

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

IN RE:)
SUSAN LYNN RUETH)
) BANKRUPTCY NO. 12-21629
)
Debtor)

MEMORANDUM OPINION
AND
ORDER

This Chapter 13 case is before the Court on the Objection filed by the Chapter 13 Debtor, Susan Lynn Rueth ("Debtor") on June 14, 2012, to the Motion for Protective Order filed by Centier Bank ("Centier") on June 5, 2012 pursuant to §362(j), which provides that on the request of a party in interest, the Court shall issue an Order under §362(c) confirming that the Automatic Stay has been terminated.

The Material Facts have as to this Contested Matter are not in dispute. The Debtor filed her Chapter 13 Petition on May 3, 2012.

The Debtor previously filed a Chapter 13 Petition under Case Number 11-22372 on June 15, 2011, which was dismissed on October 6, 2011, and which was a case pending within the preceding 1-year period of the Chapter 13 Petition filed in this case Number 12-21629.

The Debtor did not file a Motion in the present case to extend the stay pursuant to §362(c)(3)(B). The Debtor's Objection asserts that pursuant to §362(c)(3)(A), the Stay terminates only as to the Debtor and not to the property of the Debtor's Estate.

Centier filed its Reply to the Debtor's Objection on June 15, 2012, and asserted that the failure of the Debtor to file a Motion to Continue the Stay within 30 days of the Petition date pursuant to §362(c)(3)(B) results in the Stay being terminated with respect to both the Debtor and property of the

Debtor's Estate pursuant to §362(c)(3)(A) on the 30th day after the filing of the Petition in this case. Citing, In re Daniel, 404 B.R. 318 (Bankr. N. D. Ill 2009); In re Furlong, 426 B.R. 303 (Bankr. N. D. Ill 2010); and, In re Reswick, 446 B.R. 362 (9th Cir. BAP 2011).

A Hearing was held on July 10, 2012 on the Motion of Centier and the Objection thereto by the Debtor and at the conclusion thereof, the Court granted the parties and the Chapter 13 Trustee to and including July 31, 2012 to file legal memos in support of their respective positions.

The Debtor filed her Memorandum in Support of her Objection on July 31, 2012.

The Debtor's Memorandum cited the case of in re Mortimore, 2011 WL 6717680 (D. N.J. December 2011), which adopted the Majority Position and which holds that upon the failure of a debtor to file a motion to continue the stay within 30 days of the petition the stay as terminated only as to the debtor and continues as to property of the debtor's estate after 30 days from the petition date pursuant to §362(c)(3)(A), citing, In re Williams, 346 B.R. 361, 367 (Bankr. E.D. Pa 2006), and a long line of cases in accord with Williams.

Trustee Chael filed his Amicus Brief on July 31, 2012. Trustee Chael asserts that the Stay should be deemed terminated as to both the Debtor and the property of the Debtor's Estate.

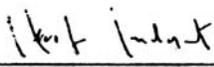
No additional materials were filed by Centier.

The Court finds that Opinion issued by United States District Court of New Jersey in In re Mortimore, supra, deciding that the failure of a Chapter 13 debtor to file a motion to continue the automatic stay within 30 days of the petition date when a previous Chapter 13 case was pending, and dismissed within the preceding 1-year period, operates only to terminate the stay versus the debtor and does not operate to terminate the stay as to property of the debtor's estate, is exceedingly well written, and covers all of the relevant and salient points to be considered by this Court in deciding this Contested Matter. The Court agrees with this Opinion in toto as to the decision, analysis, and

conclusions of law contained therein. Accordingly, this Opinion is attached hereto as Appendix A and is adopted by this Court in its entirety as the Ratio Decidendi for its Decision denying the Motion of Centier in part. It is therefore,

ORDERED, ADJUDGED, AND DECREED, that the Motion of Centier should be and is hereby **GRANTED** in part, and **DENIED** in part, and that the Automatic Stay as to the Debtor only is terminated and the Automatic Stay as to property of the Debtor's estate only is not terminated.

Dated: November 8, 2012



JUDGE, U. S. BANKRUPTCY COURT

Distribution:
Debtor
Attorney Kopko
Atty Yannakopoulos
Attorney Hoham