronic Case Filing, ¶ 11(c). See also, In re King, 2006 WL 1994679 \*4 (Bankr. N.D. Ind. 2006). As the result, that filing did not satisfy the minimum requirements necessary to initiate a voluntary case, see, N.D. Ind. L.B.R. B-1002-1(a), and “did not constitute a case for the purpose of determining the creation, existence or duration of the automatic stay as a result of any future petition that might be filed concerning the debtor . . . .” N.D. Ind. L.B.R. B-1002-1(c).

Counsel is fortunate that the dismissal of debtor’s prior case does not result in a temporary automatic stay in this case. Although the stay in a second case can be extended at the request of a

---

<sup>1</sup>The court notes that the motion does not contain the information required by Rule 9011(a) of the Federal Rule of Bankruptcy Procedure. Fed. R. Bankr. P. Rule 9011(a) (the motion “shall state the signer’s address and telephone number”).

party in interest, such a request requires a hearing held on notice to creditors, all of which must be completed before the 30-day stay expires. 11 U.S.C. § 362(c)(3)(B). The court believes creditors are entitled to at least fourteen days notice of that hearing. See, Fed. R. Bankr. P. Rule 4001. That timetable could not be satisfied here. While the case was filed on November 29, 2010, it was not until more than two weeks later, December 14, that counsel filed the motion to continue the stay and not until the next day that it came to the court's attention. In light of this and the status of its calendar, the court cannot schedule a hearing on the motion, give creditors and parties in interest appropriate notice of it, and still complete the entire process before the automatic stay would otherwise expire on December 29.<sup>2</sup> 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).

Despite its belated filing and the improper notice, because the automatic stay in this case is not temporary, there was no need for debtor to file a motion to continue the automatic stay, no hearing

---

<sup>2</sup>Debtor's counsel seems not to be aware of the need to act and to extend the stay before it expires. He served creditors and parties in interest with a notice of the motion, purporting to establish January 13, 2010 as a deadline for filing objections to it. By that time the stay would have already expired. Counsel also apparently does not realize that motions to extend the automatic stay are not subject to the notice and opportunity to object procedure established by local bankruptcy rule B-2002-2. See, N.D. Ind. L.B.R. B-2002-2(a)(1)-(25), (e). As a result, there was no basis for the notice counsel served; both it and the deadline it purported to establish are ineffective and mean nothing. Matter of Pratt, 2007 WL 2413010 (Bankr. N.D. Ind. 2007). Again, counsel is fortunate that the court does not need to act on his motion. Once he told all creditors that they had until January 13 to object to the motion, could the court really hold a hearing and act on the motion before that date? Even though an unauthorized notice and objection deadline are ineffective, in light of the expectations that counsel may create by telling other parties about a fictitious deadline, fairness to those other parties may mean the court should not act sooner than they have been led to believe it might.

is needed, and the motion is MOOT.

SO ORDERED.

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