UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

March 22, 2022 at 1:30 p.m.

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1. **21-23479-E-13** **TRICIA ROJAS** **MOTION TO DISMISS CASE**
Peter Macaluso **3-10-22 [94]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

Debtor failed to notice the Motion pursuant to Federal Rules of Bankruptcy Procedure 1017(a); 2002; 9014. However, the Order Setting Hearing filed by the court was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 13 Trustee, and United States Trustee as stated on the Certificate of Service on March 16, 2022. Dckt. 97. The court computes that 6 days' notice has been provided.

Federal Rule of Bankruptcy Procedure 1017(a) provides that a case shall not be dismissed on motion of the petitioner, for want of prosecution or other cause, or by consent of the parties, before a hearing on the notice as provided in Federal Rule of Bankruptcy Procedure 2002. Debtor failed to provide notice pursuant to Federal Rule of Bankruptcy Procedure 2002; however, the Order Setting Hearing on an expedited schedule filed by the court was served by the Clerk of the Court on March 16, 2022. Thus, the notice requirement is satisfied.

The Motion to Dismiss is xxxxx

Debtor, Tricia Tami Rojas ("Debtor"), seeks dismissal of the case. No basis for the dismissal is provided.

DISCUSSION

11 U.S.C. § 1307(b) provides:

> On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

In keeping with the Congressional intent that a Chapter 13 case is completely voluntary, 1307(b) gives an absolute right for a petitioner to dismiss a Chapter 13 petition. 8 Collier on Bankruptcy P 1307.03 (16th 2021); *In re Nash*, 765 F.2d 1410, 1413 (9th Cir. 1985).

The court notes, however, Debtor has been actively prosecuting this case. On March 15, 2022, the court heard Debtor's Motion for Confirmation of their First Amended Plan. Docket Control No. PGM-1. Although the Plan was denied without prejudice, Debtor's Counsel, Peter Macaluso, appeared and was not aware of Debtor's Motion to Dismiss. To ensure all parties are in agreement, prior to the court granting Debtor's right to dismissal, the court requests confirmation that this is truly Debtor's choice.

At the hearing XXXXXXX.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss the Chapter 13 case filed by the Debtor, Tricia Tami Rojas ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss is XXXXXXX,

2.	**22-20157-E-13 KL-1**	**NELSON MADSEN/ SHARON BURNS Peter Macaluso**	**MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 3-7-22 [33]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)©.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 7, 2022. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Confirm Absence of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Confirm Absence of the Automatic Stay is denied without prejudice.

Tri Counties Bank ("Movant") moves the court for an order confirming that the automatic stay is not in effect in this case pursuant to 11 U.S.C. § 362(j). Movant pleads that the present case is Nelson A Madsen and Sharon L Burns's ("Debtor") second bankruptcy case pending in the last year and that there is no motion seeking to impose the stay pursuant to 11 U.S.C. § 362(c)(4)(B).

DISCUSSION

11 U.S.C. § 362(c)(3)(A)

A review of Debtor's prior bankruptcy cases reveals that one case was pending and dismissed in the year prior to the filing of this case, such that the provisions of 11 U.S.C. § 362(c)(3)(A) apply. In situations where the debtor in the current bankruptcy case had a prior case that was pending and dismissed within the prior year, Congress provides in 11 U.S.C. § 362(c)(3)(A) [emphasis added]:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—
>
> > (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; . . . .

11 U.S.C. § 362(a) provides complementary stay provisions which give rights and protections to the debtor on the one hand, and the bankruptcy trustee and bankruptcy estate. The provision of 11 U.S.C. § 362(a) provide for specific and extensive statutory injunctive relief, stating (emphasis and highlights added):

> [a] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—
>
> (1) the commencement or continuation, of judicial, administrative, or other **action or proceeding against the debtor** which was or could have been commenced prior to commencement of the bankruptcy case or recover a claim that arose prior to the commencement of the bankruptcy case;
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> (2) enforcement against the **debtor** or **property of the estate** a judgment **obtained before the commencement of the bankruptcy case**;
>
> (3) act to obtain possession of **property of the bankruptcy estate**, **from the bankruptcy estate**, or **exercise control over property of the bankruptcy estate**;
>
> (4) act to create, perfect, or enforce any lien against **property of the bankruptcy estate;**
>
> (5) act to create, perfect, or enforce **against property of the debtor** any lien that secured a claim that arose before the commencement of the bankruptcy case;
>
> (6) act to collect, assess, or recover a **claim against the debtor** that arose before the commencement of the bankruptcy case;
>
> (7) setoff any debt owing to the debtor that arose before the commencement of the case against any claim against the debtor;

11 U.S.C. § 362(a)(1)-(7). It is clear that Congress has created an automatic stay that arises to benefit and protect several different entities: (1) the debtor and (2) the bankruptcy estate.

