

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman

Bankruptcy Judge

Sacramento, California

September 16, 2014 at 9:31 A.M.

1. [14-27085](#)-B-13 GARY/JUDY DUERNER
SW-1

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
8-12-14 [[25](#)]

U.S. BANK, N.A. VS.

Tentative Ruling: The debtors' opposition is overruled. Pursuant to 11 U.S.C. § 362(j) and 11 U.S.C. § 362(c)(4)(A)(ii), the motion is granted in part. The court confirms that the automatic stay did not go into effect upon the filing of the instant case by operation of 11 U.S.C. § 362(c)(4)(A)(i), that the debtors did not file a motion to impose the automatic stay within the 30-day period allowed by 11 U.S.C. § 362(c)(4)(B), and that no automatic stay has been ordered into effect since the filing of this case. Except as so ordered, the motion is denied.

11 U.S.C. § 362(c)(4) provides that "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." 11 U.S.C. § 362(c)(4)(A)(i). Here, based on the facts alleged by the movant and the court's independent review of the debtors' filing history, the court has determined that the requirements of 11 U.S.C. § 362(c)(4)(A)(i) have been satisfied. Specifically, the court has determined that the debtors have had two prior cases pending and dismissed within the one-year period preceding the filing of the instant case. Case number 12-40283 ("Case #1") was filed on November 20, 2012, and dismissed by order entered July 10, 2013. Case #1 was closed by order entered August 9, 2013. Case number 13-29072 ("Case #2") was filed on July 8, 2013, and dismissed by order entered September 24, 2013. Case #2 was closed by order entered December 18, 2013. The instant case was filed on July 9, 2014. Accordingly, Case #1 and Case #2 were pending and dismissed within the one-year period preceding the filing of the instant case, and the requirements of 11 U.S.C. § 362(c)(4) are satisfied. The debtors failed within the time allowed under 11 U.S.C. § 362(c)(4)(B) to file a motion to impose the automatic stay in this case. Accordingly, the motion is granted and the court confirms that no automatic stay went into effect upon the filing of the instant case.

The debtors' opposition is unpersuasive. The debtors first argue that Case #1 was dismissed more than one year prior to the filing of the instant case because the civil minutes from the hearing on the debtors' motion to voluntarily dismiss Case #1, which reflect that the motion was granted, were entered on July 8, 2013. This is incorrect. While it is

true that the civil minutes were dated July 8, 2013, the dismissal of the case did not become effective until the civil minute order dismissing the case was entered on the case docket. Fed. R. Bankr. P. 9021. According to the docket in Case #1, the minute order was signed by Judge Bardwil on July 10, 2013, and the order was entered on the docket that same day (Bky. Dkt. 188). Accordingly, Case #1 was dismissed on July 10, 2013, regardless of whatever date the movant may have put in a previous objection to plan confirmation. The period of time between the dismissal of Case #1 and the filing of the instant case is 364 days, less than one year.

The debtors next argue that Case #2 should not be counted as part of their filing history because it was later dismissed due to ineligibility pursuant to 11 U.S.C. § 109(g). The debtors cite no authority for the proposition that a prior case should not be considered part of a debtor's filing history for purposes of 11 U.S.C. § 362(c)(4), and the court is aware of no such authority. Further, the court simply disagrees with the debtors' argument. Case #2 was still a "case" regardless of the reason behind its dismissal. As the movant correctly asserts, the case did not get "wiped away" simply because it was later determined that the debtors were ineligible. In fact, between the time that Case #2 was filed on July 8, 2013, and dismissed on September 24, 2013, the debtors did enjoy the protections and relief offered by chapter 13 bankruptcy.

The court will issue a minute order.