UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

JENNILEE E. SKOGLUND,

Debtor.
_____/

Case No. DM 14-90050
Chapter 13
Hon. Scott W. Dales

MEMORANDUM OF DECISION AND ORDER
REGARDING MOTION TO CONTINUE AUTOMATIC STAY

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

I. INTRODUCTION

Jennilee E. Skoglund, with the assistance of counsel, filed three bankruptcy cases within the last year, with varying results.[1] In the Third Case, at the time she filed her voluntary chapter 13 petition, she also filed a Motion to Continue Automatic Stay (the "Motion," DN 3), which drew an objection from the lender on two car loans, Forward Financial Credit Union (the "Credit Union").

In its Objection to Motion to Continue the Automatic Stay (the "Objection," DN 16), the Credit Union argues that Ms. Skoglund did not file her Third Case in good faith. On March 18, 2014, using the court's closed circuit television,[2] the court held a hearing to consider the Motion, the Objection, and Ms. Skoglund's written response to the Objection. Ms. Skoglund and the

[1] Attorney Allan J. Rittenhouse represented Ms. Skoglund (or the "Debtor") in connection with Case No. 12-90631 (the "First Case"), Case No. 13-90199 (the "Second Case"), and the current case, Case No. 14-90050 (the "Third Case").

[2] Given the time constraints that Congress imposed in § 362(c), the court's schedule, and the distance between the Grand Rapids and Marquette courthouses, the court found good cause and compelling circumstances to conduct the hearing using "contemporaneous transmission" from the courthouse in Marquette to the courthouse in Grand Rapids. *See* Fed. R. Civ. P. 43(a) (applicable by virtue of Fed. R. Bankr. P. 9017).

Credit Union appeared through counsel. For the reasons set forth on the record, the court denied the Motion. This Memorandum of Decision supplements the court's oral ruling.

II. JURISDICTION AND RELATED AUTHORITY

The court has jurisdiction over the Third Case pursuant to 28 U.S.C. § 1334(a). The Motion is a core proceeding under 28 U.S.C. § 157(b)(2)(G), referred to the bankruptcy court under 28 U.S.C. § 157(a) and LCivR 83.2(a) (W.D. Mich.). The court finds that it has ample authority to resolve the Motion, despite possible arguments to the contrary based on *Stern v. Marshall*, 131 S. Ct. 2594 (2011).

III. ANALYSIS

A. Procedural History

The procedural history is not in dispute. The court dismissed the First Case -- a chapter 13 proceeding -- on March 20, 2013, without discharge, after the Debtor failed to make pre-confirmation payments as required by § 1326 and the court's order approving her stipulation with the chapter 13 trustee. The Debtor filed her Second Case roughly a month after the dismissal of the First Case, originally as a chapter 13 case. She converted the Second Case to a case under chapter 7, and the court entered a discharge under § 727 on February 13, 2014 (the "Discharge"). The Discharge in the Second Case operates as an injunction against the Credit Union, and others, as provided in § 524. The court closed the Second Case on February 28, 2014.

Eight days before the court formally closed the Second Case, Ms. Skoglund filed her Third Case, this one again under chapter 13. In her Third Case, she lists two secured creditors on

Schedule D (including the Credit Union), and no priority or general unsecured creditors on Schedules E or F.

Because the Debtor had two cases pending within the same year (one of which was dismissed), she filed the Motion to prevent the automatic stay from terminating at the expiration of the thirty-day period prescribed in § 362(c)(3)(A).[3]

B. The Statute

Congress perceived that serial bankruptcy filings create hardships for creditors, and therefore took steps to address its concerns by enacting the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Pub. L. 109-8, 119 Stat. 23 (enacted April 20, 2005).

After the enactment of BAPCPA, "if a single or joint case of [an individual] debtor was pending within the preceding 1-year period but was dismissed," the automatic stay will automatically terminate (in some respects) on the 30th day after the petition date, unless the court extends the stay after notice and a hearing completed within that 30 day period. 11 U.S.C. § 362(c)(3)(A) & (B). In cases involving individuals with more than one case filed and dismissed within the 1-year period, Congress decreed that "the stay under subsection (a) shall not go into effect upon the filing of the latter case." 11 U.S.C. § 362(c)(4)(A)(i).