In 11 U.S.C. § 362(c)(3)(A), Congress recognizes that a debtor filing a second case may be improperly attempting to use a bankruptcy estate as a front for having an automatic stay to protect the debtor. In such a situation, with respect to the specific statutory injunction provisions that impose the

injunction for the benefit of the bankruptcy estate, a bankruptcy trustee (or in theory a debtor in possession or Chapter 12 or Chapter 13 debtor may quickly and readily either stipulate to relief from the stay or abandon property of the bankruptcy estate (so it is no longer protected by the stay for property of the bankruptcy estate) securing the debt which is of no value to the bankruptcy estate and the creditors in the bankruptcy case.

However, in 11 U.S.C. § 362(c)(3)(A) provides that as to a debtor who files the second case within a year of a prior case being dismissed, the stay will terminate as to the debtor, unless the debtor "demonstrates [to the court] that the filing of the later case is in good faith as to the creditors to be stayed

As written in the plain language 11 U.S.C. § 362(c)(3)(A), in saying that the stay terminates as to the debtor, it is only the debtor who can demonstrate to the court that the debtor has filed the later case in good faith. The bankruptcy trustee – whether Chapter 7, 11, 12, or 13 has no seat at the table to demonstrate to the court that the debtor filed the later case in good faith and that the automatic stay as to the debtor should be extended.

Legal Authority Cited By Movant

Movant provides one authority and legal basis in its Memorandum of Points and Authorities in Support of Motion (Dckt. 35) for the proposition that Congress stating in 11 U.S.C. § 362(c)(3)(A) that the automatic stay terminates as to the debtor actually **means** that the automatic stay terminates as to both the debtor **and** the bankruptcy estate (each separate legal entities) - *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 368, (B.A.P. 9th 2011).

In *Reswick* the Bankruptcy Appellate Panel addressed what it thought to be confusing language in 11 U.S.C. § 362(c)(3) – concluding that the minority view of interpreting this language to mean that the term "with respect to the debtor" actually means "with the respect to the debtor **and** property of the bankruptcy estate." At the core of the Bankruptcy Appellate Panel concluding that there was not "plain language" to be interpreted, the panel in *Reswick* stated:

> If the phrase "with respect to the debtor" meant that the automatic stay only terminated as to the debtor personally and as to non-estate property, the opening clause of section 362(c)(3)(A) would be surplusage. There would be no reason for section 362(c)(3)(A) to reference actions "with respect to a debtor or property securing debt or with respect to any lease" if the interpretation of the Debtor and the majority were correct.

Reswick v. Reswick (In re Reswick), 446 B.R. 362, 368, (B.A.P. 9th 2011). The language at issue stated in 11 U.S.C. § 362(c)(3) is:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) --
>
> > (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;

The B.A.P. panel's conclusion that the reference to "property" must refer to property of the bankruptcy estate assumes that all property of a debtor is "property of the bankruptcy estate."

It appears that the B.A.P. did not consider that a debtor, who was protected by the automatic stay, might have an obligation that was secured by property owned by other persons (father, mother, business associate, or friend). And that for such obligation, the creditor would be enjoined by the statutory injunction granted the debtor in 11 U.S.C. § 362(a)(6) of any "act to collect, assess, or recover a **claim against the debtor** that arose before the commencement of the bankruptcy case"

DISCUSSION

The court's analysis of this contention for interpreting the plain language of 11 U.S.C. § 362(c)(3)(A), as it does with the view of the majority of courts begins with the basic rules of statutory construction as enunciated by the United States Supreme Court.

Statutory Interpretation of
11 U.S.C. § 362(c)(3)

To construe what Congress has enacted, judges (and lawyers) always begin with the plain language of the statute. *Duncan v. Walker*, 533 U.S. 167, 172 (2001). When the language of a statute is "plain," the court cannot disregard its plain terms and must rely on the law as written. *Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1749 (2020). Even legislative history can never defeat unambiguous statutory text. *Id*. at 1750.

