

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO
Honorable Howard R. Tallman**

In re:)
)
LINDA MARLENE THOMPSON,) **Case No. 10-37075 HRT**
)
Debtor.) **Chapter 7**
)
_____)

ORDER RE: MOTION TO EXTEND AUTOMATIC STAY

This case comes before the Court on Debtor's *Motion to Extend Automatic Stay* (docket #13; the "Motion").

The Court is quite familiar with the history of this case and the prior chapter 13 case. The Court has held hearings in both cases and has heard extensive testimony concerning the issues that have resulted in the bankruptcy filings.

This case is the Debtor's second bankruptcy case pending within the prior year. Under 11 U.S.C. § 362(c)(3), by operation of law and without Court action, the automatic stay in this case expires 30 days after the petition was filed. The petition in this case was filed on October 25, 2010. Absent Court action to extend the stay, it expires on November 24, 2010. On November 23, 2010, the Court held a hearing on Debtor's Motion. The Debtor requested, and the Court granted, permission to appear by telephone at that hearing.

Previously, the Court had scheduled Creditor Stevens, Littman, Biddison, Tharp & Weinberg, LLC's *Motion to Determine Estate's Interest in Property and for Abandonment of Real Property* (docket #10) for oral argument at the November 23, 2010, hearing. However, that issue has been rendered moot by the Court's *Amended Order Granting Creditor James D. Thompson's Motion for Trustee to Abandon Property* (docket #56).

This bankruptcy case represents a continuation of the domestic dispute between the Debtor and her former husband Dr. James D. Thompson. The particular focus of the parties' dispute is the home located at 236 Garnet Road, Silverthorne, Colorado (the "Real Property").

The marital case of *In Re the Marriage of: James D. Thompson and Linda G. Thompson*, Case No. 2002DR64 (the "Domestic Case") was filed in the District Court, Summit County, Colorado (the "State Court") in 2002. The State Court's *Findings of Fact, Conclusions of Law, and Permanent Orders* were entered in the Domestic Case on August 19, 2005. In that order, the State Court directed that the Real Property was to be sold and set out the manner in which proceeds were to be divided. The State Court's order allowed the Debtor to remain in residence on the Real Property until it could be sold. The privilege of remaining in possession of the Real Property was "upon the condition that she is cooperative with the repairs and listing of the home."

It appears there was little cooperation. The State Court orders are replete with findings and descriptions of the Debtor's delaying tactics and interference with the State Court processes. On May 12, 2008, the State Court entered its *Order Appointing Receiver* due to the "inability of the parties to agree concerning necessary repairs to the property, or to agree upon a realtor or contractor or possible terms of sale" Finally, on June 1, 2010, the State Court entered its *Order Granting Receiver's Request Re: Vacating of Ruby Ranch Property*. The State Court found that "there has been a failure by the [Debtor] to comply and cooperate with the Order appointing receiver entered by the Court May 12, 2008." As a result, the State Court ordered the Debtor to vacate the Real Property no later than June 28, 2010.

The net effect of the State Court orders has been to divest the Debtor of any interest in the Real Property save for her right to receive the net proceeds from the ultimate sale. That right became property of the Debtor's bankruptcy estate subject to her homestead exemption. The Trustee has abandoned the estate's interest in the property subject to Trustee retaining a lien amounting to the Debtor's share of any sale proceeds over and above the liens against the property and the homestead exemption.

The Receiver, appointed by the State Court in the Domestic Case, has placed the Real Property under contract for sale. That sale has been delayed by the Debtor's prior chapter 13 case and by the present chapter 7 case.

The Debtor's presentation was primarily a rehash of certain events in the Domestic Case without much focus on issues going to her good faith under § 362(c)(3)(B). The Court finds that the Debtor has failed to show cause for extending the automatic stay as to the objecting creditors and others whose debts are secured by the Real Property or arise from the Domestic Case. Section 362(c)(3) requires that the Debtor "demonstrate[] that the filing of the later case is in good faith as to the creditors to be stayed." 11 U.S.C. § 362(c)(3)(B).¹ She failed to carry her burden of proof as to those creditors described above.

In order for the Court to grant an extension of the automatic stay to a debtor who has filed a previous bankruptcy case within the past year, under 11 U.S.C. § 362(c)(3)(B), the Court must find that the most recent bankruptcy case was filed by the debtor in good faith. Good faith is analyzed by the Court under a totality of the circumstances standard. *In re Galanis*, 334 B.R. 685, 691-92 (Bankr. D. Utah 2005); *In re Montoya*, 333 B.R. 449, 458 (Bankr. D. Utah 2005). The Court will consider the following factors:

¹ This is not a case where § 362(c)(3)(C) applies. Under certain circumstances, that section provides that a case is presumed *not* to be filed in good faith. When the presumption arises under § 362(c)(3)(C), it is rebuttable only by clear and convincing evidence. Debtor's burden in this case was to show good faith by a preponderance of the evidence.

- 1) the timing of the petition;
- 2) how the debt(s) arose;
- 3) the debtor's motive in filing the petition;
- 4) how the debtor's actions affected creditors;
- 5) why the debtor's prior case was dismissed;
- 6) the likelihood that the debtor will have a steady income throughout the bankruptcy case, and will be able to properly fund a plan; and
- 7) whether the Trustee or creditors object to the debtor's motion.