Regardless of whether an interested party seeks an order to continue the automatic stay under § 362(c)(3)(B) or to impose it in the first place under § 362(c)(4)(B), Congress erected a presumption that the latter case is "filed not in good faith." *See* 11 U.S.C. § 362(c)(3)(C) and

[3] The parties and the court agree that the more draconian provisions of § 362(c)(4) do not apply to the Debtor's Third Case because only one of her two earlier cases was dismissed. *See* 11 U.S.C. § 362(c)(4)(A)(i) (subsection applies only "if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed. . .").

(c)(4)(D). This presumption is subject to rebuttal "by clear and convincing evidence to the contrary." *Id.*

C. The Hearing in the Third Case

At the March 18, 2014 hearing, both parties appeared through counsel only: the Debtor was reportedly at work and the Credit Union's representative was in India. In short, there were no witnesses. The Debtor, therefore, was unable to offer any evidence, let alone the "clear and convincing" evidence that the statute requires, to rebut the presumption that the case was filed in bad faith. Accordingly, the court found that the Third Case was "filed not in good faith," as the statute somewhat awkwardly provides, and that the automatic stay "as to the debtor" will expire on March 22, 2014 -- thirty days after the petition date.

As the court noted during the hearing, however, the two automobiles securing the Credit Union's claims[4] are included within the property of the estate under § 541(a)(1), and remain protected by the automatic stay despite the court's finding of bad faith. This follows from a careful reading of § 362. First, the plain language of § 362(c)(1) provides that the automatic stay continues as to property of the estate so long as the property remains in the estate, "[e]xcept as provided in subsections (d), (e), (f), and (h) of this section [362]." 11 U.S.C. § 362(c). Second, as other courts have noted, Congress drew an important distinction in § 362(a) between actions against the debtor, against property of the estate, or against property of the debtor. *See* 11 U.S.C. § 362(a)(1) – (a)(8); *In re Robinson*, 427 B.R. 412 (Bankr. W.D. Mich. 2010) (citing cases); *see generally* 3 Collier on Bankruptcy ¶ 362.06[3][a] (16th ed.).

[4] Despite the Discharge in the Second Case, the Credit Union's claims against the two automobiles that secured the debt continued, as the Supreme Court explained in *Johnson v. Home State Bank*, 501 U.S. 78 (1991) (definition of "claim" in § 101(5) includes post-discharge *in rem* right); *see generally* 11 U.S.C. § 524(a)(2) (discharge injunction affects collection "as a personal liability of the debtor," leaving *in rem* rights unaffected).

As a result, the estate's interest in the two automobiles securing the Credit Union's claim remains protected by the automatic stay despite the court's decision to deny the Debtor's Motion.

IV. CONCLUSION AND ORDER

The decision today has no immediate effect on the Credit Union or the two vehicles that serve as its collateral, given that the Discharge in the Second Case already enjoins the Credit Union from enforcing its claims "as a personal liability of the debtor" and given that the automatic stay continues to enjoin it from enforcing its *in rem* claim against the collateral. 11 U.S.C. § 524(a)(2). Nevertheless, the decision may serve as a predicate for a future dismissal motion or motion for relief from the automatic stay. Although so-called "Chapter 20" petitions are not prohibited *per se*, *Society Nat'l Bank v. Barrett (In re Barrett)*, 964 F.2d 588, 589 (6th Cir. 1992), such serial filings present an opportunity for abuse, and courts carefully scrutinize them. Here, the court is concerned that this Third Case may amount to nothing more than a two-party dispute promising very little benefit to anyone including the Debtor who does not need (and will not be eligible for) another discharge, and who will be obligated to pay the Credit Union in some fashion if she wishes to keep the vehicles, with or without the court's assistance.[5] The statements of Debtor's counsel that his client filed the case primarily to deal with the Credit Union, and the schedules which list no priority or general unsecured claims, serve only to magnify the court's apprehension.

For now, the court simply concludes that the Debtor has not rebutted the statutory presumption, and finds that she did not file the Third Case in good faith.

[5] The court assumes that Mr. Rittenhouse will seek compensation under § 330(a)(4) if this case proceeds, perhaps making the Third Case a worthwhile undertaking at least for him.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Motion (DN 3) is DENIED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Memorandum of Decision and Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Debtor, Jennilee E. Skoglund, Allan J. Rittenhouse, Esq., attorney for Debtor, Barbara P. Foley, Esq., chapter 13 Trustee, the Office of the United States Trustee, and upon all parties listed on the court's mailing matrix in this case.

END OF ORDER

IT IS SO ORDERED.

Dated March 19, 2014

Scott W. Dales
United States Bankruptcy Judge