

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

IN RE:)	CHAPTER 13
)	
KAREN BARE HARTH,)	Case No. 10-70828
)	
Debtor.)	

DECISION AND ORDER

This case is before the Court upon the Debtor’s Motion to Extend Stay (the “Motion”) which was heard on April 26, 2010. The Motion was not filed until April 20 due to the fact that Debtor’s counsel has been awaiting pay stubs from the Debtor to support the filing of a Chapter 13 Plan as well as the instant Motion before filing same. While the amount of notice given is less than adequate, 11 U.S.C. § 362(c)(3)(B) requires that a motion of this kind be heard within thirty days of the filing date. Situations of this kind are contemplated by the definition contained in 11 U.S.C. § 102(1) which permits “such notice as is appropriate in the particular circumstances” and even action without an actual hearing if “there is insufficient time for a hearing to be commenced before such act must be done.” The Court finds that under the circumstances presented here it may properly proceed to consider the Motion upon the notice which has been given.

The Debtor herself did not appear at the hearing due to her work obligations, but her counsel appeared on her behalf. Counsel for the Chapter 13 Trustee also appeared. The attorneys agreed that each might present evidence by proffer. The Trustee opposed the Motion. No creditor or other party in interest appeared.

This Court has jurisdiction over this proceeding by virtue of the provisions of 28 U.S.C. §§ 1334(a) and 157(a) and the delegation made to this Court by Order from the District

Court on July 24, 1984. While the present Motion is not precisely one to “terminate, annul or modify the automatic stay” as provided for in 28 U.S.C. § 157(b)(2)(G), the Court concludes that it is of the same nature as such a motion and therefore constitutes a “core” bankruptcy proceeding within the meaning of such statute.

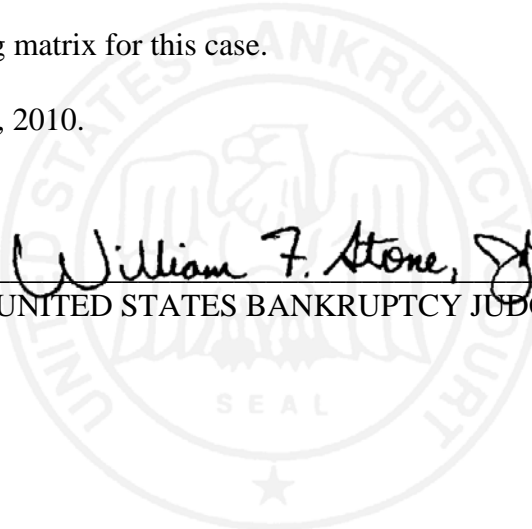
After consideration of the evidence provided by counsel by proffer, the Court accepts the Debtor’s representation that the dismissal of her prior case earlier this year, while occasioned by her failure to supply certain documentation and to file an amended plan by a date set by the Court, was the result of factors beyond her control, specifically the loss of employment during the prior case followed by a period of unemployment before she was able to obtain a new job. After a review of the schedules filed in this case and the provisions of the Debtor’s proposed Chapter 13 Plan and consideration of the representations made at the hearing, the Court finds that the present case is one which is filed in good faith as to the creditors to be stayed. The Court concludes that the presumption of bad faith provided for in § 362(c)(3)(C) is not applicable here because there has been only one other case on behalf of the Debtor pending within the one year period preceding the filing of this case, there was a substantial excuse for the Debtor’s failure to file an amended plan and supply pay stubs from her new job in the prior case, and that the current employment and income of both the Debtor and her non-filing spouse provide “other reason to conclude that [this] case will be concluded . . . with a confirmed plan that will be fully performed.” 11 U.S.C. § 362(c)(3)(C)(i)(III).

For these reasons the Court grants the Motion but only to the extent of extending the automatic stay as to all creditors until the date of the confirmation hearing on the Debtor’s Plan on June 16, 2010. If such Plan is not confirmed at such hearing, the automatic stay shall

terminate as to all creditors. It is SO ORDERED.

The Clerk is directed to send electronically or by mail, as appropriate, a copy of this Order to all parties on the current mailing matrix for this case.

ENTER this 27th day of April, 2010.

The seal of the United States Bankruptcy Court is visible in the background, featuring an eagle with spread wings, a shield on its chest, and a star below it. The words "UNITED STATES BANKRUPTCY COURT" and "SEAL" are inscribed around the eagle.
William F. Stone, Jr.
UNITED STATES BANKRUPTCY JUDGE