

\*\*\*\*\*NOT INTENDED FOR PUBLICATION\*\*\*\*\*

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO**

Bankruptcy Judge Elizabeth E. Brown

In re: )  
)  
JOHN CLARENCE BELL, )  
VIVIAN ANNETTE BELL, ) Bankruptcy Case No. 06-11115 EEB  
)  
) Chapter 13  
)  
Debtors. )

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**ORDER**

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THIS MATTER having come before the Court on the Motion to Extend the Automatic Stay, filed by the Debtors, and the Court being otherwise advised in the premises, hereby

FINDS that the Debtors previously filed a Chapter 13 case on November 25, 2005, Case No. 05-52220 EEB, which was dismissed on March 15, 2006, due to the Debtors' failure to obtain, or attempt to obtain, credit counseling prior to filing bankruptcy, as required by 11 U.S.C. § 109(h).

FURTHER FINDS that the Debtors seek in this case to obtain a ruling that the provisions of 11 U.S.C. § 362(c) are not applicable to their present case. Section 362(c)(3) provides, in pertinent part, that if an individual debtor is a debtor in either a Chapter 7, 11, or 13 case that was pending within one year preceding the present case, and the prior case was dismissed for reasons other than dismissal under Section 707(b), then "(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case; . . . ."

FURTHER FINDS that the Debtors argue that because they were ineligible to be debtors in their prior case, due to their failure to comply with Section 109(h), no "case" was pending within the one year period preceding the filing of the present case. The Debtors cite no authority for this argument, but the Court is aware of a growing number of decisions, which have considered whether a "case" has been filed by an ineligible debtor. *See In re Seaman*, \_\_ B.R. \_\_, 2006 WL 988271 (Bankr. E.D.N.Y. 2006) and cases cited therein. In *In re Salazar*, \_\_ B.R. \_\_, 2006 WL 827842 (Bankr. S.D. Tex. 2006), the court concluded that the filing of a petition by an

ineligible debtor did not commence a case and, therefore, did not trigger the provisions of Section 362.

FURTHER FINDS that, in *In re Seaman, supra*, the court reached the opposite conclusion, holding that the filing of a petition by a debtor ineligible to do so for whatever reason nevertheless commences a case, requiring that the petition be dismissed instead of stricken. This Court finds the reasoning and analysis of the *Seaman* court to be more persuasive and adopts its reasoning as its own.

FURTHER FINDS that the instant Motion did not argue, in the alternative, any grounds for extension of the stay. The Motion requests only that the Court declare Section 362(c) inapplicable. Section 362(c) states that a debtor must establish that the filing of the present case is made in good faith, which requires the debtor to rebut with clear and convincing evidence a presumption that the present case has been filed “not in good faith.” 11 U.S.C. § 362(c)(3)(C).

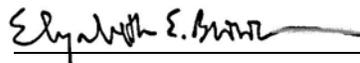
FURTHER FINDS that no objections to the present Motion have been filed. The Debtors’ lender, WFS Financial, who holds a lien on the Debtors’ car, was not served with the Motion in accordance with Bankruptcy Rule 7004. WFS Financial had filed a motion for stay relief in the prior case. In any event, the absence of objections does not assure a debtor that the court will grant any motion filed. The Court must enforce the provisions of the Bankruptcy Code, regardless of whether any party in interest files an objection.

FURTHER FINDS that there is one note of consolation to the Debtors. While the Court finds that Section 362(c)(3) is applicable to this case, its provisions are limited in scope. Its termination of the automatic stay after thirty days is limited to actions taken against the Debtors, not property of the estate. Furthermore, it is applicable only to a prepetition “action taken with respect to a debt or property securing such debtor or with respect to any lease.” Thus, it applies only to the continuation of actions commenced against a debtor prepetition. ” *In re Paschal*, 337 B.R. 274 (Bankr. E.D.N.C. 2006). Thus, the narrow 30-day window of a stay under Section 362(c) may have little or no impact in the majority of consumer cases. Accordingly, it is hereby

ORDERED that the Motion is DENIED.

DATED this 27th day of April, 2006.

BY THE COURT:



Elizabeth E. Brown, Bankruptcy Judge