UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:	)	
	)	
Phillip A. Pardus and	)	
Michelle D. Pardus,	)	CASE NO. 11-22677-jpk
	)	Chapter 13
Debtors.	)	

ORDER FOR HEARING ON MOTION FOR RULE TO SHOW CAUSE ["MOTION"]

The Motion was filed by the debtor, by counsel, on September 13, 2011. The motion alleges that a creditor, Ron's Home Improvement Inc., has proceeded with a wage garnishment action based upon the premise that the Court's Order Denying Motion to Continue Automatic Stay terminated the automatic stay in 11 U.S.C. § 362(a) in all respects in this case.

The language of the August 22, 2011 order which determined the effect of denial of extension of the automatic stay under 11 U.S.C. § 362(c)(3) states:

> It Is Ordered that the automatic stay under 11 U.S.C. § 362(a) shall terminate at midnight, August 11, 2011 with respect to any action taken with respect to a debtor or property securing such debt or with respect to any lease, with respect to the debtor.

This language is taken directly from Section 362(c)(3). There are essentially two lines of authority in reported decisions as to the effect of a court's order denying extension of the stay under 11 U.S.C. § 362(c)(3). The minority view is that failure to extend the stay causes the automatic stay of Section 362(a) to be eviscerated for all purposes, while the majority view focuses on the exact language of the statute and holds that the automatic stay terminates only with respect to certain matters in relation to the debtor, while it remains in effect with respect to those provisions of Section 362(a) which relate to matters concerning the bankruptcy estate. In the context of the foregoing Motion, 11 U.S.C. § 1306(a) includes in property of the Chapter 13 debtor's bankruptcy estate, "earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed or converted...", and thus

the wages which have been allegedly garnished constitute property of the bankruptcy estate. Under the majority view noted above, continuing garnishment of wages subsequent to the filing of a Chapter 13 case – despite denial of a Section 362(c)(3) motion – would constitute a violation of several provisions of 11 U.S.C. § 362(a).

The court has not had occasion to determine the foregoing issue by a written decision. The matter addressed by the Motion is the first instance in which the foregoing issue has been presented directly to the court, and the court welcomes the opportunity to determine the issue by a formal written decision on the merits. At the hearing scheduled by this order, a briefing scheduling will be established for the parties.

IT IS ORDERED that a preliminary pretrial conference will be held on the Motion on **October 3, 2011, at 3:00 P.M.**

Dated at Hammond, Indiana on September 23, 2011.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee
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