

1
2
3
4
5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7 SACRAMENTO DIVISION
8
9
10

11 In re)
12) Case No. 06-20527-A-13G
13 SUSAN ADAMS,)
14) Docket Control No. JKB-1
15) Date: March 20, 2006
Debtor.)
Time: 9:00 a.m.
_____)

16 **MEMORANDUM**

17 The movant, the Blum Family Trust, holds a deed of trust
18 encumbering the residence of the debtor, Susan Adams. According
19 to the movant, its deed of trust secures an obligation of almost
20 \$407,000. The movant is well-secured. The debtor's opposition
21 to the motion indicates both that the property is worth \$835,000
22 and that its sale is imminent.

23 This is a motion pursuant to 11 U.S.C. § 362(c)(4)(A)(ii) &
24 (j). That is, the movant seeks an order confirming that the
25 debtor and the bankruptcy estate are unprotected by the automatic
26 stay because the debtor is an individual who had two prior
27 chapter 13 cases dismissed within one year of the filing of her
28 latest chapter 13 petition.

1 Because the court's preliminary review of the motion
2 suggested that it lacked merit, the court set the motion for a
3 hearing. That hearing has been concluded. With the benefit of
4 arguments from the debtor as well as the movant, the court is
5 convinced that its initial reservations about the motion were
6 well-founded and the motion will be denied for the reasons
7 explained below.

8 The current chapter 13 petition, Case No. 06-20527, was
9 filed on March 7, 2006. It was preceded by two earlier
10 petitions.

11 The debtor's first chapter 13 petition, Case No. 05-21296,
12 was filed on February 8, 2005. The debtor voluntarily dismissed
13 that petition on February 24, 2005. However, a final decree was
14 not issued, and the case was not closed, until June 6, 2005.

15 The debtor filed a second chapter 13 petition, Case No. 06-
16 20018, on January 4, 2006. Because the debtor never filed her
17 schedules and statements as required by 11 U.S.C. § 521(a)(1),
18 the second petition was "automatically dismissed effective on the
19 46th day after the filing of the petition." See 11 U.S.C. §
20 521(i). The 46th day fell on February 19.

21 Undeterred, the debtor filed her third chapter 13 petition
22 on March 7, 2006. On that same day, the movant countered with
23 this motion. It seeks the court's confirmation that the filing
24 of the third petition did not trigger the automatic stay because
25 the two earlier chapter 13 petitions had been dismissed during
26 the previous year.

27 11 U.S.C. § 362(c)(4)(A) provides:

28 (i) if a single or joint case is filed by or against a

1 debtor who is an individual under this title, and if 2
2 or more single or joint cases of the debtor were
3 pending within the previous year but were dismissed,
4 other than a case refiled under section 707(b), the
5 stay under subsection (a) shall not go into effect upon
the filing of the later case; and (ii) on request of a
party in interest, the court shall promptly enter an
order confirming that no stay is in effect. . . .

6 Unfortunately for the movant, section 362(c) (4) (A) is not
7 applicable because the debtor's first chapter 13 petition was
8 dismissed more than one year prior to the filing of her current
9 petition.

10 This problem might be dispatched by arguing that, despite
11 the dismissal of the first case more than one year ago, it
12 nonetheless was pending within one year of the current petition
13 because the first case was not closed until June 6, 2005.
14 However, the movant did not make this argument. If it had, it
15 would have been rejected.

16 For purposes of section 362(c) (4) (A), a prior chapter 13
17 petition is no longer pending when it is dismissed. Once a
18 petition is dismissed, it ceases to restrict the rights of a
19 creditor against its collateral or against those liable for its
20 claim. This is because the dismissal of a chapter 13 petition
21 reverts property of the estate in the debtor (or in the entity in
22 which such property was vested immediately before the filing of
23 the chapter 13 petition). See 11 U.S.C. § 349(b) (3). And, once
24 property is no longer property of the estate, it is no longer
25 protected by the automatic stay. See 11 U.S.C. § 362(c) (1).
26 Dismissal also terminates the automatic stay of "any other act."
27 See 11 U.S.C. § 362(c) (2).

28 ///

1 As a result, the dismissal of a chapter 13 petition means
2 that it is no longer an impediment to a creditor proceeding
3 against its collateral or against the former debtor. See also In
4 re Weston, 101 B.R. 202, 205 (Bankr. E.D. Cal. 1989) (quoting
5 legislative history indicating that the purpose of section 349 is
6 to make clear that dismissal "undo[es] the bankruptcy case, as
7 far as practicable, and restores all property rights to the
8 position in which they were found at the commencement of the
9 case."), *affirmed*, 123 B.R. 466 (B.A.P. 9th Cir. 1991), *affirmed*,
10 967 F.2d 596 (9th Cir. 1992).

11 The argument raised by the movant is also without merit.
12 The movant argues that the reference in section 362(c)(4)(A)(i)
13 to prior cases "pending within the previous year" is to cases
14 pending anytime in the previous calendar year. In the movant's
15 view, section 362(c)(4)(A)(i) is not referring to a one-year
16 period of time running backward from the filing of the latest
17 petition.