Merely because there is a division in judicial authority does not render a statute ambiguous. *Reno v. Koray*, 515 U.S. 50, 65 (1995). Even if a court is more persuaded by the policy implications of one judicial authority that "the law should have been written to say something other than the plan language of the statue," the court must apply the unambiguous law as it is written. *United States v. Rodgers*, 466 U.S. 475, 484 (1984). If the plain language of the statute is being applied differently than Congress's intent, "[i]t is beyond our province to rescue Congress from its drafting errors, and to provide for what we might think ... is the preferred result." *United States v. Granderson*, 511 U.S. 39, 68, 114 S.Ct. 1259, 127 L.Ed.2d 611 (1994) (concurring opinion). Congress can resolve the misapplied law by drafting amendments to the poorly written statutes.

In addressing the contention that "as to the debtor" means as to the "estate and all other parties in interest," parsing through the language of 11 U.S.C. § 362(c)(3) proceeds as follows:

Reviewing 11 U.S.C. § 362(a), Congress has clearly created four provisions that expressly apply to "the debtor" and three that expressly related to property of the bankruptcy estate. Congress clearly distinguishes between the "debtor" and the bankruptcy estate when imposing the automatic stay.

Definition of Debtor and Bankruptcy Estate

The terms "debtor" and "bankruptcy estate" are not undefined theoretical concepts for court's to develop in the future. First, Congress does not leave who or what is a "debtor" for argument of parties and to be divined by the court, but defines "debtor" in 11 U.S.C. § 101(13) to be:

> (13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

Definition of Person

Congress then makes sure there is no dispute as to who or what constitutes a "person" providing the statutory definition in 11 U.S.C. § 101(41), as:

> (41) The term "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that– . . . .

Then in 11 U.S.C. § 301, 302, and 303 that voluntary, joint, and involuntary bankruptcy cases are commenced by or for the "debtor" in that bankruptcy case.

Thus, the "debtor" is the person who has put him/her/itself voluntarily into bankruptcy or has been placed into bankruptcy involuntarily by creditors. Such person is not "property."

For what constitutes a "bankruptcy estate," Congress provides a statutory definition in 11 U.S.C. § 541(a), which is summarized as follows (using the paragraph and subparagraph designations .of § 541(a)):

> (a) The commencement of a bankruptcy case creates the bankruptcy estate, which is comprised of all the following property:
>
> > (1) All legal or equitable **interests of the debtor in property** as of the commencement of the case (with specified exceptions in 11 U.S.C. § 541(b) and ©);
> >
> > (2) **All interests of the debtor and the debtor's spouse** in community property as of the commencement of the case that is (A) subject to management and control of the debtor or (B) liable for claims against the debtor;
> >
> > (3), (4) Any interest in property recovered by the trustee under specified bankruptcy provisions;
> >
> > (5) **Property acquired by the debtor** by bequest, devise, inheritance, marital settlement or dissolution, life insurance or death plan, which debtor becomes entitled to within 180 days after the commencement of the bankruptcy case;
> > (6) Proceeds, product, offspring, rents, or profits of or from property of the estate; and;
> >
> > (7) Interests in property that the bankruptcy estate acquires after the commencement of the case.

11 U.S.C. § 541(a)(1)-(7).

It is clear that as drafted by Congress, the bankruptcy estate is not the debtor, and the debtor is not the bankruptcy estate. Though acquired by operation of law from the debtor, the property of the bankruptcy estate is not property of the debtor.

Exclusions from the above are found in 11 U.S.C. § 541(b) and ©, including properties that the debtor holds for others (such as trustee of a trust), terminated leases, specified retirement accounts, education accounts, and spendthrift trust interests. For these property interests, they continue to be property of the debtor (and are not property of the bankruptcy estate) and protected by the automatic stay protections granted the debtor - to the extent that the automatic stay has not been terminated as to the debtor.

Legislative History

Although this court finds the plain language of 11 U.S.C. § 362(c)(3) unambiguous, and therefore, no look into legislative intent is warranted (or justifiable in interpreting the plain language of 11 U.S.C. § 362(c)(3)(A)), such review is instructive and consistent with the plain language of the statute. The House Report includes the following discussion of the automatic stay and the provisions of 11 U.S.C. § 362(a):

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.
>
> The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.
>
> Subsection (a) defines the scope of the automatic stay, by listing the acts that are **stayed by the commencement of the case**. The commencement or continuation, including the issuance of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case is stayed under paragraph (1). The scope of this paragraph is broad. All proceedings are stayed, including arbitration, license revocation, administrative, and judicial proceedings. Proceedings in this sense encompasses civil actions as well, and all proceedings even if they are not before governmental tribunals.

. . .