In re Galanis, 334 B.R. at 693.

1) *The Timing of the Petition*

The timing of the petition is significant and weighs heavily against the Debtor. The original case was filed the day prior to the date the Receiver was scheduled to close a State Court ordered sale of the Real Property. After dismissal of that case, the Receiver sought to remove the Debtor from the Real Property in compliance with the State Court's order. The Debtor immediately filed the instant case. The timing of the filing of this case as well as the prior case demonstrates the Debtor's desire to frustrate the legitimate orders and processes of the State Court.

2) *How the Debt Arose*

This factor weighs against the Debtor. Although the Debtor does have monetary obligations to the objecting creditors, the focus of these bankruptcy petitions was not those debts but obligations stemming from orders of the State Court. Bankruptcy relief classically allows a family or individual who is overburdened with financial debt to obtain a fresh start under the auspices of the Bankruptcy Code. The use the Debtor has made of the Bankruptcy Code – to frustrate and evade legitimate State Court processes – is an abuse of the Bankruptcy Code and of this Court.

3) *The Debtor's Motive in Filing the Petition*

The evidence is clear that the Debtor's motive in filing both cases was to continue to evade her obligations under the State Court orders. The Debtor has taken five appeals with respect to State Court orders. Dr. Thompson asserted one cross-appeal. All are decided and are final. The bankruptcy case is simply an attempt to move the controversy to another forum.

4) *How the Debtor's Actions Affected Creditors*

The objecting creditors filed liens under state law against the Real Property in order to secure repayment of debts owed to them. The evidence persuades the Court that the Real Property has suffered a steady decline in physical condition and value since the 2005 permanent orders of the State Court determined that the property was to be sold. The security of the creditors' liens is diminishing. Further delay can do nothing but cause further decline in the property's value and put the lien creditors at risk of becoming undersecured.

5) *Why the Debtor's Prior Case Was Dismissed*

This factor is neutral. The prior case was dismissed because the Debtor could not demonstrate her eligibility for chapter 13 relief. In and of itself, the reason for dismissal of the Debtor's prior case is not significant.

6) *The Likelihood That the Debtor Will Have a Steady Income Throughout the Bankruptcy Case, and Will Be Able to Properly Fund a Plan*

This factor applies to chapter 13 cases and is inapplicable to this chapter 7 case.

7) *Whether the Trustee or Creditors Object to the Debtor's Motion*

Two creditors have objected to the Debtor's Motion in this case. However, none of the creditors who are not connected to the Domestic Case have raised objections.

A factor not enumerated by the *Galanis* court but important in this case is whether there is meaningful relief to be had in a chapter 7 bankruptcy case. The Debtor complains bitterly about her fortunes in the State Court. She has pursued many appeals and those appeals have been decided. This Court's jurisdiction does not include appellate authority over the State Court or the Colorado Court of Appeals. The Trustee has reviewed the Real Property and has abandoned it. The Real Property is no longer property of the bankruptcy estate over which this Court may exercise jurisdiction. Extending the stay could accomplish nothing of substance and any additional delay beyond what they have already experienced would continue to prejudice the creditors.

Moreover, no values for the Real Property have been discussed in the testimony that would satisfy the liens against the property and exceed the homestead exemption. The Trustee's agreement to abandon the property also demonstrates that the evidence she reviewed persuaded her that the property promises no equity value for the bankruptcy estate.

In both the prior chapter 13 case and in the present chapter 7 case, the Debtor has sought to evade her obligations under the orders entered in the Domestic Case by the State Court. The

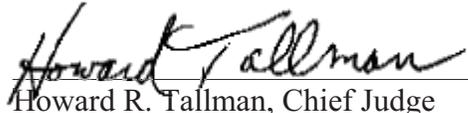
evidence makes it clear that Debtor's bankruptcy cases are simply a continuation of a two-party dispute that has already been fully litigated and ruled on in the State Court. The evidence persuades the Court that the Debtor's bankruptcy filings have been motivated solely by the desire to frustrate the State Court's valid final orders. For that reason, the Court finds that this bankruptcy case was not filed in good faith, at least as to those creditors whose debts arise from the Domestic Case and those who are affected by the sale of the Real Property. As to those creditors, Debtor's Motion must be denied. As a result, the automatic stay terminates on November 24, 2010, as to those creditors. Therefore, it is

ORDERED that Debtor's *Motion to Extend Automatic Stay* (docket #13) is GRANTED IN PART and DENIED IN PART. The Court hereby extends the automatic stay in this case EXCEPT that the stay shall expire on November 24, 2010, as to the two objecting creditors, Dr. Thompson and the Stevens, Littman, Biddison, Tharp & Weinberg, LLC, firm as well as any other creditor whose debt is secured by a lien on the Real Property or whose debt arises out of the Domestic Case. It is further

ORDERED that Creditor Stevens, Littman, Biddison, Tharp & Weinberg, LLC's *Motion to Determine Estate's Interest in Property and for Abandonment of Real Property* (docket #10) is DENIED AS MOOT.

Dated this 24th day of November, 2010.

BY THE COURT:


Howard R. Tallman, Chief Judge
United States Bankruptcy Court