18 The movant supports this argument by pointing to the wording
19 of 11 U.S.C. § 362(c)(3). Section 362(c)(3) limits the automatic
20 stay to a duration of 30 days if a prior petition was dismissed
21 "within the preceding 1-year period." On the other hand, under
22 section 362(c)(4)(A)(i) the automatic stay is not triggered if
23 two or more petitions were dismissed "within the previous year."

24 The different statutory language suggests to the movant that
25 section 362(c)(4)(A)(i) and section 362(c)(3) are calculating the
26 year time frame differently. According to the movant, section
27 362(c)(3) clearly, or at least more clearly, refers to a one-year
28 period of time running from the filing of a new petition, while

1 section 362(c)(4)(A)(i) refers to the previous calendar year.

2 It is undeniable that the two sections are worded
3 differently. Nonetheless, the phrase, "the previous year," is
4 not synonymous with "the previous calendar year." If the
5 statutory context is not considered, all that can be said is that
6 the phrase, "the previous year," could mean either a one-year
7 period of time or a calendar year. But, the phrase's statutory
8 context makes it clear that "the previous year" is a one-year
9 period running from the filing of the most recent petition.

10 Paragraphs (B), (C), and (D) of section 362(c)(4) describe
11 how an individual debtor deprived of an automatic stay by
12 paragraph (A) of section 362(c)(4) may seek the imposition of a
13 stay. When a motion seeking a stay is filed, an individual
14 debtor may be required to rebut a presumption that his or her
15 latest petition was not filed in good faith. This presumption
16 arises, for instance, if "2 or more previous cases under this
17 title in which the individual was a debtor were pending within
18 the 1-year period." [Emphasis added.] See 11 U.S.C. §
19 362(c)(4)(D)(i)(I).

20 What 1-year period is paragraph (D)(i)(I) referring to? The
21 use of the article "the" indicates that this period must have
22 been previously defined in section 362(c)(4). The only temporal
23 reference in section 362(c)(4) that precedes paragraph (D)(i)(I)
24 is the phrase "within the previous year" in paragraph (A)(i).
25 Consequently, "the 1-year period" mentioned in paragraph
26 (D)(i)(I) must be "the previous year" referred to in paragraph
27 (A)(i).

28 ///

1 If the phrase, "within the preceding 1-year period," in
2 section 362(c) (3) refers to a one-year period immediately
3 preceding the most recent petition (as the movant admits), and if
4 section 362(c) (4) uses the phrases, "within the previous year"
5 and "within the 1-year period" interchangeably, there is no
6 reason to construe virtually the same language in 362(c) (4)
7 differently than interpreted in section 362(c) (3).¹

8 Also, section 362(c) (4) (A) (i) requires that two prior
9 petitions have been pending "within the previous year." The use
10 of the word "within" connotes an event or events occurring
11 between two points in time. If the prior petitions had to be
12 filed in a particular calendar year in order for section
13 362(c) (4) (A) (i) to be applicable, one would expect the statute to
14 refer to petitions filed "during" that year rather than "within"
15 the year.

16 Finally, it is interesting to note that even if the movant's
17 interpretation of section 362(c) (4) (A) (i) is correct, it could
18 not prevail on this motion. The debtor filed a prior petition
19 during calendar year 2005. It was also dismissed during 2005.
20 Her second petition, however, was filed and dismissed during
21 calendar year 2006. Hence, if section 362(c) (4) (A) (i) is
22 triggered by the dismissal of two petitions during the prior
23

24 ¹ The only difference in phrasing between section
25 362(c) (3) ["within the preceding 1-year period"] and section
26 362(c) (4) (D) (i) (I) ["within the 1-year period"] is the omission
27 in section 362(c) (4) (D) (i) (I) of the word "preceding." The
28 omission is insignificant given the reference in section
362(c) (4) (A) (i) to the "previous" year. This makes it clear that
section 362(d) (4) (D) (i) (I), like section 362(c) (3), is referring
to a 1-year period preceding the most recent petition.

1 calendar year, section 362(c)(4)(A)(i) is not applicable because
2 one of the debtor's two prior petitions was dismissed during the
3 current calendar year rather than the previous calendar year.

4 Moreover, interpreting section 362(c)(4)(A)(i) to limit the
5 availability of the automatic stay only if two earlier petitions
6 were dismissed in the previous calendar year could lead to absurd
7 results that are inconsistent with the purpose of paragraph
8 (A)(i) - to discourage repetitive and abusive petitions. Under
9 such an interpretation, a debtor could file and dismiss
10 consecutive chapter 13 petitions with impunity as long as the
11 latest petition is filed in the same calendar year as all of the
12 dismissals.²

13 The court concludes that when an individual debtor has filed
14 two earlier petitions that were dismissed within the one-year
15 period preceding the filing of a third petition, the automatic
16 stay does not go into effect. Because this did not occur here,
17 the request for an order confirming the absence of an automatic
18 stay will be denied.

19 A separate order will be entered.

20 Dated: March 22, 2006

21 By the Court

22 /s/
23

24 Michael S. McManus, Chief Judge
25 United States Bankruptcy Court
26

27 _____
28 ² However, such a debtor, like the debtor in this case,
would have to contend with section 362(c)(3).