> Paragraph (2) stays the enforcement, against the debtor **or** against property of the estate, of a judgment obtained before the commencement of the bankruptcy case. Thus, execution and levy against the debtors' prepetition property [which is property of the bankruptcy estate, and not debtor, once the case is filed] are stayed, and attempts to collect a judgment from the debtor personally are stayed.
>
> Paragraph (3) stays any act to obtain possession of property of the estate (that is, property of the debtor as of the date of the filing of the petition) or property from the estate (property over which the estate has control or possession). The purpose of this provision is to prevent dismemberment of the estate. Liquidation must proceed in an orderly fashion. Any distribution of property must be by the trustee

after he has had an opportunity to familiarize himself with the various rights and interests involved and with the property available for distribution.

Paragraph (4) stays lien creation against property of the estate. Thus, taking possession to perfect a lien or obtaining court process is prohibited. To permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of unsecured.

Paragraph (5) stays any act to create or enforce a lien against property of the debtor, that is, most property that is acquired after the date of the filing of the petition, property that is exempted, or property that does not pass to the estate, to the extent that the lien secures a prepetition claim. Again, to permit postbankruptcy lien creation or enforcement would permit certain creditors to receive preferential treatment. It may also circumvent the debtors' discharge.

Paragraph (6) prevents creditors from attempting in any way to collect a prepetition debt. Creditors in consumer cases occasionally telephone debtors to encourage repayment in spite of bankruptcy. Inexperienced, frightened, or ill-counseled debtors may succumb to suggestions to repay notwithstanding their bankruptcy. This provision prevents evasion of the purpose of the bankruptcy laws by sophisticated creditors.

H. Rept. No. 95-595 to accompany H.R. 8200, 95th Cong., 1st Sess. (1977) pp. 340-344. (Emphasis added.) As shown in the Legislative History, there are injunctions created for the "debtor" and injunctions created for "property of the bankruptcy estate," and then some that work to protect both.

As stated by Congress, the automatic stay does not exist merely to protect the debtor. The stay protects the bankruptcy estate, reaching out to protect even the interests of the creditor body as a whole. When one interprets 11 U.S.C. § 362(c)(3) statement of termination of the automatic stay "as to the debtor" to be "and as to the bankruptcy estate and all other creditors," it works to punish creditors, especially the creditors holding general unsecured claims.

11 U.S.C. § 362(a) provides complementary stay provisions which give rights and protections to the debtor on the one hand, and the bankruptcy trustee and bankruptcy estate.

Also, Congress recognizes that a debtor filing a second case may be improperly attempting to use a bankruptcy trustee as a front for an automatic stay. The trustee may quickly and readily either stipulate to relief from the stay or abandon the property (so it is no longer protected by the stay for property of the bankruptcy estate) securing the debt. For a creditor and trustee who so reasonably act, the debtor is then prevented from then contending he or she has a stay, forcing needless time and expense of stay litigation.

Review of the *Reswick* Decision and Subsequent Court Decisions

In *Reswick*, the B.A.P. concluded that the reference to the stay terminating only as to the debtor was "ambiguous" in light of the language saying that with respect to the debtor and property securing the debt at the start of 11 U.S.C. § 362(a)(3)(A). As discussed above, property securing the

debt, which is not property of the bankruptcy estate (i.e. property owned by a third party or subsequently acquired by the debtor) would be protected by the automatic stay granted to debtor (and clearly would be outside the automatic stay granted property of the bankruptcy estate).

Collier on Bankruptcy provides the following discussion and citations supporting this treatise with respect to the scope of the termination of the automatic stay "as to the debtor" as provided in 11 U.S.C. § 362(c)(3):

> [a] Scope of Stay Limitation
>
> There are certain limitations arising from the express wording of subsection (c)(3). First, the **stay terminates under this provision only "with respect to the debtor.**" As in other provisions in section 362, Congress sought in subsection (c)(3) to **distinguish between actions taken against property of the debtor and property of the estate**.[18] This intent to limit the stay termination to actions against the debtor is made abundantly clear when the language in subsection (c)(3) is compared to the much broader scope of the parallel stay termination provision in subsection (c)(4)[19] for a debtor who has had two dismissed cases within the prior year, particularly since both provisions were enacted at the same time as part of the 2005 amendments.[20] Thus, if there has been a stay termination based on the operation of subsection (c)(3) in a case filed within a year of a prior dismissal, the automatic stay provided under section 362(a) continues to apply in that case as to actions taken against property of the estate, but not as to actions against the debtor or property of the debtor that is not property of the estate.[21]

18 *See, e.g.*, 11 U.S.C. § 362(a)(1) ("against the debtor"), 362(a)(2) ("against the debtor or against property of the estate"), 362(a)(3) ("property of the estate or of property from the estate"), 362(a)(4) ("against property of the estate"), 362(a)(5) ("against property of the debtor"), 362(a)(6) ("against the debtor").
1911 U.S.C. § 362(c)(4)(i); see ¶ 362.06[4] infra.

20 *See Jumpp v. Chase Home Fin., LLC (In re Jumpp)*, 356 B.R. 789 (B.A.P. 1st Cir. 2006); *In re Moon*, 339 B.R. 668, 671 (Bankr. N.D. Ohio 2006) ("Had the drafters of this provision intended that the whole of the automatic stay would terminate, they could have easily just referenced § 362(a) as they did in § 362(c)(4)(A) ('the stay under subsection (a) shall not go into effect upon the filing of the later case').").

21 Rose v. Select Portfolio Servicing, Inc., 945 F.3d 226 (5th Cir. 2019); *In re Holcomb*, 380 B.R. 813 (B.A.P. 10th Cir. 2008); *In re McGrath*, 621 B.R. 260 (Bankr. D.N.M. 2020); *In re Thu Thi Dao*, 616 B.R. 103 (Bankr. E.D. Cal. 2020); *In re Roach*, 555 B.R. 840 (Bankr. M.D. Ala. 2016); *In re Hale*, 535 B.R. 520 (Bankr. E.D.N.Y. 2015); *In re Scott-Hood*, 473 B.R. 133 (Bankr. W.D. Tex. 2012); *In re Alvarez*, 432 B.R. 839 (Bankr. S.D. Cal. 2010); *In re Jones*, 339 B.R. 360 (Bankr. E.D.N.C. 2006); *In re Johnson*, 335 B.R. 805 (Bankr. W.D. Tenn.2006). *But see Smith v. Maine Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576 (1st Cir. 2018); *In re Reswick*, 446 B.R. 362 (B.A.P. 9th Cir. 2011); *Vitalich v. Bank of N.Y. Mellon*, 569 B.R. 502 (N.D. Cal. 2016); *St. Anne's Credit*

> *Union v. Ackell*, 490 B.R. 141 (D. Mass. 2013); *In re Daniel*, 404 B.R. 318 (Bankr. N.D. Ill. 2009); *In re Jupiter*, 344 B.R. 754 (Bankr. D.S.C. 2006).

3 Collier on Bankruptcy P 362.06 (16th 2021) (emphasis added).

As referenced above, Congress has also enacted 11 U.S.C. § 362(c)(4) which applies if the debtor had two cases pending and dismissed within one year prior to the case then before the court. In 11 U.S.C. § 362(c)(4)(A)(i) (emphasis added), Congress provides:

> (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and **if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), **the stay under subsection (a) shall not go into effect upon the filing of the later case**;. . . .

Congress does not state in 11 U.S.C. § 362(c)(4)(i) that the stay does not go into effect as to the "debtor," but says the say does not go into effect as to the "case." The case is the legal proceeding commenced in which there is a debtor – thus, there is no automatic stay that goes into effect for each of the protected entities, the debtor and the bankruptcy estate in which all of the property of the estate is located.

Court's Ruling

Creditor states the relief requested in the last section of the Motion the following specific relief:

> **Since the automatic stay under Bankruptcy Code Section 362(a) has been terminated by operation of Bankruptcy Code Section 363(c)(3)**, and since cases have held that the stay terminates in its entirety, Lender is entitled to an **order confirming that the automatic stay under Bankruptcy Code Section 362(a) has been terminated with respect to the Debtors and the property of the bankruptcy estate** so that Lender may take any action with respect to the Loan and Lender's Collateral, pursuant to Bankruptcy Code Section 363(j).

Motion, p.3:17-23; Dckt. 33 (emphasis added). The relief is premised that the bankruptcy stay has been terminated in the case and that the relief is expressly requested in the conjunctive, that the stay has been terminated with respect to both the Debtor and the Bankruptcy Estate, the relief cannot be granted. The plain language of 11 U.S.C. § 362(c)(3)(A) clearly and plainly states that the stay terminates only as to the Debtor, not the Bankruptcy Estate. If the legal term "debtor," as defined by Congress in 11 U.S.C. § 101 includes "property of the estate," then 11 U.S.C. § 362(c)(4)(A)(i) would have stated that no stay goes into effect as to the "debtor" and not no stay goes into effect in the "case."

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm Absence of the Automatic Stay filed by Tri Counties Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that pursuant to 11 U.S.C. § 362(c)(3)(A), the Motion is denied without prejudice.